



**PARK CITY MUNICIPAL CORPORATION
APPEAL PANEL MEETING
SUMMIT COUNTY, UTAH
MARSAC MUNICIPAL BUILDING
MARCH 4, 2024**

MEMBERS IN ATTENDANCE: Adam Strachan, Esteban Nunez, Matthew Day
(attended virtually)

EX OFFICIO: Rebecca Ward, Planning Director; Michelle Kellogg, City Recorder; Spencer Cawley, Planner II; Dave Thacker, Chief Building Official; Mark Harrington, City Attorney

1. MEETING CALLED TO ORDER AT 5:00 P.M.

The Appeal Panel Meeting was called to order at 5:02 p.m.

Planning Director, Rebecca Ward, reported that this is the first Appeal Panel Meeting. City Recorder, Michelle Kellogg, was present to swear in Esteban Nunez and Adam Strachan. Matthew Day attended virtually. It was noted that he was sworn in prior to this meeting. Recorder Kellogg took a moment to swear in Messrs. Nunez and Strachan.

2. ROLL CALL

All members of the Appeal Panel were present.

3. STAFF AND BOARD COMMUNICATIONS AND DISCLOSURES

- A. Appeal Panel Chair Election –** The Appeal Panel will Elect One of Its Members to serve as Chair for a Term of One Year.

Director Ward reported that the Appeal Panel needs to elect a member to serve as Chair for a term of one year. Mr. Day suggested that Mr. Strachan serve as Chair due to his prior experience.

MOTION: Matthew Day moved to APPOINT Adam Strachan as Chair of the Appeal Panel for a term of one year. Esteban Nunez seconded the motion.

VOTE: The motion passed unanimously.

- B. Open and Public Meetings Act Training.**

Director Ward noted that there was a handout related to Open and Public Meetings Act Training included in the packet. There was a short training video to share with the Appeal Panel as well. The training video explained that the Open and Public Meetings Act is the State Law that ensures that government actions and deliberations are openly conducted. An open and public meeting is

when a public body quorum, also known as a simple majority, needs to discuss or act upon government business. It includes meetings that are sometimes referred to as Workshops, Executive Sessions, Regular Meetings, Public Hearings, Electronic Meetings, and Emergency Meetings. Open and public meetings do not include chance or social meetings.

A Public Hearing is a type of open and public meeting where citizens have a reasonable opportunity to speak. Public hearings happen when a government adopts a budget, imposes, or increases taxes or fees, or transfers money from an enterprise fund. These meetings have extra noticing requirements. An Electronic Meeting is a type of open and public meeting that is convened electronically. The governing body must adopt a resolution, rule, or ordinance allowing electronic meetings. An Emergency Meeting may be held to discuss an urgent matter due to unforeseen circumstances. In order to hold the meeting, the best notice feasible is provided, with the time, location, and topics to be considered. An attempt also must be made to contact all governing body members. Additionally, the governing body majority must approve the meeting.

An open and public meeting may be closed to discuss any of the following matters:

- The character, competence, or health of an individual;
- Collective bargaining;
- Litigation;
- Certain real property transactions, including water rights or water shares, with specific restrictions;
- Security personnel, devices, or systems deployment;
- Investigations of criminal misconduct; and
- Private or protected information per the Utah Procurement Code.

A Closed Meeting may be held only if a quorum is present and the meeting was properly noticed. Two-thirds of the governing body present at the meeting need to vote “yes” to close a meeting. It was explained that during a Closed Meeting, a governing body cannot do the following:

- Interview someone applying to fill an elected position;
- Discuss filling a mid-term vacancy or temporary absence;
- Discuss the character, competence, or health of a person who had their name submitted for consideration to fill a mid-term vacancy or temporary absence; and
- Approve any ordinance, resolution, rule, regulation, contract, or appointment, or take a vote, unless it is a vote on a motion to end the closed portion of the meeting and return to an open meeting.

When a governing body closes a meeting, the following must be publicly announced and entered into the Meeting Minutes of the open meeting in which the closed meeting was approved:

- The reason or reasons for holding the Closed Meeting;
- The location of where the Closed Meeting will be held; and
- The vote of each member of the governing body either for or against the motion to close the meeting.

If a Closed Meeting is discussing the character, competence, or health of an individual, or security personnel, devices, or systems deployment, no recording or Meeting Minutes are required. However, the presiding member needs to sign a sworn written statement stating such. If the

Closed Meeting is held for any other reason, a recording must be made, which includes the date, time, and place of the meeting, names of members present and absent, and names of all others, except where disclosure would infringe on the confidentiality necessary to fulfill the original purpose of closing the meeting. Regular open and public meetings require 24 hours' notice. The public notice includes the meeting agenda, date, time, and place. Public meeting agendas need to include reasonably specified topics to be considered, with each topic listed under a separate agenda item on the meeting agenda. The governing body may not consider a topic in an open meeting that is not included on the agenda. If a new topic, not on the agenda, is raised by the public during an open meeting, the governing body may discuss the topic. However, final action may not be taken on the topic during that meeting. It can be scheduled for discussion in the future.

Entities holding regular meetings scheduled in advance over the course of the year need to provide annual notice of the entire meeting schedule for the year. The notice must include the date, time, and place for each meeting. Notice is posted on the public body's website, in a public location, such as the location where the meeting will be held, and the Utah Public Notice website, in accordance with Utah Code 63G-30-102. Typically, posting on the Utah Public Notice website is done by the Records Officer, Recorder, or Clerk. However, it is the responsibility of the governing body to ensure that notice is provided. It was noted that written Meeting Minutes and a recording are kept for all open meetings, with few exceptions. Written Meeting Minutes include:

- The date, time, and place of the meeting;
- Names of members present and absent;
- The substance of all matters;
- Names of citizens providing comments and the substance of the comments provided;
- Any information a body member requests be entered into the Meeting Minutes; and
- A record by individual members of each vote taken.

A body with elected members must record each vote in list format by category for each action taken by a member, including yes votes, no votes, and absent members. The recording must be a complete and unedited record of all open portions of the meeting from beginning to end and be labeled with the meeting date, time, and place. All or part of an open meeting may be independently recorded by any person in attendance if the recording does not interfere with the conduct of the meeting. Pending minutes are minutes of an open meeting in draft form, subject to change, before being approved by the public body that held the open meeting. Pending Meeting Minutes must contain a clear indication, such as a "draft" or "pending" watermark to state that the governing body has not yet approved the minutes and they are subject to change.

Approved Meeting Minutes means written minutes of an open meeting approved by the public body that held the open meeting. Entities must establish and implement procedures for the public body's approval of written minutes. Pending minutes, approved minutes, and recordings are public records under the Government Records and Management Act ("GRAMA"). Any individual who publicly presents information relating to an item on the meeting agenda must provide a copy of the information for inclusion in the public record. Pending minutes must be made available to the public within 30 days. Within three business days after approving written minutes of an open meeting, approved minutes and public materials must be made available on the Utah Public Notice website, the entity's primary office, and the website. Additionally, within three business days after holding an open meeting, an audio recording of the open meeting must be made available to the public to listen to.

Chair Strachan asked if Planning Staff would handle Meeting Minutes and posting the materials. Director Ward reported that the Meeting Minutes will be written, the Appeal Panel will review those Meeting Minutes, and the Appeal Panel will determine whether it is appropriate to approve or amend them. Staff will ensure that Meeting Minutes are uploaded and made available to the public. Chair Strachan asked about the need to keep track of the votes. Director Ward explained that this is kept as part of the Meeting Minutes. She clarified that with the civic clerk program used for online Meeting Material Packet publication, it is possible to track votes there as well.

4. PUBLIC COMMUNICATIONS

There were no public communications.

5. CONSENT AGENDA

- A. **Consideration to Adopt Resolution 01-2024 – A Resolution Authorizing Participation in Meetings by Electronic Communication.**

MOTION: Matthew Day moved to APPROVE Resolution 01-2024 – Approving Appeal Panel Rules of Order and Procedure and Adopting a Policy Authorizing Participation in Meetings by Electronic Communication. Esteban Nunez seconded the motion.

VOTE: The motion passed unanimously.

6. REGULAR AGENDA

- A. **1115 Aerie Drive – Conditional Use Permit for a Private Recreation Facility –**
The Applicant Appeals the Planning Commission's July 13, 2022, Denial of a Conditional Use Permit (PL-21-05101) for a Private Recreation Facility (Sports Court) located Outside the Building Pad.

Mr. Day shared a disclosure with those present. He explained that he has been on the property and has seen the recreational facility. Several months ago, he had a local window contractor bidding on a personal project. He asked to see what the windows would look like fully installed in a house and the contractor took him to 1115 Aerie Drive to see the windows there. That visit occurred before he was a member of the Appeal Panel. Mr. Day does not know the owner of the property and to his knowledge, he has not spoken to the owner. While on-site, he did briefly see the recreational area. He did not ultimately engage that window contractor for his project. His previous visit to the site will not impact his ability to review the appeal in an unbiased manner.

Planner II, Spencer Cawley, presented the Staff Report and explained that he will now share an overview of the appeal for 1115 Aerie Drive. He noted that the Chief Building Official, Dave Thacker, is present to answer questions related to the Building Permit and Building Department processes. The applicant and applicant representatives are also present at the meeting.

Planner Cawley shared background information about the application. On December 20, 2021, the applicant submitted a Conditional Use Permit ("CUP") application for a sports court. A sports court is identified by the Land Management Code ("LMC") as a private recreation facility, requiring a CUP in the zone where the residence is located. The sports court was constructed without proper approvals or permits and was built outside of the existing building pad indicated on the

Hearthstone Subdivision Plat, crossing property lines. The applicant proposed to modify the constructed sports court by reducing the size from 4,795 square feet to 2,085 square feet and completing the review and permit process for the construction of the sports court. Also on December 20, 2021, the applicant submitted an Administrative CUP application for retaining walls constructed greater than six feet in height without proper approvals or permits. Planner Cawley informed those present that Administrative CUPs require Staff-level review and final action.

On June 17, 2022, the applicant requested final action on the Administrative CUP, pursuant to Utah Code § 10-9a-509.5(2)(b), requiring Staff to complete the review within 45 days. In order to accommodate the request, Staff took the CUP to the Planning Commission on July 13, 2022. At that time, the Planning Commission reviewed the Private Recreation Facility CUP, held a public hearing, and denied the CUP, as outlined in the Final Action Letter. The findings stated:

- The development is not compatible with prior land use approvals, including the approved Master Planned Development (“MPD”) and Final Plat;
- The application lacked information regarding the CUP requirements for screening and landscaping, compatibility with surrounding structures, noise, lighting, sensitive lands, and steep slopes; and
- The proposal is inconsistent with the General Plan.

Planner Cawley reported that public input was received and forwarded to the Appeal Panel prior to the meeting. All public input received as part of the original application was attached as Exhibit I in the Meeting Materials Packet. An aerial view of 1115 Aerie Drive was shared. The property is Lot 8 in the Overlook at Old Town Subdivision. The subdivision is located on Aerie Drive within the two switchbacks of the right-of-way. The subdivision was approved in 1993 and as part of that approval, each lot was allowed a 90-foot by 90-foot building pad. On the image shown, Staff highlighted the existing sports court, the proposed resized sports court pad, and the existing building pad. On January 21, 2021, a Grading/Landscaping Permit was applied for to replace three retaining walls on the northeast corner of the property. The Building Department Staff noted that walls greater than four feet require engineered plans and patios require a separate Building Permit. Planning Department Staff reviewed the application and noted that walls must be outside of the 10-foot Public Snow Storage Easement adjacent to Aerie Drive. It was also stated that all areas that are disturbed during construction must be re-vegetated and no significant vegetation was approved to be removed. The approved Site Plan is attached as Exhibit E.

On September 8, 2021, two stop-work orders were issued. Planner Cawley noted that those are attached to the Meeting Materials Packet as exhibits. On March 15, 2022, the applicant submitted a Plat Amendment application. The application was specific to amending the building pad and the limits of disturbance. He reiterated that July 13, 2022, was the denial of the CUP. On August 1, 2022, the applicant filed an appeal of the CUP denial from the Planning Commission. On August 11, 2022, the Planning Director, with applicant approval, continued the Administrative CUP review of the proposed retaining walls to a date to be determined, due to the appeal of the CUP denial for a Private Recreation Facility. On October 18, 2022, a Perpetual Improvements Easement Agreement was recorded with Summit County. On November 16, 2023, the Utah Property Rights Ombudsman issued an Advisory Opinion regarding the Final Action.

The standard of review for the Appeal Panel is that it shall act in a quasi-judicial manner and review factual matters de novo, without deference to Staff determination of factual matters. The Appeal Panel shall determine the correctness of the Planning Commission’s interpretation and

application of the plain meaning of the land use regulations and interpret and apply a land use regulation to favor a land use application unless the land use regulation plainly restricts the land use application. The applicant has the burden of proving that the Planning Commission erred in denying the CUP. The Planning Commission found the proposal does not mitigate the reasonably anticipated detrimental effects of the proposed use and does not comply with the CUP criteria outlined in LMC § 15-1-10(E). The Utah Property Rights Ombudsman Advisory Opinion outlines four points in their analysis of the Planning Commission's action, which are as follows:

- The proposed development at 1115 Aerie Drive does not violate internal lot restrictions;
- The Commission's findings that the as-built conditions violated the City's Steep Slope Regulations are not supported by the record;
- Final Action on Conditional Use applications must be supported by substantial evidence; the substantive review process allows for obtaining additional necessary information before decision-making, and the City's code suggests that the Planning Commission should have continued the matter, per the applicant's request; and
- The remaining findings according to the City's Conditional Use review must be revisited to consider proper plat interpretation and additional necessary information.

Attorney Todd Godfrey stated that years ago, he represented Valley Mental Health and Valley Behavioral Health. There was a Chief Executive Officer ("CEO") who resembled the property owner in this case. He took a moment to confirm that this was not the same person. Attorney Godfrey introduced himself to the members of the Appeal Panel and explained that is with the firm Hayes Godfrey & Bell. The City has retained him to represent the Appeal Panel at the current Appeal Panel Meeting.

Mr. Nunez asked about the retaining wall. It was stated that engineered plans were requested if it was over four feet, so he wanted to know what process was given to the applicant to be able to submit those engineered plans. Planner Cawley explained that during the review process if there is identification of additional information needed in order to review and approve a Building Permit, a request can be made to the applicant. The permit can be approved and the information submitted later or the information can be submitted prior to issuing the Building Permit.

Mr. Day also had a question about the retaining wall. As he understood the matter, this is not an appeal against the CUP for the retaining wall. That being said, the issues are intertwined in a lot of ways. He wanted to know if it is possible to ask questions about the CUP that is not being appealed. Attorney Godfrey understood the appeal to relate only to the location of the recreational facility and not to the retaining wall. It is possible to ask questions about the retaining wall, but it does not appear to be significant to the appeal determination currently before the Appeal Panel.

Chair Strachan referenced Page 13 of the Staff Report, which included the Site Plan. The existing tennis court pad is outside the setback and part of the existing building pad is outside the setback. He wondered if the setback violations had been discussed. Director Ward confirmed that they were discussed for the existing concrete tennis court pad. The existing building pad on the Site Plan shows that the structure is shifted to the south. She did not believe that was a point of discussion previously but confirmed that the setbacks for the tennis court were discussed.

Chair Strachan noted that the MPD was amended in the late 1990s. He wanted to know if there is anything in the Meeting Minutes or Staff Reports from those meetings that reference items built outside of the building pad or a variance. Planner Cawley explained that he is not able to speak

to what was discussed during the meetings in the 1990s. However, based on research done as part of the CUP application, in April 1999, the Planning Commission at that time held a Work Session and considered an amendment to the Hearthstone Subdivision to eliminate those building pads. There was no consensus at a Planning Commission level that there was a reason to change the building pad limitations as platted. That plat amendment did not move forward.

Mr. Day believed the question was less about the building pad and more about the limits of disturbance. At some point, there were supposed to be limits of disturbance on the plats, but those were not put onto the lot or any of the other lots. At that time, it was contemplated that there would be limits of disturbance, but those never made it onto the plat. This was confirmed.

Mr. Day asked about the Grading Permit. It appears there was a partial pass in January 2023, where the playground with outdoor kitchen, putting green, fire pit, and hot tub, was approved. He asked for clarification about that. Building Official Thacker referenced the Inspection Report included in the Meeting Materials Packet. An inspection was performed on the landscape features in the rear yard, which included a putting green area, an outdoor kitchen area, and a few other playground features. Those were within the setbacks. In conversation with the Planning Director at the time, it was determined that those could be approved once Building Code standards and requirements were met. That moved forward without approving the tennis court area or any of the retaining walls outside setback areas. Mr. Day pointed out that those items were inside the setbacks but outside the building pad. Building Official Thacker confirmed this.

Chair Strachan asked for additional details about the determination made. He wanted to know if Staff considered that the building pad was the limitation or limit of disturbance. Building Official Thacker explained that Staff looked at the original submittal that came in, which only showed a few modifications to the property. Additional drawings were requested and the retaining walls within the setbacks were included in those drawings. The determination was based on the fact that the retaining walls in the areas that were approved were within the setbacks of the lot and there were no specific areas determined as limits of disturbance. Chair Strachan wanted to know why the sports court was not acceptable but the outdoor kitchen was. He wanted to better understand the distinction that had been made. Building Official Thacker stated that this was described within the Inspection Report. It noted that the retaining walls within the setbacks were encroaching upon the property lines and were not included in the approval, although they are both within the permit. The permit remains open, which is why there is currently a partial pass.

Mr. Day asked if it is possible to conclude that items such as the hot tub, fire pit, and putting green did not comply. Building Official Thacker stated that the intention of the report was to note that everything within the setbacks was approved. Anything outside the setbacks needs to be either approved or denied. From there, modifications can be made, as necessary. Mr. Day noted that one of the reasons the Commission denied the CUP had to do with the definition of structure. He struggled to understand why certain items were considered appropriate and others were not.

The applicant representative, Wade Budge, introduced himself to the Appeal Panel. He explained that he is representing Gary Sutton, who is the owner of the property and is also present at the meeting. Mr. Sutton has written a one-page comment that will be read. Mr. Budge stated that there is a desire to make clear that when the property was purchased in 2020, someone was hired to assist with the work. When the stop-work order was received, Mr. Budge was hired. Before the one-page comment was read, additional information was shared about the situation.

Mr. Budge referenced Figure 2 in the Staff Report. That was a new figure created by Staff and is now being reviewed. When the MPD was approved, the setbacks did not exist. The setbacks now identified there were adopted subsequent to the MPD and the plat. That is why the Appeal Panel may see the encroachments. It is understood that there needs to be compliance with the setbacks, which is why the applicant has come forward to address that through the current process. The goal is to receive approval for the sports court and make sure it complies with the setbacks. Reasonable conditions can be imposed so it is possible to qualify for the CUP. From there, action can be taken on the Administrative CUP and conditions can be imposed there.

Mr. Budge shared a PowerPoint presentation with the Appeal Panel. He noted that a copy has been submitted into the record and members have a paper copy of the slides as well. One slide included Park City LMC information. Staff accurately covered that information already, but he noted that the City Ordinance 15-1: General Provision and Procedures states: "A Conditional Use shall be approved provided that reasonable conditions can be imposed." He believes the Appeal Panel can approve the CUP on appeal because reasonable conditions can be imposed. An image was shared to illustrate the proposed sports court. The red outline indicates the resized sports court. It will no longer serve a tennis function as originally planned. He pointed out the relocated retaining wall and explained that there was a retaining wall done as part of this work that needs to be removed because it is in the setback and in the vicinity of the snow storage easement. A condition is proposed that as part of the approval, the retaining wall be moved.

Mr. Day asked how high the retaining wall shown in the image is. Mr. Budge stated that it can be up to six feet in that vicinity. At 6-feet, there is a requirement that it be engineered. As a result, it is proposed that a Condition of Approval state that the retaining wall be engineered. Mr. Budge reviewed another image of the sports court area. It better illustrated the retaining walls under the Administrative CUP. Those were shown in blue and green and were retaining walls within the setback. When those were built as part of the 2021 improvements, there were encroachments onto the adjoining property owner. That has since been cured because an Improvements Easement was entered into. There was a letter of support that was submitted into the record.

Mr. Budge reviewed some of the issues determined by the Planning Commission and compared those to the Ombudsman's opinion. He discussed Issue #1 – Building Pad Line:

- Planning Commission Finding:
 - The subdivision plat included a 90x90 building pad and no development can occur outside the building pad. The sports court is outside the building pad and thus violates the plat restriction.
- Ombudsman Advisory Finding:
 - The City wrongfully interpreted platted building pad lines as proscribing any development activity beyond the existing home's footprint, which was not the intent of the plat, according to the MPD approval and ordinances in effect at that time.

Mr. Budge explained that slide nine in his presentation showed that there is no limit of disturbance. He reviewed a set of Conditions of Approval back when the plat was approved. It referenced, "limits of disturbance as specified at the time of Final Plat approval." It also referred to, "limitations on landscaping and irrigation shall be defined at the time of Final Plat." Neither of those limitations were ever imposed on the plat. He shared the Meeting Minutes from August 25, 1993. Based on the Staff response at that time, landscaping could occur outside of limits of disturbance if limits of disturbance were imposed. Additionally, the Staff Report from October 4, 1993, stated that: "Each

lot reflects a building pad of approximately 8,000 square feet, which designates the general location of the home.” The building pad is not a limit of disturbance and is intended to show the limits for the home. The City Council Staff Report from April 14, 1994, was shared. No limits of disturbance were specified. Mr. Budge proposed that all activities occur within the setbacks. That being said, he noted this is a 13-lot subdivision where there are no limits of disturbance imposed.

Discussions were had about the Aerie Subdivision, which was developed around the same time. Chair Strachan wanted to know if that subdivision has limits of disturbance indicated. It was believed that the Aerie Subdivision included limits of disturbance. Mr. Budge noted that he has never seen a limit of disturbance treated the same as the building pad. Those are normally treated differently. Mr. Budge next reviewed information about Issue #2 – Steep Slopes:

- Planning Commission Finding:
 - The applicant failed to provide sufficient information to determine whether the sports court violated the City’s steep slope ordinance;
 - The sports court violated the City’s steep slope ordinance as it was constructed within 50’ of very steep slopes.
- Ombudsman Advisory Opinion:
 - The Commission’s finding that very steep slopes have been disturbed is undermined by its other finding that slopes could not be determined and is therefore not supported by the record.

Mr. Budge explained that steep slopes were analyzed by Alliance Engineering. There was a lot of discussion about the post-construction activity slope analysis during the Planning Commission hearing. Evidence has since been submitted from Alliance Engineering related to the pre-construction slopes. The areas that represent very steep slopes, for which a 50-foot setback would be required, are within the circle shown on the presentation slides. The area in the revised pad does not qualify under the definition of a very steep slope, because there is not enough there. The Planning Commission did not have that information at the meeting. Instead of the Commission continuing the item until additional information was presented, they chose to deny it.

Chair Strachan asked what data Alliance Engineering used. Mr. Budge reported that aerial photography and topography pulled from aerial surveys were used. All of that information could be submitted. Additionally, anyone from Alliance Engineering who assisted with the work could speak to the City. Mr. Day wanted to know if the additional information about the very steep slopes has been submitted to Staff. Mr. Budge confirmed that it has been submitted to Staff, but is unsure what the Staff determination is. If there are questions, it is possible for Staff to speak to Alliance Engineering. Mr. Day was interested to hear what the opinion of Staff was on this.

Mr. Budge next reviewed a presentation slide for Issue #3 – Significant Vegetation. It is not believed that any significant vegetation was removed, as it was mostly brush where the development activities occurred. Regardless, the owner wants to put in 11 quaking aspen trees, 9 Austrian pine trees, and 19 gamble oak trees to provide screening to the sports court. Mr. Budge reported that the presentation slides analyzed the 16 criteria in the code and all were met. In addition, 10 proposed Conditions of Approval have been submitted to the City for consideration. One condition was not to allow overhead lighting on the court as that would be inconsistent with the neighborhood and would create impacts. Prohibiting lighting would mitigate the issue.

Chair Strachan asked Attorney Godfrey if it is possible to direct the Planning Commission to adopt certain Conditions of Approval. It seemed to him the Planning Commission should make the determination on those. Attorney Godfrey had read through the ordinance, and legally, the Appeal Panel has the authority to approve a CUP with attached conditions. Whether that is something the Appeal Panel wants to do is up for discussion, but legally speaking, they have that authority.

Mr. Day believed that some of the information was either not available or the Planning Commission did not feel it was available. Instead of continuing the matter, the Planning Commission denied the CUP request. One option would be to send this back to the Planning Commission and allow that additional information to be presented. Alternatively, the Appeal Panel could ask that additional information be brought back to this body instead of the Planning Commission. He wanted to know what the most appropriate approach is moving forward. Attorney Godfrey reported that the Appeal Panel has the authority to continue this matter and request further information or send it back to the Planning Commission for their consideration with the additional information. The Appeal Panel can decide how to proceed, but both options are within their authority. The ordinance enables the Appeal Panel to make a decision on this matter.

Mr. Nunez referenced the Meeting Minutes shared by Mr. Budge. He wondered whether the language shown was intended to illustrate that there was some ambiguity on what can be disturbed. Mr. Budge noted that Slide 11 does not speak to structures, but it discusses activities occurring outside of the limits of disturbance if those were to be imposed. Those would be landscaping-type activities. Based on his review of the record, there might have been limits of disturbance, but those would be deferred to the Final Plat. Ultimately, the Council did not impose that.

Planner Cawley shared additional information about the Planning Commission's considerations. For steep slopes and vegetation, the LMC talks about what can be developed on a steep slope. In the LMC, there is a definition of a steep slope, which is anything greater than 15%. A very steep slope is anything greater than 40%. In the Planning Commission's findings for denial, it was noted that the subject property contains steep and very steep slopes, which have been disturbed to accommodate the sports court. The submitted maps were reflective of post-development conditions and did not show conditions prior to disturbance. Additionally, the existing conditions slope maps show development within 50 feet of very steep slopes. The exact amount of vegetation could not be determined and the Commission did not feel the addition of impervious surfaces to the site was adequately mitigated in the proposal. The amount of disturbed/landscaped areas outside the building pad was not consistent with other properties.

The Planning Commission also felt that the as-built conditions, including the placement of the sports court and other structures, did not appear to comply with the original plat restrictions. The Planning Commission determined structures, including retaining walls and sports courts, are limited to the building pad. The proposed development cannot extend beyond the platted building pad because the LMC defines limits of disturbance as, "the designated area in which all construction activity must be contained." As for landscaping, noise, lighting steep slopes, and the sensitive lands overlay, the Planning Commission shared the following findings:

- The application does not meet CUP criteria due to a lack of information submitted regarding screening and landscaping, compatibility with surrounding structures, potential noise, lighting, environmentally sensitive lands, steep slopes, and appropriateness of the proposed structure to the existing topography of the site;

- Not consistent with the General Plan, as the proposal allows for disturbance of sensitive lands without adequate mitigation;
- Does not comply with revegetation of the site and the site shall be restored to what was approved with Landscaping/Grading Permit #21-122.

Planner Cawley shared some of the options before the Appeal Panel, which are as follows:

- Deny the appeal, uphold the Planning Commission's denial, and direct Staff to prepare Findings and Conclusions upholding the Planning Commission's decision;
- Grant the appeal and grant the Conditional Use Permit and direct Staff to prepare Findings, Conclusions, and Conditions of Approval consistent with the Panel's determination;
- Grant the appeal in part and remand the matter to the Planning Commission with direction to re-evaluate the proposal consistent with the Appeal Panel's determination:
 - Sensitive Lands Analysis, including Steep Slopes;
 - Updated Landscape Plan;
 - Updates project statement addressing the 16 CUP criteria;
 - Geotechnical Report.
- Continue the appeal to a date certain and request additional information.

Chair Strachan opened the public hearing.

Gary Sutton introduced himself as the property owner and applicant. His family owns the home at 1115 Aerie Drive. Two and a half years ago, the family was in the process of doing landscaping work, which included the sports court. It was a shock when the City put a stop-work order on the project. After this, he met with the City to discuss the project. The City explained that the contractor had a permit but was beyond the scope of what the City had approved under the permit. This began a series of many meetings and discussions with the City. Staff was opposed to the project and indicated there were numerous ways the project was out of compliance with City Code. At that point, he hired Mr. Budge at Snell & Wilmer to advise him through this process.

There were many discussions with the City about how to come into compliance. Mr. Sutton stressed that there is a desire to be in compliance. Each time the City brought up a concern, which was addressed. There were hundreds of emails and many reports provided to the City. To address compliance issues related to setbacks and property boundaries, a strip of land was purchased from the neighbor to the east. Tremendous efforts have been made to work with the City. Two separate engineering firms were hired as well as an additional consultant.

Eventually, this project came before the Planning Commission. At that time, a modified application was presented. There was a proposal to reduce the size of the sports court and plant trees around it to block the sports court from view. During the Planning Commission Meeting, he spontaneously offered to make additional modifications based on concerns and comments heard from Commissioners and citizens in attendance. Despite best efforts, the Planning Commission denied the application. He was surprised by the assertion that building occurred on steep slopes. Additionally, he was surprised that the City interpreted the limits of disturbance on the property to be equivalent to the building pad. His attorneys believed the City's reasons for denying the application were in error, which was the reason the denial was appealed to the State of Utah's Ombudsman Office. Ultimately, there was a disagreement about the Park City interpretation.

Mr. Sutton hopes that his family will be allowed to finish the project and plant trees around the sports court so it is not noticeable. The proposal includes planting trees along the road and east of the property to obscure the sports court. The sports court and outdoor area are desired to create a special place where the family can make lasting memories. He realized that there were some problems with the original contractor, but expressed frustration that the project has been put on hold for such a long time. Mr. Sutton wanted to see this matter be resolved. He regrets that his neighbors have had to look at an incomplete concrete slab for an extended period of time. He has worked diligently to address the issues as quickly as the system will allow him to. His hope is that this situation will not continue to drag out. If the City allows him to complete the project, it will be completed in a beautiful and natural manner as soon as feasibly possible.

Patricia Kipp explained that she is a neighbor and lives at 1264 Aerie Drive. There was no communication with neighbors about what would happen in the area. She noted that the sports court was continually referenced, but there was no definition of what it would be used for. Currently, there are a lot of issues with pickleball courts and she did not want to see one there. In the last several years, there have been articles published about people who are unable to sell their homes because there is a pickleball court next door. There are also associated noise issues. Ms. Kipp added that neighbors did not know a sports court would be put in until the concrete was being poured, and even then, there was no clarity about the actual use of the sports court. She did not believe the appeal should be approved and reiterated her concerns about the court.

There were no further comments. The public hearing was closed.

Mr. Day believed there were three issues to consider. The first is the building pad and whether building can occur outside of the building pad. It is also important to consider compliance and whether the impacts can be mitigated, as well as fencing, screening, and landscaping. The third issue has to do with the very steep slope requirements. Mr. Nunez agreed with the assessment.

Chair Strachan suggested tackling the building pad issue first. He did not see how it was possible to say there was no limit of disturbance for the outdoor kitchen, but there was for a sports court. That seemed inconsistent to him. If there is a limit of disturbance, and that is the building pad, that should have been consistently applied from the beginning. Mr. Day agreed. Both parties saw a somewhat different history, but both agreed that there was supposed to be a limit of disturbance there. It did not make sense to contemplate a limit of disturbance if it was going to be the exact same as the building pad. By definition, the building pad is not the limit of disturbance. The fact that there is no limit of disturbance might be an error from the past, but that does not feel like a burden that the applicant should have to take on as a new purchaser of the land. He assumed the property owner had the right to rely on the plat that was purchased. Mr. Nunez stated that it is unclear what that limit of disturbance was based on the final plat recording.

Mr. Day referenced the language from the Ombudsman. In a situation where there are uncertain or ambiguous restrictions, it needs to be resolved in favor of the free and unrestricted use of property. He wondered if that is the way the Appeal Panel should be thinking about this. Attorney Godfrey confirmed that this is an accurate statement of the law. Unless a use is clearly restricted by an ordinance, it needs to be construed in favor of an applicant. With that being the case, Mr. Day held the opinion that the Planning Commission made a mistake saying that the building pad equaled the limit of disturbance. Chair Strachan agreed with that. From a procedural level, he wondered whether the Appeal Panel wanted to remand this back to the Planning Commission. Personally, he felt it would be a poor move to take this out of the hands of the Commission. Since

there is new information the Planning Commission did not have before, he thought it was worthwhile to send the application back to the Commission with recommended conditions.

Mr. Day pointed out that it has been two and a half years since the stop-work order was put in place. Part of the reason the Appeal Panel was created was to provide more certainty and potentially quicker responses. He was not certain whether it was best to remand the item to the Planning Commission or make a decision at an Appeal Panel level. Mr. Nunez understood that the applicant wanted this matter resolved, which is reasonable, given the length of time this has taken. It might be best for the Planning Commission to look at this again with the new information.

Chair Strachan discussed the proposed conditions from the applicant. He noted that the applicant is willing to stipulate that there will not be pickleball on the sports court and there will not be lighting. Mr. Budge clarified that he would have to sit down and speak to his client about pickleball use, but the conditions of approval were clear that there would be no overhead lighting. Any noise ordinance would need to be complied with as well. Attorney Godfrey believed the Appeal Panel was considering reversing the decision of the Planning Commission as it relates to the limit of disturbance issue and remanding the matter back to the Planning Commission for consideration of the CUP, evaluation of the very steep slope issue at the location of the sports court, the potential detrimental effects of the use, and mitigation measures that could be imposed.

Mr. Day asked what will happen if the matter is sent back to the Planning Commission and the Planning Commission rules that the effects cannot be mitigated. He wanted to know if the applicant will have the right to re-appeal the decision to the Appeal Panel. Attorney Godfrey confirmed this. Mr. Nunez believed there was certain information that the Planning Commission did not have before, which has since been reviewed by the Appeal Panel, such as the very steep slope-related study. As a result, he thought it made sense to send the matter back to the Planning Commission for review. Mr. Day was comfortable taking that approach as well. Discussions were had about a suggested timeline. Attorney Godfrey explained that there is nothing in the ordinance that suggests the Appeal Panel has the authority to place a time limitation on the Planning Commission's action. However, the motion could request a reasonably expedient timeframe.

MOTION: Adam Strachan moved to REVERSE the Planning Commission determination on the issue of the building pad establishing the limits of disturbance and REMAND the issue of whether the sports court is on a very steep slope, as defined under the LMC, and REMAND the issue of whether the sports court has any detrimental effects, and if so, whether those can be mitigated under the LMC. Matthew Day seconded the motion.

VOTE: The motion passed unanimously.

Director Ward reported that there needs to be a Final Action Letter within 15 days. The item can be continued to a date that works for the Appeal Panel. Attorney Godfrey clarified that the ordinance suggests Staff should prepare findings and conclusions on the appeal. It is possible to come back on a date certain to review those, but alternatively, Staff could circulate findings and conclusions among the Appeal Panel members. Once there is approval, Staff can finalize the matter, and at the next meeting, those findings and conclusions can be ratified. In that case, he explained that the findings and conclusions would be circulated by email. Any comments or suggestions would be part of the public record. This will prevent the Appeal Panel from having to convene again for a special meeting, but it depends on what was desired by the City.

Chair Strachan thought what was suggested by Attorney Godfrey was a reasonable approach. However, he wanted to make sure the applicant could continue to move the process forward. It was important for the neighbors to be able to review the findings and conclusions ahead of the Planning Commission Meeting as well. There is not a desire to delay the process from moving forward. Attorney Godfrey did not believe there would be any delay as a result of the findings and conclusions process outlined. The Final Action Letter would be ready within 15 days. City Attorney, Mark Harrington, agreed that is an option, but if the decision is made to take that approach, he recommended a second motion be made to authorize the Chair to execute the Final Action Letter after circulation to the other members. This will create a clear record of authority.

MOTION: Matthew Day moved to AUTHORIZE the Chair to execute the Final Action Letter, pending approval by a majority of the Appeal Panel members. Esteban Nunez seconded the motion.

VOTE: The motion passed unanimously.

7. ADJOURNMENT

MOTION: Adam Strachan moved to ADJOURN. There was no second.

VOTE: The motion passed unanimously.

The meeting adjourned at approximately 6:47 p.m.

Approved 04.30.2024

1115 AERIE DRIVE

APPEAL OF CONDITIONAL USE PERMIT DENIAL

APR 04 04:30:2024

Appeal Panel

March 4, 2024

PL-21-05101 (CUP)

PL-22-05329 (Appeal)



SUMMARY

Dec 20, 2021 – CUP application for sports court

Dec 20, 2021 – Admin. CUP for retaining walls

July 13, 2022 – Planning Commission Review

Public Comment sent to Appeal Panel via e-mail and Exhibit I



BACKGROUND

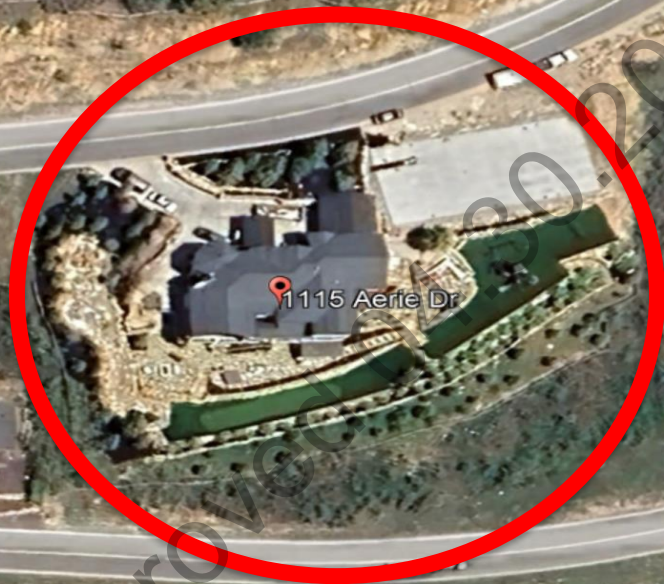
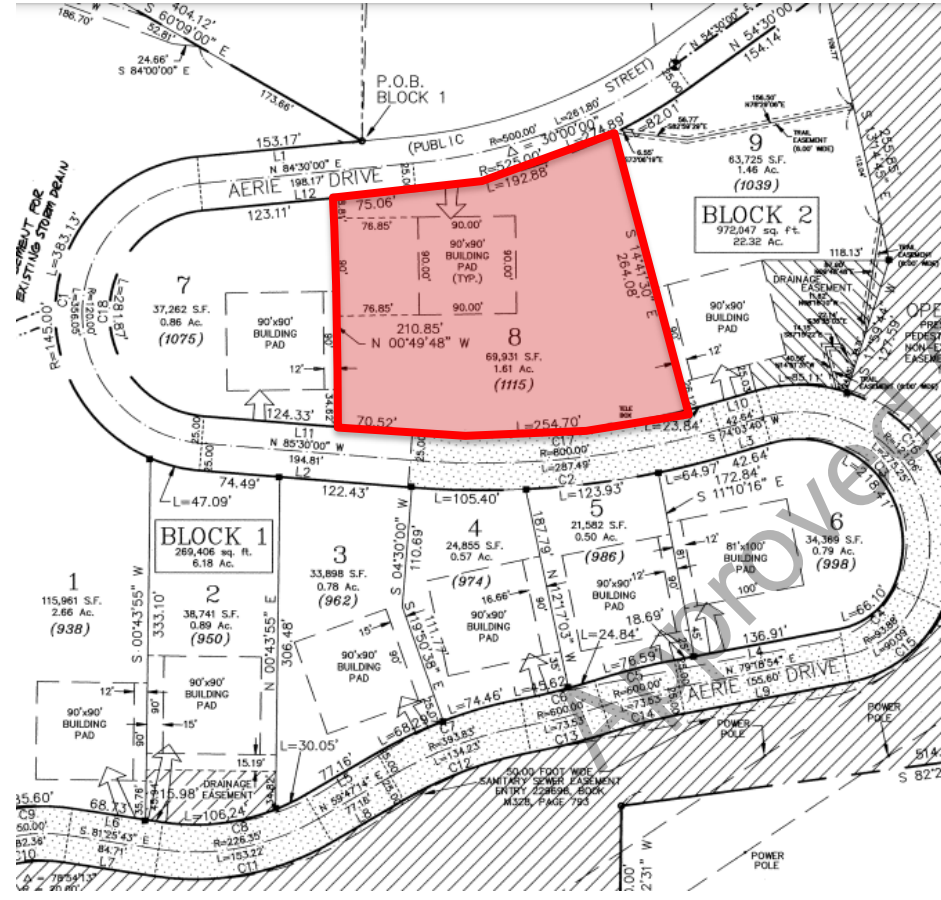


Image © 2024 Airbus



Google Earth

BACKGROUND



PARK CITY

1884

BACKGROUND

Jan 21, 2021 – Grading/Landscaping Permit (21-122)

- Replace three retaining walls in NE corner of property
- Staff note walls greater than 4 feet require engineered plans
- Patios require separate Building Permit
- Walls must be outside 10-foot snow storage easement
- All disturbed areas must be re-vegetated; no Significant Vegetation to be removed

Sept 8, 2021 – Stop Work Orders Issued (21-01142; 21-01143)

BACKGROUND

March 15, 2022 – Plat Amendment Application

July 13, 2022 – Denial of CUP

August 1, 2022 – Appeal received by City

August 11, 2022 – Admin CUP Continued, still pending

October 18, 2022 – Perpetual Improvements Easement Agreement

Nov 16, 2023 – Ombudsman Advisory Opinion



STANDARD OF REVIEW

Appeal Panel shall act in a quasi-judicial manner and review matters de novo, without deference to Staff determination of factual matters.

Appeal Panel shall determine the correctness of the Planning Commission's interpretation and application of the plain meaning of the land use regulations and interpret and apply a land use regulation to favor a land use application unless the land use regulation plainly restricts the land use application.

BURDEN OF PROOF

The Applicant has the burden of proving the Planning Commission erred in denying the Conditional Use Permit.

Approved 04.30.2024



ANALYSIS

The Planning Commission found the proposal does not mitigate the reasonably anticipated detrimental effects of the proposed Use and does not comply with the Conditional Use Permit criteria outlined in LMC § 15-1-10(E).

- Not compatible with prior land use approvals, MPD, or Final Plat
- Application lacked information for screening, landscaping, development compatibility, noise, lighting, sensitive lands, steep slopes
- Inconsistent with General Plan

ANALYSIS

The Ombudsman Advisory Opinion outlines four points in their analysis of the Planning Commission's action.

- The proposed Development does not violate internal Lot restrictions.
- The Commission's Findings that the as-built conditions violated the City's Steep Slope Regulations is not supported by the record.
- Final Action on Conditional Use applications must be supported by substantial evidence; the substantive review process allows for obtaining additional necessary information before decision-making, and the City's code suggests the Planning Commission should have continued the matter per the Applicant's request.
- The remaining findings according to the City's Conditional Use review must be revisited to consider proper Plat interpretation and additional necessary information.

STEEP SLOPE & VEGETATION

- LMC § 15-2.21-4: Steep Slope Development
- LMC § 15-15-1: Steep Slopes greater than 15%; Very Steep Slopes greater than 40%
- LMC § 15-2.10-10: Protection of Significant Vegetation during development

Subject Property contains Steep and Very Steep Slopes, which have been disturbed to accommodate the sports court.

Submitted maps are reflective of post-development conditions, and do not interpolate conditions prior to disturbance.

Existing conditions slope map shows development within 50 feet of Very Steep Slopes.

Exact amount of vegetation cannot be determined.

Addition of impervious surfaces to site are not adequately mitigated in proposal

Amount of disturbed/landscaped areas outside of Building Pad not consistent with other properties.



STEEP SLOPE & VEGETATION

As-built conditions, including placement of sports court/structures, do not appear to comply with original plat restrictions.

Planning Commission determined structures include retaining walls and sports court and are limited to Building Pad.

Proposed development cannot extend beyond the platted Building Pad because the LMC defines Limits of Disturbance as “the designated Area in which all Construction Activity must be contained”.



LANDSCAPING, NOISE, LIGHTING STEEP SLOPES, AND SENSITIVE LAND OVERLAY

Application does not meet CUP criteria due to a lack of information submitted regarding screening and landscaping, compatibility with surrounding Structures, potential noise, lighting, environmentally sensitive lands, Steep Slopes, and appropriateness of the proposed Structure to the existing topography of the Site.

Not consistent with General Plan as proposal allows for disturbance of Sensitive Lands without adequate mitigation.

Does not comply with revegetation of the site and the site shall be restored to what was approved with Landscape/Grading Permit #21-122.



ALTERNATIVES

- Deny the appeal, uphold the Planning Commission's denial, and direct staff to prepare Findings and Conclusions upholding the Planning Commission's decision.
- Grant the appeal and grant the Conditional Use Permit, and direct staff to prepare Findings, Conclusions, and Conditions of Approval consistent with the Panel's determination.
- Grant the appeal in part and remand the matter to the Planning Commission with direction to re-evaluate the proposal consistent with the Appeal Panel's determination.
 - Sensitive Lands Analysis, including Steep Slopes
 - Updated Landscape Plan
 - Updated project statement addressing the 16 CUP criteria
 - Geotechnical Report
- Continue the appeal to a date certain and request additional information.

1115 Aerie Dr.

APPEAL:

CONDITIONAL USE PERMIT –
PRIVATE RECREATION FACILITY

PROJECT NUMBER PL-21-05101

PARK CITY APPEAL PANEL

MARCH 4, 2024

Approved 04.30.2024

Property/Project Timeline

- 4/14/1981 – 144 units in six (6) 75' multifamily buildings development plan was approved
- 6/14/1993 – Hearthstone MPD Approved
- 8/25/1993 – Preliminary Plat Approved by Planning Commission (includes Lot 8)
- 10/4/1993 – Final Plat Approved by City Council
- 4/14/1994 – Amended Final Plat Approved by City Council (brought in Phase 2)
- 6/16/1994 – Hearthstone Subdivision Recorded (Both Phase 1 and Phase 2)
- 10/15/1998 – 1115 Aerie Dr. Building plans submitted (Lot 8)
- 9/25/2020 – 1115 Aerie LLC purchased property, including existing primary dwelling.
- 2/17/2021 – Retaining wall plan approved – Permit No. Temp 21-052
- 9/8/2021 – Stop work orders, CE-21-01142 and CE-21-01143 placed on site (retaining walls and sports court)
- 10/1/21 – City sends Code Compliance Issues letter
- 12/20/21 – Applications Admin CUP- PL-21-05100 (administrative CUP for retaining walls) and CUP PL-21-05101 (sports Court CUP) were submitted
- 7/13/2022 – Public hearing - CUP Denied by Planning Commission
- 8/2/2022 – Request made to Office of the Property Rights Ombudsman
- 11/16/2023 – Ombudsman Advisory Opinion issued
- 3/4/2024 – Appeal Hearing

Park City Land Management Code – Original Decision

15-2.10 Estate (E) District

15-2.10-2 Uses

B. CONDITIONAL USES.

19. Recreation Facility, Public and Private

15-15 Defined Terms

15-15-1 Definitions

RECREATION FACILITIES.

Prior to the April 28, 2022 LMC Amendments, Private Recreation Facilities were defined by LMC § 15-15-1 as, "Recreation facilities operated on private Property and not open to the general public. Including Recreation Facilities typically associated with a homeowner or Condominium association, such as pools, tennis courts, playgrounds, spas, picnic Areas, similar facilities for the Use by Owners and guests".

15-1 General Provision And Procedures

15-1-10 Conditional Use Review Process

A Conditional Use shall be approved if reasonable conditions are proposed, or can be imposed, to mitigate the reasonably anticipated detrimental effects of the proposed Use in accordance with applicable standards.

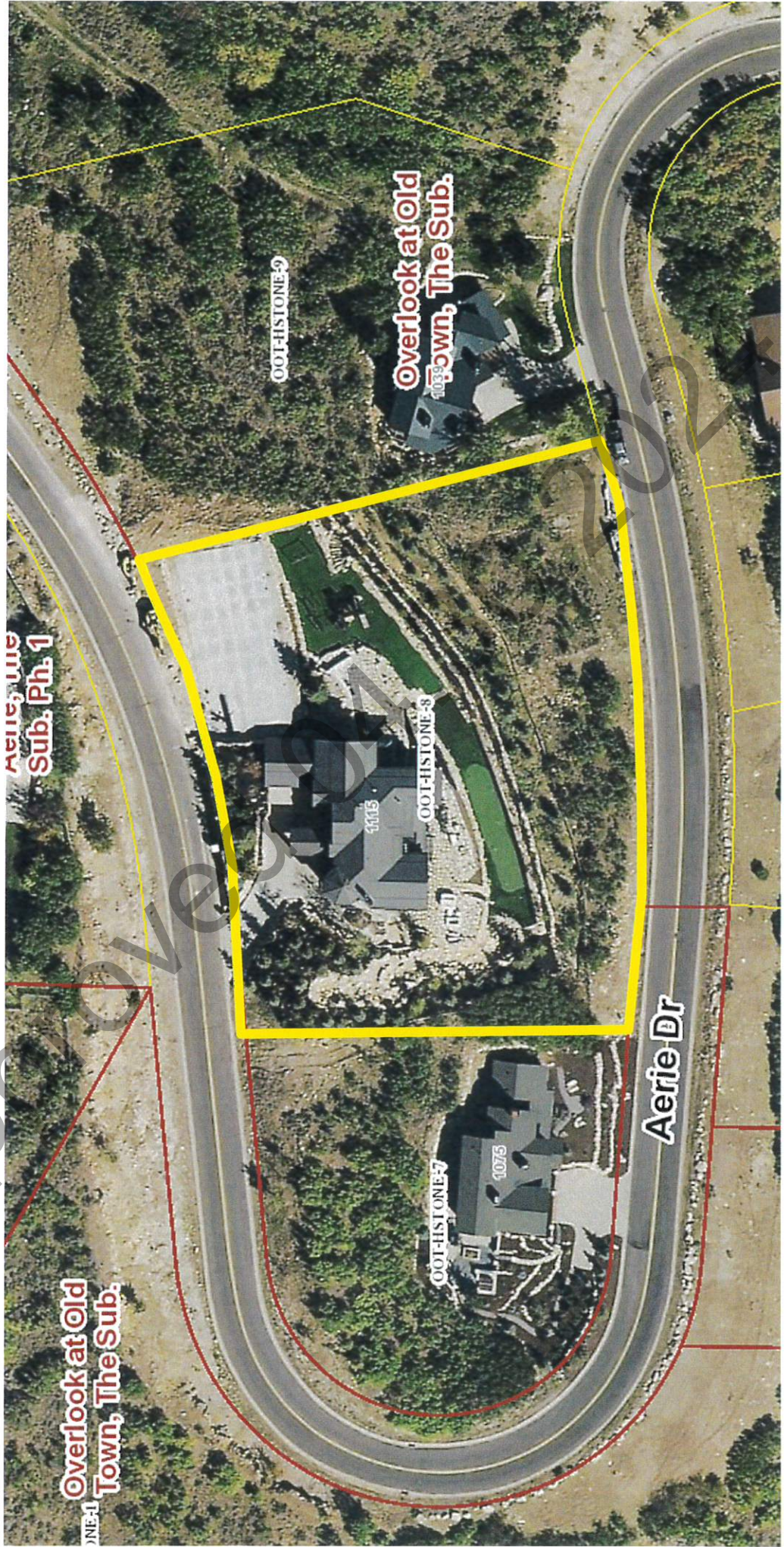
Park City Land Management Code – Appeal

15-1-18.G

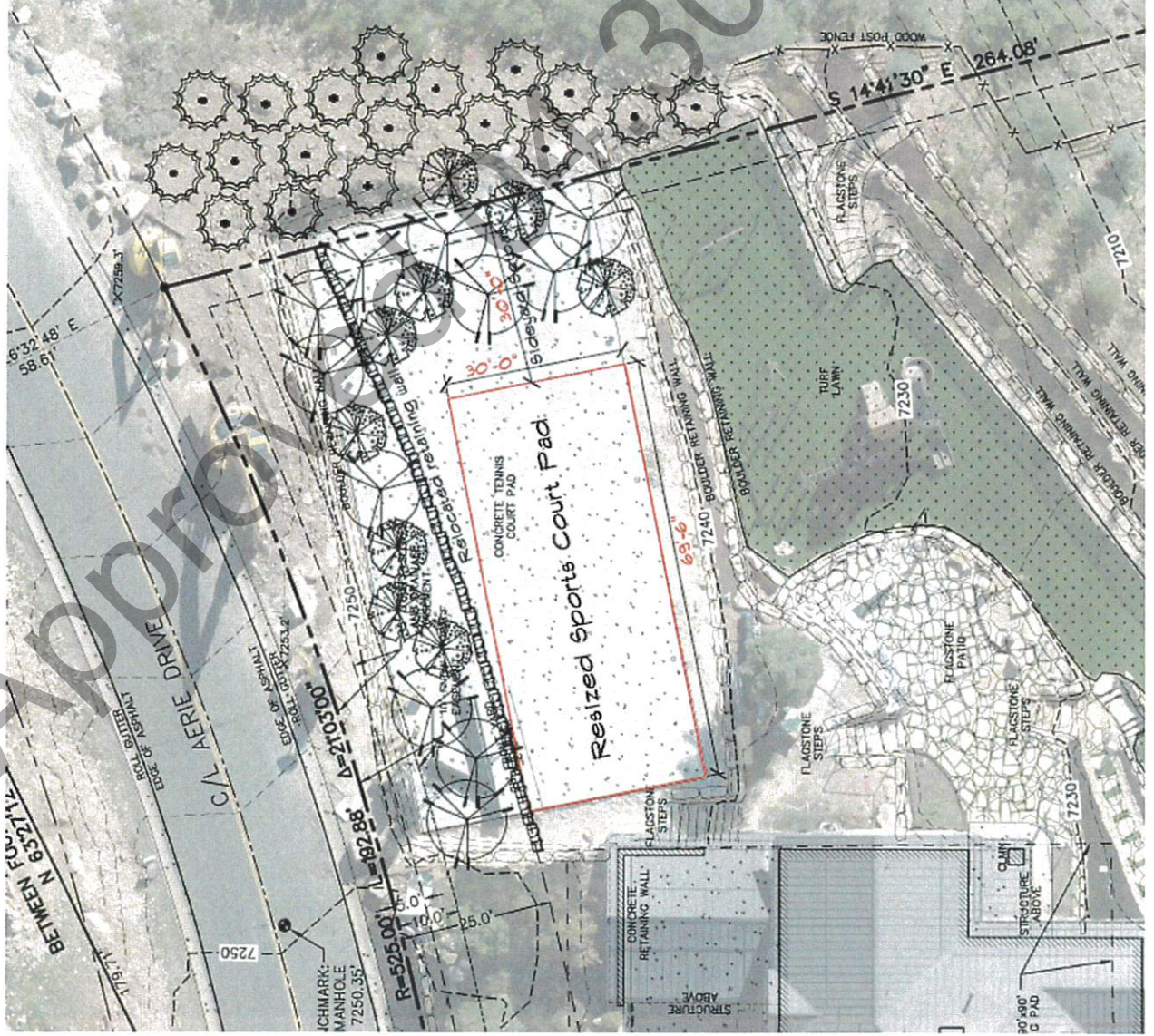
BURDEN OF PROOF AND STANDARD OF REVIEW.

- The appeal authority shall act in a quasi-judicial manner.
- The appellant has the burden of proving that the land use authority erred.
- The appeal authority shall review factual matters de novo, without deference to the land use authority's determination of factual matters.
- The appeal authority shall determine the correctness of the land use authority's interpretation and application of the plain meaning of the land use regulations, and interpret and apply a land use regulation to favor a land use application unless the land use regulation plainly restricts the land use application.
- New evidence may be received so long as it relates to the scope of the appeal.

Site Location – 1115 Aerie Dr. 5/29/2023



Proposed Sports Court – Part of CUP PL-21-05101



NOT FOR CONSTRUCTION
PRELIMINARY ONLY

NOTES:

1. Boulder retaining wall relocated to front setback line.
 2. Concrete tennis court pad resized to smaller sports court within setbacks.
 3. Off-site disturbed area regraded to natural contours and revegetated.
 4. Landscaping along right-of-way outside of new storage easement area.
 5. Plant materials planted east of sports court for screening.
 6. All disturbed areas stabilized with natural ground cover mulch.
1. As-built survey mapping prepared by Alliance Engineering.

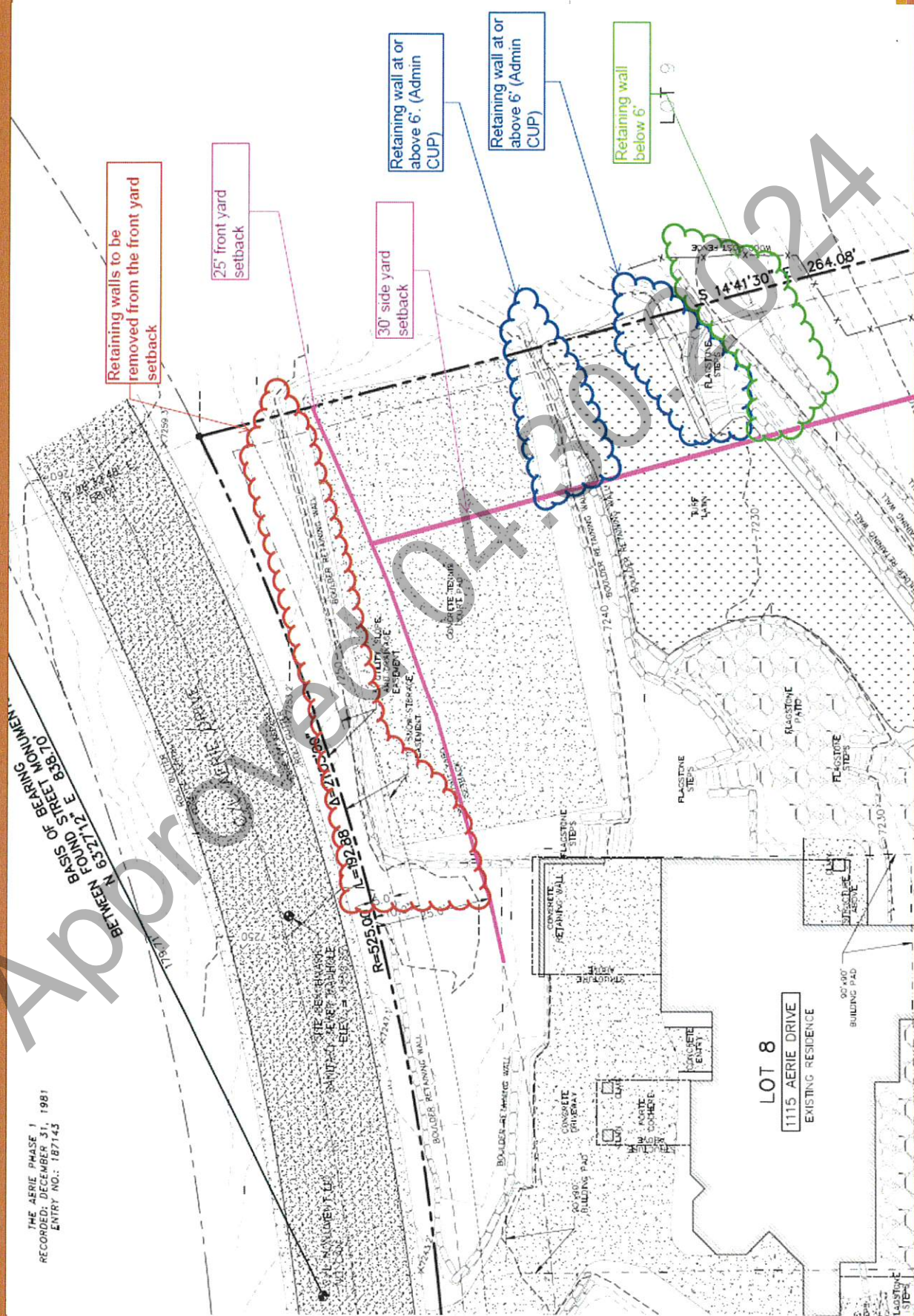
PROPOSED PLANT MATERIALS:

- 9 - Austrian Pine (or equivalent)
- 10 - Gambel Oak (or equivalent)
- 11 - Quaking Aspen (or equivalent)

SPORTS COURT EXHIBIT

SCALE: 1" = 20'-0"

Proposed Sports Court – Part of CUP PL-21-05101



THE AERIE PHASE 1
RECORDED: DECEMBER 31, 1981
ENTRY NO.: 187143

Issue #1 – Building Pad Line

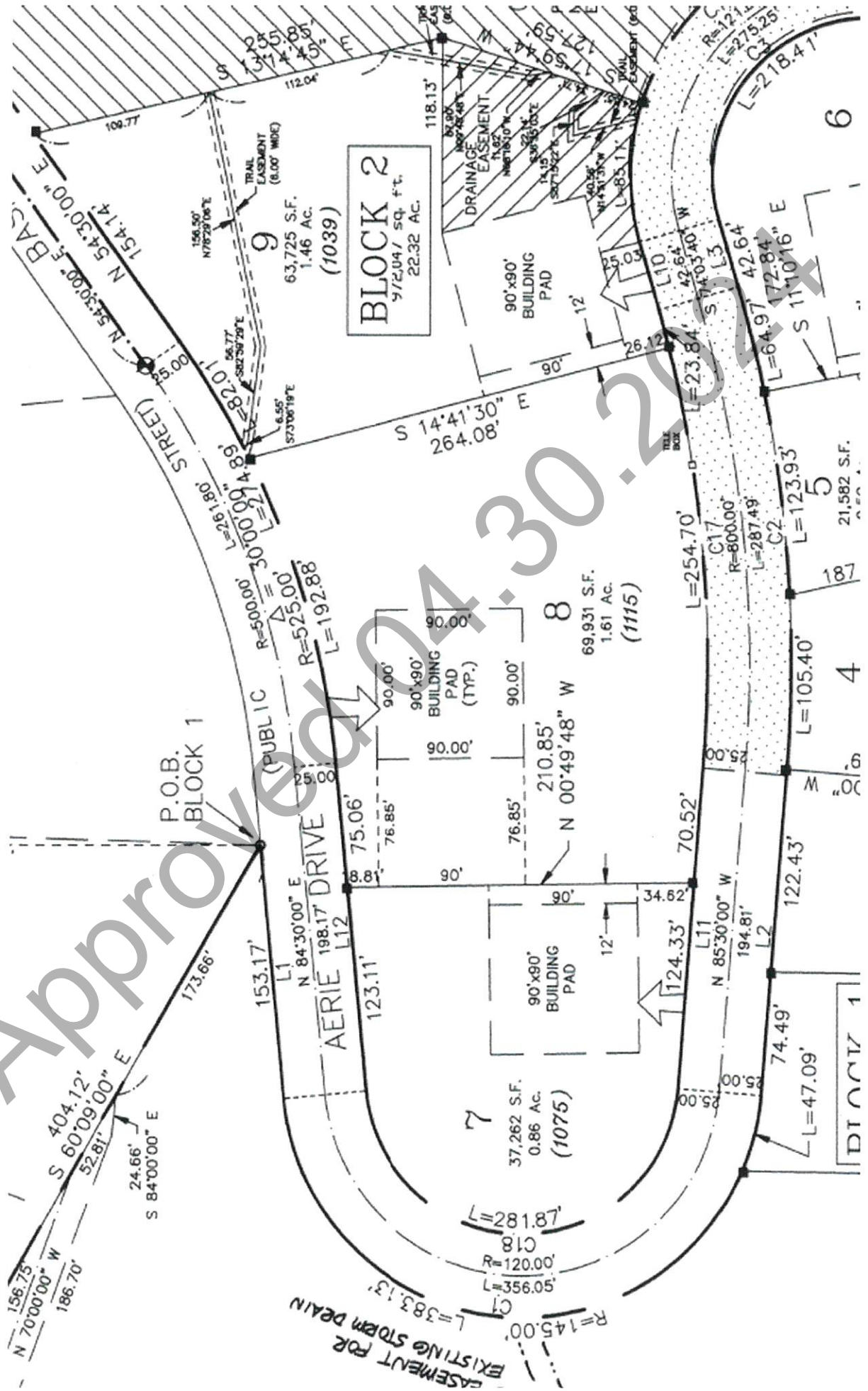
Planning Commission Finding:

The subdivision plat included a 90' x 90' building pad and no development can occur outside the building pad. The sports court is outside the building pad and thus violates the plat restriction.

Ombudsman Advisory Opinion:

The city wrongfully interpreted platted building pad lines as proscribing any development activity beyond the existing home's footprint, which was not the intent of the plat according to the master planned development approval and ordinances in effect at that time.

No Limits of Disturbance on Plat



Limits of Disturbance vs. Building Pad (Preliminary Plat)

Hearthstone MPD—Conditions of Approval - June 14, 1993

1. Lot 7 shall be deleted or relocated to another site which minimizes visual impacts..
2. The applicant shall grant easements for the water line and access to the pump station as approved by the staff.
3. The plat shall contain notes regarding storm water requirements and considerations, wintertime travel restrictions (one-way road), and limits of disturbance as specified at the time of final plat approval.
4. All driveways must include turnarounds to alleviate sight distance concerns. Specific driveway locations must be defined at the time of final plat.
5. All construction must comply with UBC Chapter 70 grading requirements.
6. Block 4 shall be dedicated to the city contingent upon acceptance of the dedication by the City Council and prior to recordation of the plat.
7. The project will be required to provide trails and trail easements consistent with the Park City Trails Master Plan.
8. Limitations on landscaping and irrigation shall be defined at the time of final plat.
9. Structures built in the Nielsen Korthoff subdivision shall be limited by a maximum house size of up to 6,000 square feet.
10. Storm drainage detention design and a security will be required prior to plat recordation or issuance of building permits, whichever comes first.
11. The subdivision CC&Rs shall include architectural guidelines compatible with those of the Aerie subdivision.
12. All standard conditions of approval apply.

The subdivision plat was supposed to delineate the limits of disturbance.

Limits of Disturbance vs. Building Pad (Preliminary Plat)

Staff Report/Minutes – Preliminary Plat– Planning Commission- August 25, 1993, it states –

Hearthstone Subdivision (aka Nielsen/Korthoff)

Planner Susan Lykes reviewed the staff report and distributed house sizes of nearby houses in the Aerie Development. The Staff was concerned with the maximum house size of 6,000 square feet. The house sizes surrounding Hearthstone ranged from 4,100 square feet to 14,000 square feet. Regarding limitations on landscaping and irrigation, the applicants proposed 15,000 square feet. Planner Lykes felt there would be few lots which would be close to that. The limits of disturbance required by policy were 15 feet outside of the building pad, so there should not be a great deal of disturbance or difficulty revegetating.

Commissioner Alison Child asked if the limits on landscaping coincided with the limits of disturbance. The Staff responded that it was greater than the limits of disturbance. Commissioner Child felt there was a problem putting a subdivision in that area because of the circulation and the road in the winter.

LIMITATIONS ON LANDSCAPING AND IRRIGATION. The MPD approval contained a condition of approval that the subdivision have limitations on landscaping and irrigation because of the difficulty of establishing new vegetation on the sparse soil and high bedrock and to conserve water. The staff and applicant have discussed the landscaping and irrigation limitation; the applicant will propose a maximum prior to sketch and preliminary plat approval.

Limits of Disturbance vs. Building Pad (Final Plat)

Staff Report – Final Plat Approval – Planning Commission - October 4, 1993 –
no "Limits of Disturbance" were specified -

III. PROJECT DESCRIPTION

LOT PARAMETERS. The Hearthstone Subdivision contains twelve lots, configured as per the approved MPD. Lot sizes range from 21,582 to 118,880 square feet. The average lot size is 61,220 square feet.

Each lot reflects a building pad of approximately 8000 square feet, which designates the general location of the home. Driveway locations are loosely specified; driveways must meet all Land Management Code location standards during building permit review.

The building pad was only intended to regulate each Lot's primary structure.

V. STAFF RECOMMENDATION

The staff recommends APPROVAL of the final plat for Hearthstone Subdivision based upon compliance with the purposes of the subdivision ordinance. The staff recommends that the following conditions be attached to the approval.

1. The portion of Mellow Mountain Road traversing this property shall be dedicated to and accepted by the City prior to plat recordation.
2. A six-foot easement for all trails crossing individual lots shall be reflected on the plat. Trails shall be constructed prior to September 22, 1994.
3. Maximum house sizes shall be as follows:
 - . 3500 square feet for lots 4 and 5,
 - . 4000 square feet for lots 3 and 6,
 - . 5000 square feet for lots 1, 2, and 9,
 - . 6000 square feet for lots 7 and 12, and
 - . 6500 square feet for lots 8 and 10, and
 - . As built for Lot 11 (no additions to the existing house shall be permitted).

A note shall be placed on the plat outlining the maximum square footages.

4. The front setbacks for lot 2 shall be 35 feet; for lot 4, 35 feet; and for lot 6, 45 feet. A note shall be placed on the plat regarding these setbacks.
 5. The developer shall be required to install two "stop ahead" signs placed on Aerie Drive 200 and 750 feet above the Aerie Drive/Deer Valley Drive intersection. The developer shall also install a street light at the same intersection.
 6. The applicant shall make an irrevocable offer of dedication of the open space parcels prior to plat recordation.
 7. A security shall be posted for all public improvements, including trails and the Aerie Drive improvements, in a form acceptable to the City Attorney prior to plat recordation.
- PLANNING COMMISSION ACTION.** The Planning Commission APPROVED the Hearthstone Final Plat with the conditions of approval as stated above by a five-to-one vote with Commissioner Child opposed.

Building Pad intended to Limit House Size

City Council Staff Report – **Final Plat** - Amendment (Condition of Approval) April 14, 1994 –
no “Limits of Disturbance” were specified

RECOMMENDATION: The City Council should approve the revised final plat for the Hearthstone Subdivision, subject to the following Conditions of Approval.

1. A six-foot easement for all trails crossing individual lots shall be reflected on the plat. Trails shall be constructed prior to September 22, 1994.

2. Maximum house sizes shall be as follows:

-3500 square feet for lots 4 and 5,

-4000 square feet for lots 3 and 6,

-5000 square feet for lots 1, 2, and 9,

-6000 square feet for lot 7,

-6500 square feet for lots 8 and 10, and

A note shall be placed on the plat outlining the maximum square footages.

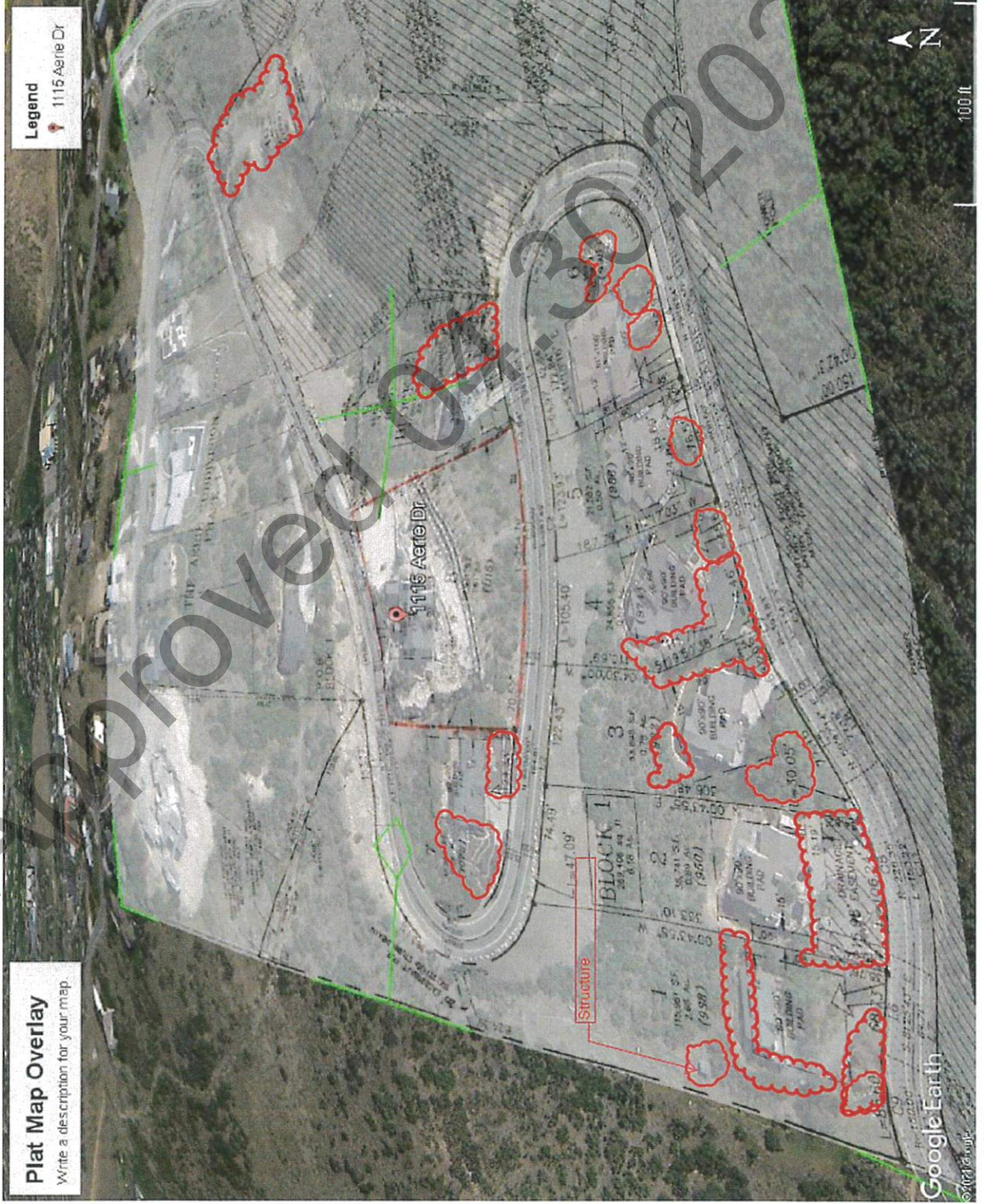
3. The front setbacks for lot 2 shall be 35 feet; for lot 4, 35 feet; and for lot 6, 45 feet. A note shall be placed on the plat regarding these setbacks.

4. The developer shall be required to install two “stop ahead” signs placed on Aerie Drive 200 and 750 feet above the Aerie Drive/Deer Valley drive intersection. The developer shall also

5. The applicant shall make an irrevocable offer of dedication of the open space parcels prior to plat recordation.

6. A security shall be posted for all public improvements, including trails and the Aerie Drive improvements, in a form acceptable to the City Attorney prior to plat recordation.

Disturbance Areas Outside “Building Pad”



All 10 lots in
Hearthstone
Subdivision Phase 1
have disturbance
outside of the
building pad.

Issue #2 – Steep Slopes

Planning Commission Finding:

- The Applicant failed to provide sufficient information to determine whether the sport's court violated the City's steep slope ordinance.
- The sports court violated the City's steep slope ordinance as it was constructed within 50' of very steep slopes.

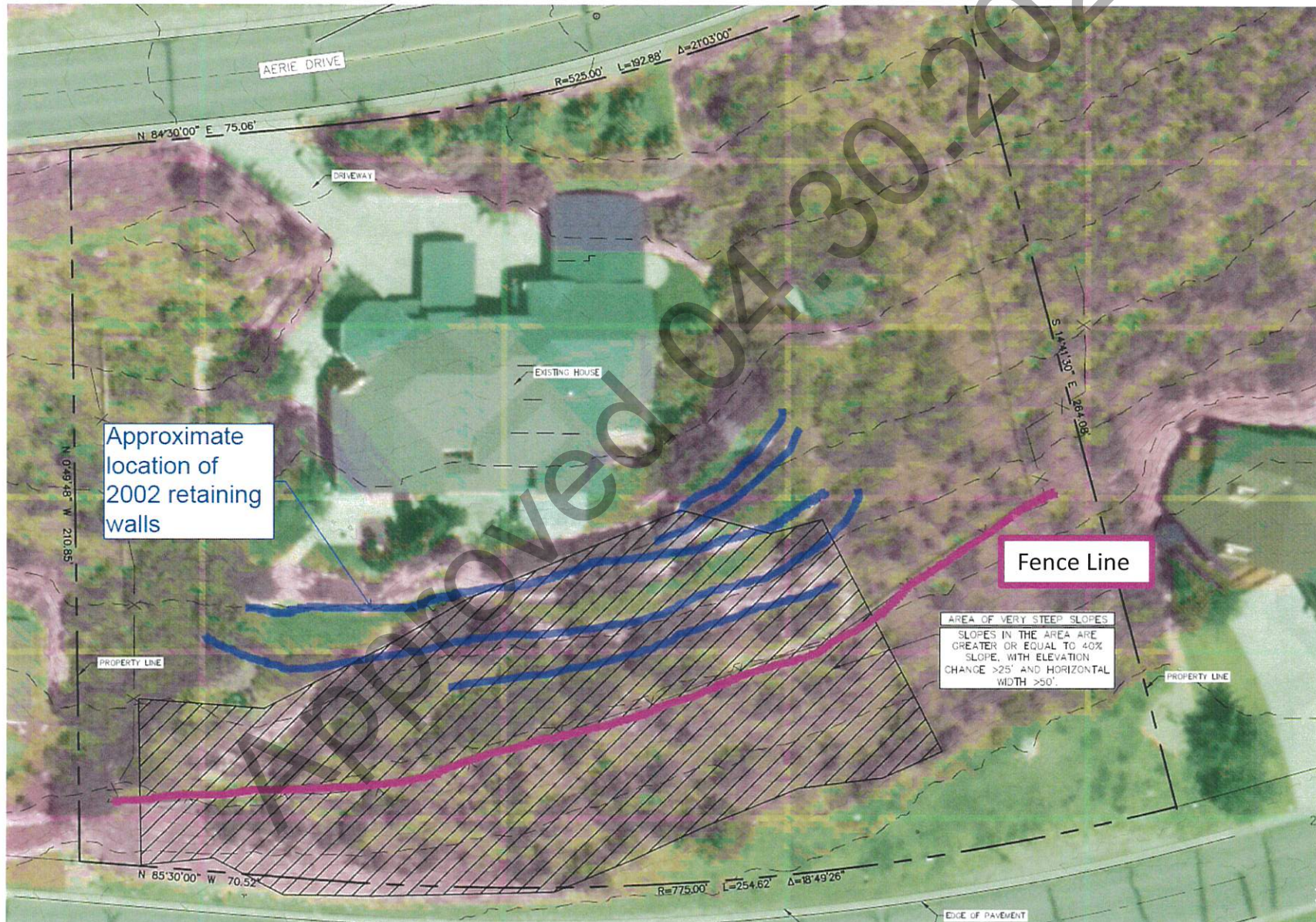
Ombudsman Advisory Opinion:

The Commission's finding that Very Steep Slopes have been disturbed is undermined by its other finding that slopes could not be determined and is therefore not supported by the record.

Alliance Engineering has shown that the sports court is more than 50' from Very Steep Slopes

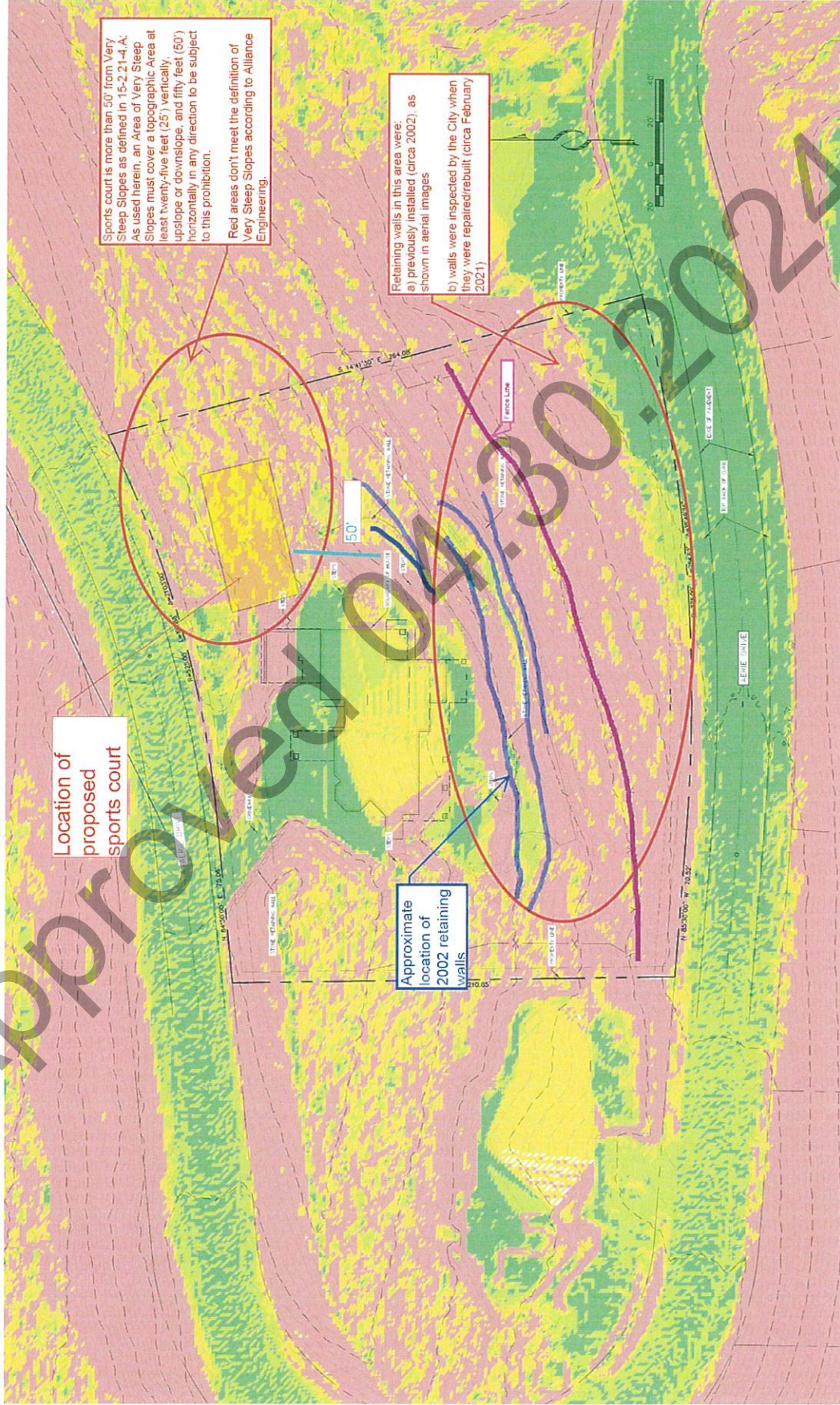
Issue #2 – Steep Slopes

2018 Topography with 2015 Image



Issue #2 – Steep Slopes

2018 Topography – Prepared by Alliance Engineering



Slopes Table

Number	Minimum Slope	Maximum Slope	Color
1	0.00%	10.00%	Green
2	10.00%	20.00%	Yellow
3	20.00%	30.00%	Orange
4	30.00%	50.00%	Red

NOTES:
 1. ALL SLOPE DATA IS BASED ON THE 2018 TOPOGRAPHY.
 2. SLOPE DATA IS BASED ON THE 2018 TOPOGRAPHY.
 3. SLOPE DATA IS BASED ON THE 2018 TOPOGRAPHY.
 4. SLOPE DATA IS BASED ON THE 2018 TOPOGRAPHY.

STAFF: JASON BOAL
 JOB NO: 2018-01
 DATE: 10/17/23

PROJECT: 1115 AERIE DRIVE

FOR: JASON BOAL

DATE: 10/17/23

SHEET 1 of 1

Issue #2 -a – Steep Slopes - SLO

SLO Not Applicable to the Subdivision:
City Council overturned the Planning Commissions denial of the MPD and SLO was not applicable (1993)

OPTION 2 The second option is to overrule the Planning Commission's decision and approve the MPD: the Sensitive Lands Ordinance would not apply to the Nielsen portion of the project and the density would be either twelve or thirteen lots based upon treatment of lot 7. When a subdivision application is received, the project density would be vested, while the specific parameters of the subdivision would be reviewed and approved by the Planning Commission. If the Council takes this course of action they would be acting on the LMC-1 iteration as shown. The staff would recommend that lot 7 be deleted or relocated because of visual impacts (non-compliance with LMC §10.9(h)4) and serious grading and retaining challenges (Amended 1985 Comprehensive Plan, Natural Resources and Aesthetics sections). The staff would recommend the following conditions of approval.

5. Appeal of Planning Commission denial of a 13 unit Small Scale Master Planned Development - Nielsen/Korthoff - See work session notes. Ruth Gezelius, "I move that we overturn the Planning Commission denial on the Nielsen/Korthoff application and that we approve the master planned development with the 12 lots, deleting specifically the proposal for a dwelling on Lot #7, based on the criteria that it does not meet the delineation in the Land Management Code criteria for a master planned development". J. Craig Smith clarified that although Lot #7 has been deleted, that that property is a necessary part of the master planned development. Sally Elliott seconded. Bob Richer suggested that at the subdivision approval, the Planning Commission should consider the recommendations from the City Engineer regarding Aerie Drive and that the Commission should be made aware of the Council's concerns regarding the vulnerability of the Sensitive Lands Ordinance in its determination. Motion unanimously carried.

Issue #3 –Significant Vegetation

Planning Commission Finding:

1115 Aerie may have disturbed significant vegetation, but the City lacked information to make a determination.

Ombudsman Advisory Opinion:

1115 Aerie should have been given the opportunity to supplement its application with additional information.

Issue #3 –Significant Vegetation

Pre-construction vegetation (May 2019)

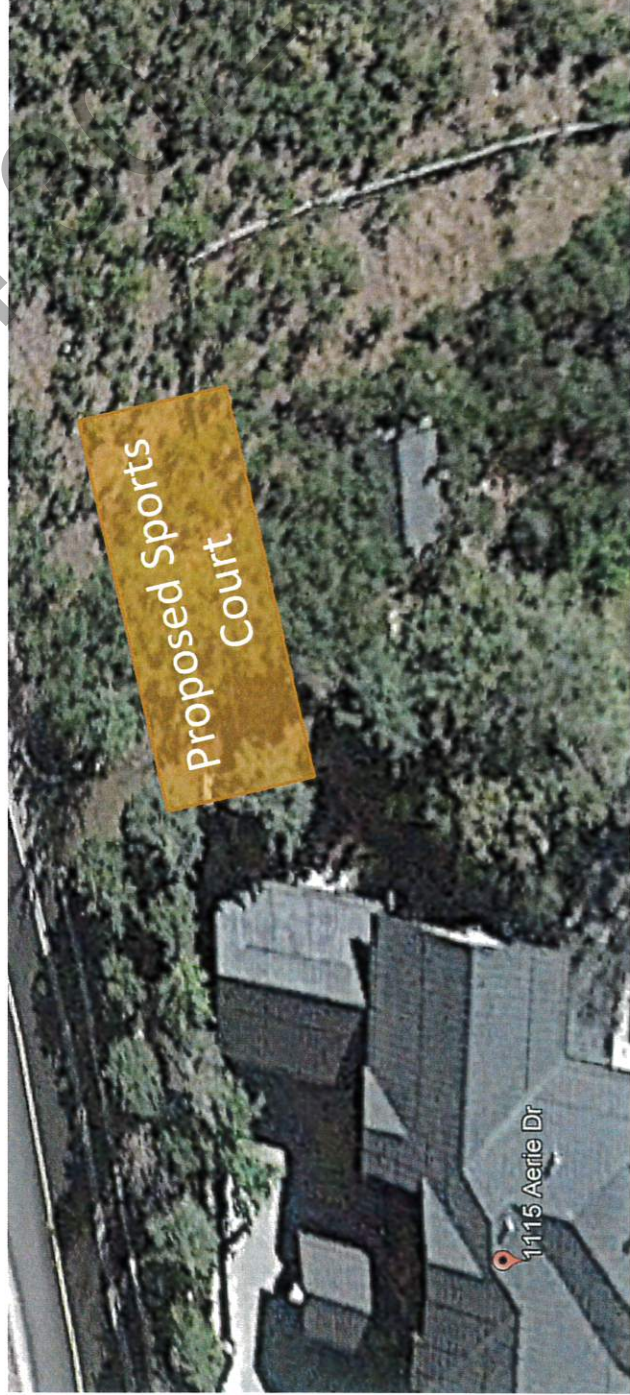


No Significant Vegetation

§15-15:SIGNIFICANT VEGETATION.

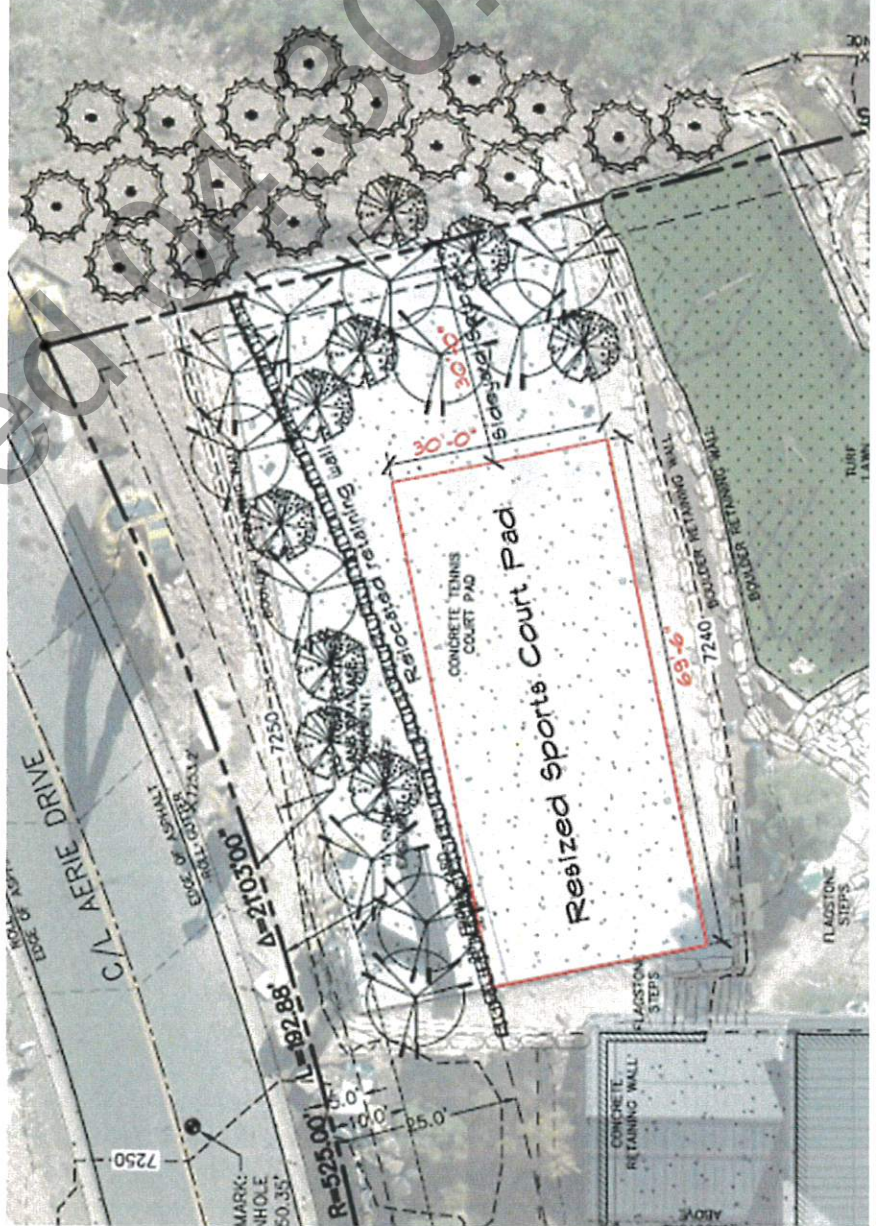
Includes all large trees six inches (6") in diameter or greater measured four and one-half feet (4.5') above the ground, all groves of small trees, and all clumps of oak or maple covering an Area fifty square feet (50 sq. ft.) or more measured at the drip line.

Pre-construction vegetation (9/11/2020)



Issue #3 –Significant Vegetation

The Planning Director shall determine the Limits of Disturbance and may require mitigation for loss of Significant Vegetation consistent with Landscape Criteria in Sections 15-3-3 and 15-5-5(N), and Title 14.



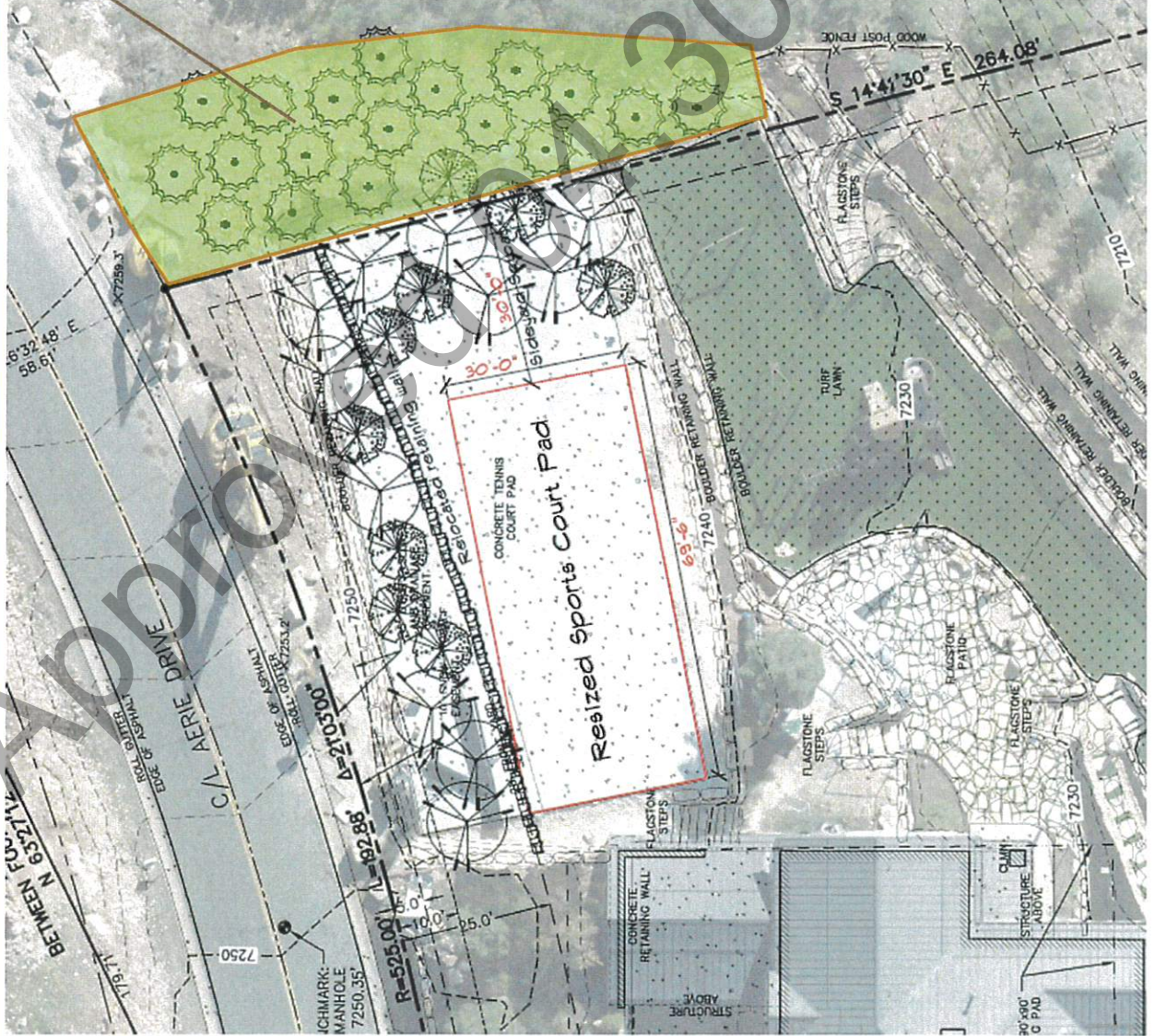
- To provide screening to the sports court:
- 11 quaking aspen trees,
 - 9 Austrian pine trees, and
 - 19 gambel oak trees to provide screening to the sports court

Landscaping/Screening

Offsite Vegetation Mitigation






NOT FOR CONSTRUCTION
PRELIMINARY ONLY



NOTES:

1. Boulder retaining wall relocated to front setback line.
2. Concrete tennis court pad resized to smaller sports court within setbacks.
3. Off-site disturbed area regraded to natural contours and revegetated.
4. Landscaping along right-of-way outside of snow storage easement area.
5. Plant materials planted east of sports court for screening.
6. All disturbed areas stabilized with natural ground cover mulch.
7. As-built survey mapping prepared by Alliance Engineering.

PROPOSED PLANT MATERIALS:

-  9 - Austrian Pine (or equivalent)
-  10 - Gambel Oak (or equivalent)
-  11 - Quaking Aspen (or equivalent)

SPORTS COURT EXHIBIT

SCALE: 1" = 20'-0"

16 CUP Standards (Red Applicant's Comments

REVIEW. The Planning Department and/or Planning Commission must review each of the following items when considering whether or not the proposed Conditional Use mitigates impacts of and addresses the following items:

1. Size and location of the Site; **Residential lot is an appropriate location for the residential use.**
2. Traffic considerations including capacity of the existing Streets in the Area; **No additional traffic is being added.**
3. Utility capacity, including Storm Water run-off; **As Conditioned, storm water mitigation to be required, reviewed and approved by the Engineering Department. No additional utility demands.**
4. Emergency vehicle Access; **No change in access.**
5. Location and amount of off-Street parking; **No additional off-street parking is needed or proposed.**

16 CUP Standards (Red Applicant's Comments

6. Internal vehicular and pedestrian circulation system; **No internal vehicular circulation.**
7. Fencing, Screening, and landscaping to separate the Use from adjoining Uses; **As Conditioned, sports court will be moved away from property lines and areas between sports court and property lines will be screened with landscaping.**
8. Building mass, bulk, and orientation, and the location of Buildings on the Site; including orientation to Buildings on adjoining Lots; **As Conditioned - Size of sports court is being reduced from what is currently constructed.**
9. Usable Open Space; **No publicly usable open space is proposed. (Open space parcel was provided when subdivision was approved.)**
10. Signs and lighting; **As Conditioned - No signs or overhead lighting will be permitted in association with the sports court.**
11. Physical design and Compatibility with surrounding Structures in mass, scale, style, design, and architectural detailing; **As Conditioned – the size of the constructed sports court will be reduced.**

LMC § 15-1-10(E)

16 CUP Standards (Red Applicant's Comments)

12. Noise, vibration, odors, steam, or other mechanical factors that might affect people and Property Off-Site; **As Conditioned – No overhead lights for the sports court. Noise Ordinance will be followed.**
13. Control of delivery and service vehicles, loading and unloading zones, and Screening of trash and recycling pickup areas; **No change in access/delivery.**
14. Expected Ownership and management of the project as primary residences, Condominiums, time interval Ownership, Nightly Rental, or commercial tenancies, how the form of Ownership affects taxing entities; **No proposed change in ownership for the sports court.**
15. Within and adjoining the Site, Environmentally Sensitive Lands, Physical Mine Hazards, Historic Mine Waste and Park City Soils Ordinance, Steep Slopes, and appropriateness of the proposed Structure to the existing topography of the Site; and **As Conditioned – the existing concrete surface will be made smaller to ensure no structures exist in the setback.**
16. Reviewed for consistency with the goals and objectives of the Park City General Plan; however such review for consistency shall not alone be binding. **Not inconsistent with the General Plan.**

Staff Recommendation 3/4/2024

- i. Sensitive Lands Analysis, including Steep Slopes
 - a) Subdivision is exempt from the SLO standards. The Hearthstone MPD for 13 lots (Phase 1), which was approved June 1993, says that Sensitive Overlay Zone does not apply to Nelson portion (Lot 8 is in the Nelson portion).
 - b) Sufficient information has been submitted to show there are no “very steep slopes” that were impacted by the sports court.
 - c) Applicant will comply with all building and engineering standards for development.
- ii. Updated Landscape Plan
 - a) Current landscaping plan meets code requirements and is sufficient for approval of the CUP.
- iii. Updated project statement addressing the 16 CUP criteria in LMC § 15-1-10(E)
 - a) Proposed conditions address each of the 16 CUP criteria.
- iv. Geotechnical Report
 - a) An engineering report for the existing walls has been submitted and reviewed by the city. The existing walls were inspected by the Park City Building Department. New walls will be engineered and obtain a building permit per LMC §15-4-2.D.

Proposed Conditions

Application CUP PL-21-05101 is approved, subject to the following conditions:

1. Portions of the sports court and retaining walls currently placed in the front and side setbacks must be relocated outside the front and side setbacks. The area of the front and side setbacks will be revegetated in accordance with the submitted plans.
2. Offsite disturbed area to be revegetated in accordance with submitted plans.
3. Relocate retaining wall that is north of the sports court. Building permit for relocated retaining wall must include engineered plans.
4. The Applicant shall submit a Construction Mitigation Plan for approval by the Chief Building Official that mitigates construction traffic on Aerie Lane. The Applicant shall submit a management and safety plan for the proposed route. Time of operations, truck inspections, and the number of trips hauling shall be outlined and regulated through the Construction Mitigation Plan.
5. Prior to submittal of a Building Permit for the relocated retaining wall located north of the revised sports court, the Applicant shall submit for review the excavation and grading plans for Engineering Department review and approval to ensure no erosion, land subsidence, or avalanche hazard is created.

Proposed Conditions

6. The Applicant shall demonstrate compliance with Municipal Code of Park City Chapter 11-21 Utah Wildland-Urban Interface Code at the time of Building Permit submittal.
7. The Applicant's stormwater mitigation plan shall be reviewed and approved by the Engineering Department prior to building permit submittal.
8. The Applicant shall notify the Planning Department prior to making any changes to the plans approved as part of the Conditional Use Permit.
9. The property is located outside of the Park City Landscaping and Maintenance of Soil Cover Ordinance (Soils Ordinance) and therefore not regulated by the City for mine-related impacts. If the property owner does encounter mine waste or mine waste impacted soils they must handle the material in accordance with State and Federal law.
10. No overhead lighting will be permitted for the sports court. All exterior lighting shall be down directed, fully shielded, with bulbs 3,000 degrees Kelvin or less to prevent glare onto adjacent property and shall comply with the City's outdoor lighting code per LMC § 15-5-5(J). Flood lights are prohibited. Fully Shielded outdoor lights shall not exceed 12 feet above Existing Grade. Fully-Shielded ground-level fixtures are encouraged. Final lighting details must be reviewed by Planning Staff prior to installation.

Appeal Authority

10-9a-701. Appeal authority required -- Condition precedent to judicial review -- Appeal authority duties.

By ordinance, a municipality may:

- (4)
- (d) not require a land use applicant or adversely affected party to pursue duplicate or successive appeals before the same or separate appeal authorities as a condition of an appealing party's duty to exhaust administrative remedies; and

APPEAL :

CONDITIONAL USE PERMIT – PRIVATE RECREATION FACILITY
PROJECT NUMBER PL-21-05101

PARK CITY PLANNING APPEAL PANEL – MARCH 4, 2024

Approved 2.30.2024