



**PARK CITY MUNICIPAL CORPORATION
APPEAL PANEL MEETING
SUMMIT COUNTY, UTAH
MARSAC MUNICIPAL BUILDING
APRIL 30, 2024**

MEMBERS IN ATTENDANCE: Adam Strachan, Esteban Nunez, Matthew Day

EX OFFICIO: Rebecca Ward, Planning Director; Spencer Cawley, Planner II; Mark Harrington, Senior City Attorney; Jacob Klopfenstein, Administrative Assistant

1. ROLL CALL

Chair Adam Strachan called the Appeal Panel Meeting to order at 5:00 p.m.

2. MINUTES APPROVAL

- A. Consideration to Approve the Appeal Panel Meeting Minutes from March 4, 2024.**

MOTION: Esteban Nunez moved to APPROVE the Appeal Panel Meeting Minutes from March 4, 2024. Matthew Day seconded the motion.

VOTE: The motion passed with the unanimous consent of the Panel Members.

3. PUBLIC COMMUNICATIONS

There were no public communications.

4. STAFF AND BOARD COMMUNICATIONS AND DISCLOSURES

Chair Strachan identified the Appellants as Eric Hermann and Susan Fredston-Hermann and stated that he has known them socially for many years. However, his social relationship with them will not impact his decision about the substance of the appeal. Additionally, he knows Wade Budge and Justin Keys professionally, but this will not impact his decision on the appeal.

5. REGULAR AGENDA

- A. Appeal of 220 King Road Final Action** – The Appeal Panel Will Review an Appeal of the Final Action taken by the Planning Commission Approving the Proposed Plans to Demolish Two Existing Dwellings to Construct a New Single-Family Dwelling and Accessory Buildings and Outdoor Pool within the Sweeney Master Planned Development, Historic Residential - 1 Zoning District, and Partially within the Sensitive Land Overlay as follows:(I) PL-22-05318 (Conditional Use Permit, Dwelling);(II) PL-22-05319 (Plat Amendment);(III) PL-23-05523 (Conditional Use Permit, Pool); and(IV) PL-23-05571 (Steep Slope Conditional Use Permit).

Chair Strachan reported that the appeal process will start with a Staff introduction to the appeal. That will be followed by a preliminary motion regarding standing. After that, the substance of the appeal will occur. Planner II, Spencer Cawley introduced himself and explained that he is joined by Senior City Attorney, Mark Harrington. Planner Cawley and Attorney Harrington will share an overview of the appeal application that is currently before the Appeal Panel for consideration.

Planner Cawley shared summary information about the existing conditions of the site. It is a 1.23-acre lot and it is Lot 2 of the Treasure Hill Subdivision Phase 1. It is also part of the Sweeney Master Planned Development (“MPD”). The zoning district is Historic Residential – 1 (“HR-1”) and it is partially within the Sensitive Land Overlay. There are two existing structures, a single-family dwelling built in 1998, and a guest house built in 2000. The applicant proposes to demolish the existing single-family dwelling and guest house in order to construct a new single-family dwelling, accessory building, outdoor pool, and underground parking area. An image was shared with those present to show the location of 220 King Road. It highlights the driveway easement off King Road. The Sensitive Land Overlay is the section left of the dotted red line.

The Planning Commission reviewed four applications:

- Conditional Use Permit (“CUP”) for a single-family dwelling;
- Plat Amendment;
- CUP for an outdoor pool;
- Steep Slope CUP.

The Appeal Panel has been asked to 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. Planner Cawley next reviewed some of the appellant's arguments.

The appellant argues that the Planning Commission erred in their approval because two eight-foot concrete retaining walls are proposed to be constructed within a platted driveway access easement for the benefit of 220 King Road and on very steep slopes in the Sensitive Land Overlay. Planner Cawley stated that no City approval may modify underlying property ownership or easement rights. The driveway easement is not within the Sensitive Land Overlay and no further analysis is required for construction within platted elements. Updated plans were submitted prior to ratification of the Final Action Letter on February 21, 2024.

The appellant also argues that the Planning Commission decision relied on the incorrect assertion by the applicant that only the restrictions in the MPD and Subdivision Plat, rather than the Land Management Code ("LMC"), apply to this property. Plat Amendment and CUP approval are subject to the LMC, Sweeney MPD, and Treasure Hill Subdivision. Additionally, the appellant argues that the proposed structure does not meet the requirements of the LMC as expressly required by the MPD and the Restrictive Covenants. The following information was shared with the Panel:

- The 1980 MPD process established the Planning Commission as the authority to grant variations in height;
- Sweeney MPD and Treasure Hill Subdivision Plat Notes established a review process for the lots in the subdivision;
- MPD requires review for compliance with adopted codes and ordinances in effect at the time, in addition to compliance with the Master Plan.

The appellant also argues that the Planning Commission did not review restrictive covenants for the property. Planner Cawley referenced LMC § 15-1-3. It stated that the City does not enforce private restrictive covenants, nor shall any covenant have the effect of modifying the regulations herein. Planning Commission review is through the lens of applying the LMC to the application. Planner Cawley next shared an overview of the timeline for the Appeal Panel Meeting.

Representing the applicant, Bruce Baird explained that he will start by discussing the motion for standing. He handed out a document to the Appeal Panel Members with four tabs. Mr. Baird referenced the first tab in the handout. It is clearly the Hermann appeal and the cover is an appeal form. The second and third page is the actual appeal, dated March 1, 2024. It clearly says that it is an appeal on behalf of the Hermanns, but all it relates to is the driveway issue. There is nothing in that appeal regarding any of the substantive issues. Mr. Baird referenced the second tab. It mentions the undersigned, but the undersigned is Justin Keys, and he is not an appellant.

Something that came in the packet from the City is a list of all the appeals of the non-Hermann parties. Mr. Baird noted that this information can be seen in the third tab. A logical person would assume those people are the ones making this appeal. He referenced the fourth tab, which leads to Exhibit A and Exhibit B. Those are absent of any individual behind them. When reading the documents, it looks like the Hermanns are only making an appeal on the issues related to the driveway. That concern was raised with Staff early on and explained that they did not believe there was standing. Staff indicated that some kind of motion would need to be made.

A week ago, there was a pre-conference, and it was indicated to Mr. Keys that this motion would be made. It was filed, as promised, at 5:00 p.m. on Wednesday. A response was not received until 5:00 p.m. yesterday. Mr. Baird explained that he now needs to respond to the letter here as opposed to having had a chance to do that by way of a reply brief. He referenced the brief he submitted on standing and explained that he will mention a few points from that when appropriate.

Mr. Baird explained that if the Hermanns are making the driveway argument, and it is the other supporters making the other arguments, and those arguments have no standing, then those arguments are gone. He pointed out that the Hermanns are the only ones that appealed the driveway issue. The supporters appear to be the only ones who appealed the land use issue. He acknowledged that Exhibit A has since been fixed and it now seems to be the Hermanns and DeSisto, whereas Exhibit B lists all of the other parties. However, that is not the way it was filed.

Mr. Baird addressed the substantive issues regarding the standing of the non-Hermann parties. He explained that he will respond to the arguments in the letter received by Mr. Keys. There is a reason all this makes a difference and the reason is in the Utah Code. It states that the way you get to District Court is to have exhausted your administrative remedies. This is the administrative remedy. The issue is that the Land Use, Development, and Management Act ("LUDMA") specifically says who gets to appeal to the District Court. It is only a person who is an adjoining subject property owner or will suffer damage different in kind than, or an injury distinct from, that of a general community as a result of a land use decision. While he acknowledges that the Park City code is different, it cannot expand the processes of the administrative appeals as specified in LUDMA. The appellants have input, which is due process, but input is different than standing.

Chair Strachan asked Mr. Baird if all the appellants have standing under the Park City LMC. Mr. Baird explained that they technically have standing under the Park City LMC, but the Park City LMC is violative of LUDMA in terms of whom it grants standing to. The appellants do not have standing under LUDMA, because the injuries they claim are not standing under the concept of an adversely affected party. The LMC proports to give them standing to be here, but they do not actually have standing to be here, because they have no appellant rights after this process.

Mr. Nunez asked for additional clarity about the claim that the appeal process wasn't followed properly. His understanding is since they raised public comment, they have standing to raise an appeal. Mr. Baird explained that the issue is that standing can be claimed because there was public comment, they live within 300 feet, or there is some generalized injury. Those are the three basic arguments that can be raised, but there is no belief that the first two are justified under LUDMA. He believed that because of LUDMA, they have no standing for this appeal, even if that standing is purportedly granted by the Park City LMC. Mr. Baird next discussed the issue of standing under LUDMA. He explained that standing under LUDMA has two different tests:

- Are they an adjoining property owner?
- Do they have any particularized injury?

Mr. Baird pointed out that none of the non-Hermann parties are adjoining property owners. As for the particularized injury, when they spoke to the Planning Commission, no particularized injuries were shared. Not one of them said that there was a particularized injury. For instance, that their view will be diminished. Mr. Baird next discussed the case law that was specified in the brief submitted by Mr. Keys. The issue with the case referenced is that it predates the definition of adversely affected parties. According to the current definition, there is no adversely affected interest in this particular case. As a result, there is no standing under LUDMA.

Attorney, Todd Godfrey, noted that Mr. Baird spoke of the supporting appellants. He wondered where Ed DeSisto stands in that regard. He also wanted to know what arguments have been raised in his portion of the appeal. Mr. Baird explained that Mr. DeSisto is the only other person within 300 feet. There are two 300-foot appellants, the Hermanns and Mr. DeSisto. However, he stated that Mr. DeSisto still fails under LUDMA, because it is not an adjoining property. Mr. DeSisto does not articulate any different harm that anyone else has articulated. No one articulated a view interest at the Planning Commission hearing or in their actual appeal. The only time an individualized damage assessment was articulated was in the appeal brief that came in yesterday. He stated that it is full of statements, but repetition and speculation do not make

something true. There is no allegation, proof, or possibility of particularized individual harm as required to be considered an adversely affected party under the LUDMA definition of standing.

Mr. Day asked what will happen if the Park City rules on standing prevail. Mr. Baird stated that he has never dealt with this situation before, where the local government code purports to grant standing for an appeal beyond the standing specified in LUDMA. It is his position that the LUDMA preemption is there. He does not believe the Park City LMC can give the authority for more to appeal than would be allowed under LUDMA. Some of the appellants do not even live in the area. Mr. Day wanted to know how long there has been a difference between the Park City position. Mr. Baird believed it was approximately seven years, but he offered to find out the exact date.

Representing the appellant, Justin Keys addressed the Appeal Panel. He reported that the Hermanns have standing under LUDMA, which is the reason Mr. Baird chose to focus on the way the appeal was filed. He clarified that the motion to dismiss was not received until Friday at 5:00 p.m. and the response was drafted over the weekend so it could be filed yesterday. He shared details about the filing process. At that time, there was one application form, because he only represents one party. Mr. Keys clarified that he represents the Hermanns. The reason for the separation of arguments is that none of the others who wanted to join the appeal have standing to bring the easement-related claims. He noted that those claims only pertain to the property his clients own. To avoid confusion, there were two separate letters, but the appellants are his clients, the Hermanns. Staff was told that this was the approach that would be taken. Exhibit A was meant to be the Hermanns and Exhibit B was meant to be the supporting parties.

Mr. Keys clarified that he did not provide the appeal to the opposing counsel, as opposing counsel receives that through the City. He cannot speak to how Mr. Baird received the documents or the order those were received. However, he can explain the intention of the appeal and the confirmation there was with the City. He pointed out the newness of this appeal provision.

Mr. Day asked whether two different appeal numbers were issued. This was denied. Planning Director, Rebecca Ward, referenced the statement that Exhibit A was intended to include the Hermanns only. Mr. Keys clarified that this was his intention when he went to submit everything. Director Ward reported that in the email sent on March 16, 2024, Exhibit A included both the Hermanns and Mr. DeSisto. Mr. Keys stated that this was not his intention. He walked Exhibit A in for submission and told them that Exhibit B will be forthcoming. He reiterated that only the Hermanns are intended to be included as part of Exhibit A. Supporting parties are in Exhibit B.

The LUDMA argument was discussed. Mr. Keys reported that for the last seven years, according to the applicant, the Park City LMC has been out of compliance. However, the code can also be read in harmony with LUDMA. The definition changed, but that does not mean what is in the Park City LMC cannot be a subpart of the same definition. Essentially, material harm has to be shown, but that can be shown in the ways that the City has identified in the code. Mr. Keys does not read the two codes as being out of harmony, because someone can exhaust the administrative remedies at this level and establish their standing here and then qualify for an appeal to the District Court. He noted that the Appeal Panel can still consider new information. That is the way the appeal process is set up within the City. The record is not closed until after the Appeal Panel reaches a conclusion. At that point, if standing has not been established, there would likely be difficulty appealing to the District Court. He reiterated that there is harmony between the codes.

Attorney Harrington asked Mr. Keys to point him to a provision in the Park City Municipal Code that indicates the record is not closed after the Planning Commission proceedings. Mr. Keys

believed that information was in the Appeal Code itself. It stated that facts de novo are being considered and new information can be taken. He shared the language with those present, which stated, "New evidence may be received so long as it relates to the scope of the appeal."

Mr. Nunez asked about the scope of the appeal. It seems there are two potential interpretations of the appeal: the one that only relates to the driveway and the one that relates to the other appellants. He is curious whether the Appeal Panel will hear only the driveway appeal or something more than that. Mr. Keys reported that there is only one appeal form and one appeal number. Only one appeal fee was paid. He stressed the fact that there were not multiple appeals, as the only appeal filed was done on behalf of the Hermanns. That being said, there were other members of the community who wanted to join in on their appeal. Those members do not have standing as to some of the claims that the Hermanns brought forward, such as the driveway claims. That was the reason those claims were separated out into a different document.

Mr. Day believed the argument was that there is only one appeal, the Hermanns have standing, and it doesn't matter whether the others have standing or not since the appeal carries based on the Hermanns. Mr. Keys clarified that several of the members do have standing under the Park City code and under LUDMA. He does not represent those appellants, but they have the ability during the public comment to state whether or not they have a particularized harm. Based on what the Appeal Code states, it is possible for those members to establish particularized harm.

Discussions were had about LUDMA and the particularized harm requirement. Mr. Keys explained that there is another way to show you have that, which is owning adjoining property. His clients own adjoining property, so there is no question as to their standing and particularized harm. The question he hasn't seen fleshed out in case law is how close someone needs to be. The measure used to be 300 feet, but now the language specifically references adjoining. He believed that will be fleshed out more over time. Mr. Keys reiterated that there is a party that has standing both under LUDMA and under the Park City LMC. Mr. Day noted that the Appeal Panel can agree to expand the appeal in order to hear information that is beyond the original scope. Mr. Keys confirmed this and pointed out that it speaks to the flexibility of the internal process.

Mr. Baird did not agree with some of the statements made by Mr. Keys. For instance, the idea that people who speak today on this appeal can have standing to file an appeal to the District Court. LUDMA states that the appellants have to make an appeal of the actual land use decision within 10 days. That forecloses anyone else who shows up today. Secondly, while the record allows new facts, it does not allow new legal arguments. Those facts cannot create retroactive appellant standing for people who didn't have it to begin with. He reviewed an example from another case.

Mr. Baird expressed concerns about the fact that Mr. Keys stated there was only one appeal. It appeared that there were two appeals, one for the Hermanns and one for the supporters. Mr. Keys clarified that it was brought forward as a single appeal. Director Ward asked if the appeal applications were sent to the City Recorder after the submission of the appeal petition. Mr. Keys explained that he came in with a hard copy version of Exhibit A and all of the appeal documents. The only thing that came in separately from the individuals who wanted to join in the appeal was what was supposed to be in Exhibit B. He reiterated that those individuals were not his clients.

Everything was filed on the Friday before the deadline, in person. The Exhibit B appeals came in over the weekend, as the deadline was on a Saturday. Planning Staff stated that when the deadline lands on a weekend, it rolls through until Monday. Everything was submitted in time.

Director Ward referenced Page 4 of the Staff Report and the understanding of the exhibits. All of the exhibit forms were submitted within the deadline and on time, as mentioned by Mr. Keys.

Attorney Godfrey did not hear anything unexpected during the first portion of the meeting. Chair Strachan noted that there is an appeal by two people who clearly have standing. The substance of those matters will still need to be examined. Whether or not the others have standing under LUDMA, he believed that is for the District Court to sort out. They all have standing under the current Park City Code, because public input was shared at the Planning Commission level and/or they live within 300 feet of the project. The Appeal Panel's jurisdiction is shaped by the LMC. The LMC states that if people give public comment at the Planning Commission level, they have standing to appeal to the City. Whether there is standing to appeal to the District Court is a separate issue. He believed it is worthwhile to hear the Hermann appeal and to let the other appellants work out any potential standing issues at the District Court level.

Mr. Nunez feels it is within the scope of the Appeal Panel to hear not only the original appeal filed about the driveway issue but also the additional facts. He agreed with Chair Strachan that it is best to hear all of the information. There is a desire to follow the Park City code. Mr. Day wanted to settle who has standing and who does not, because it will be relevant to what the Appeal Panel does moving forward. It seems like there is a broader definition of standing, which does not indicate harm. That gives him some pause. That being said, this is a situation where in order to appeal in Park City, there are certain requirements, such as a legal argument and fees. Those requirements make it difficult for a lot of people in the community to submit an appeal. Under 15-1-18(G), the Appeal Panel has the authority to hear and to broaden the scope, which seems fair.

Chair Strachan asked that a note be made to ensure there is a ruling on the record before the Appeal Panel Meeting ends. He acknowledged that the meeting will likely be lengthy. The timeline for the Appeal Panel Meeting was reviewed. It was noted that the appellant will present their appeal grounds, the applicant will respond, and the Appeal Panel will ask questions. After the applicant has responded, Staff has the opportunity to clarify or rebut anything on either side. The public hearing will open after that. There are times listed in the document of 10 minutes and 15 minutes, but based on the complexity of this matter, he does not believe the times are accurate.

The appellant representative shared additional information. Mr. Keys shared presentation slides about the 220 King Road property. He confirmed that it is difficult to bring forward an appeal in this context. It is a lot of work and it can be expensive. The reason this is so important to the Hermanns is because they have lived in Old Town since 2006 and are familiar with the Old Town requirements. There is also familiarity with the requirements in place to approve a single-family home in Old Town. What initially made them concerned was the rapid path that this application went down, in large part due to the 45-day cut-off invoked through the Utah State Statute. There was only one public hearing and it wasn't totally clear to his clients what all of this would look like. An architect was retained to better illustrate what was actually being proposed. Mr. Keys shared a rendering of what has been proposed by the applicant and noted that it was overlaid to scale.

The home that is proposed to be constructed next door to his clients is on the hillside. It was previously argued that the house will not block any views, but Mr. Keys and his clients disagree with that statement. The majority of Park City agreed to bond and spend \$64 million to be sure that the hillside does not have large construction on it. What is proposed is considered large construction. That is the reason this project is so important to his clients and others. It is out of character with what is typically approved in Old Town. It was previously stated that the project is consistent with what is seen in the Sweeney MPD. However, the record shows that this is not the

case. He shared a graph from the January 24, 2024, Staff Report. The graph shows the size of the other single-family homes in the Sweeney MPD and Treasure Hill Subdivision. It is clear that the other single-family homes there are nowhere near the same size as the proposed structure.

Mr. Keys shared Sweeney MPD – Basic Conditions information. The Sweeney MPD constitutes an act of legislative authority taken by Park City in 1985. There was an amendment to it in 1987 and several other actions were taken over time. He explained that legislative tweaks are very different than administrative actions. The Development Parameters and Conditions language was reviewed. Mr. Keys stated that the application submitted by the applicant does not comply with the Sweeney MPD, which is a fundamental problem. The Sweeney MPD states that when each application is submitted, that application will be reviewed based on the LMC at the time. The application is considered through the lens of the Sweeney MPD and the LMC.

Mr. Keys stated that the proposed structure does not comply with the external building height requirements of the Sweeney MPD. The Sweeney MPD speaks directly to height because there were concerns about the impact high-density development would have over Old Town in this location. The agreement was that certain locations would be densified and others would be less dense with height limitations. The applicant's home is proposed to be constructed in one of the areas where there is reduced density and there are height limitations. The language states:

- Building heights shall be limited to the maximum envelope described in the Restrictions and Requirements Exhibit. At the time of Conditional Use approval, projects shall be reviewed for conformance with the heights prescribed thereon, and on the following:
 - The various parcels located within the Historic Residential (HR-1) Zone district shall abide by the Land Management Code and no height exceptions will be considered. Maximum building height on the single-family lots shall be limited to 25' in order to reduce potential visibility.

Mr. Keys explained that this is clear and plain language. It says that in the HR-1 Zone, it shall be 25 feet and there shall be no height exceptions granted. In 1987, the City Council amended the MPD, but in that, it stated, "The modification to the Sweeney MPD is minor and does not result in increased height in any of the development parcels." Between 1985 and 1987, some density was moved around. He shared a map of the area and pointed out the lot the Hermanns own and the lot subject to the current application. It clearly states that the maximum height is 25 feet and the maximum footprint is 3,500 square feet. He next reviewed the current LMC height requirements. In the HR-1 Zone, building height is currently limited to 27 feet. Language states that "A structure shall have a maximum height of 35 feet measured from the lowest finish floor plane to the point of the highest wall top plate that supports the ceiling joists or roof rafters." In the January 24, 2024, Staff Report, it stated the proposal does not comply with the interior height.

Chair Strachan believed it was the position of Mr. Keys that the MPD controls and the maximum height is 25 feet. This was confirmed. Mr. Day asked why the MPD controls this. Mr. Keys explained that the MPD itself is the contract by which the rights were vested. It specifically states that 25 feet was the height that would be allowed. The applicant will argue that through the MPD, some plat note is vested, but he pointed out that those plat notes are inconsistent with the MPD. There is an argument to be made that the height could be 27 feet under the existing code. Mr. Keys reported that the MPD sets the vested right and it states that the home can be 25 feet.

Attorney Godfrey asked if there is a set of covenants on this property other than the MPD. Mr. Keys stated that there are a number of different covenants, including private restrictive covenants. Those were pointed out, not because he felt they were binding to the City, but because those indicate what provisions should apply. Attorney Godfrey expressed some confusion about the argument put forward by Mr. Keys. It seems he is arguing that the proposed application violates the height restriction because it is taller than the MPD height. Mr. Keys clarified that neither the LMC nor the MPD allow the height that the Commission approved. The Commission arrived at the height based on a plat note amendment. If the MPD doesn't allow the height and the HR-1 Zone doesn't allow the height, it is not possible to get around that with a plat note amendment.

The 1996 amendment was discussed. At that time, some plat notes were added and this was an ordinance adopted by the City Council. Chair Strachan asked whether the plat note is void if it is inconsistent with the MPD and applicable zone. Mr. Keys stated that this is his position, especially if the plat note was adopted by the Planning Commission, which cannot set policy through a legislative act. Chair Strachan asked if the City Council can delegate legislative authority to the Planning Commission. Mr. Keys confirmed that this can happen in certain contexts, but it has to be specific, and that is not what happened in the instance of the application.

As a justification, Staff stated that the 1985 version of the code allowed for an amendment of the MPD and to give height exceptions. The current version of the code also allows you to amend the MPD and give height exceptions. However, that is a different process. Mr. Keys shared the 1985 LMC provision and pointed out the Variations in Height Requirements language:

- The height requirements of Section 7 shall apply to MPDs, except that after review by the Planning Commission, the Commission may approve, disapprove, or approve with modifications a request for an increase in the allowable height of some or all of the buildings in the development by up to 25% of the maximum building height.
 - Height variations shall not be permitted in the HR-1, RM, R-1, and HRL Zones.

Since this property is in the HR-1 Zone, it is not possible to use this tool to grant a height variation of up to 25%. There is a delegated authority there, but it is specifically delegated. This height cannot qualify under the LMC, because the City Council has decided that no height exceptions will be granted in this zone. Instead of going through that process, plat notes were amended. Mr. Keys stated that the Sweeney MPD speaks at length about why height is so important. Visibility of the mountainside is critical and there is no desire to see tall buildings there. It also talks about stepping. What is proposed is the opposite of minimizing the visual impact in the area.

At the last public hearing, several Commissioners were concerned about the shed roof and asked if it could be broken up. The solution that was offered was a pop-out, but that pop-out goes beyond the 25-foot façade that is allowed. Based on the work done by a hired architect, the front pop-out façade is 36 feet 10 inches and the one to the right is 32 feet 11 $\frac{3}{4}$ inches. Mr. Keys noted that the numbers on the east façade are much taller than the HR-1 Zone and Sweeney MPD allows.

Mr. Keys next spoke about the building footprint. He explained that the building footprint does not comply with the Sweeney MPD or LMC. An overlay was shared and it showed the Marsac building in gray while the white underneath illustrates the proposed structure. The applicant states that they are under 3,500 square feet because only certain aspects of the home should be counted in the footprint calculation. Their argument is that the garage should not count towards the total

footprint. The applicant stated that it is a parking area and not a garage because of the openness, but the Sweeney MPD speaks to parking. He read Condition of Approval #3:

- The approved densities are those attached as an Exhibit and shall be limited to the maximums identified thereon. Parking shall be provided on-site in enclosed structures and reviewed in accordance with either the table on the approved Restrictions and Requirements Exhibit or the adopted ordinances at the time of project approval.

Finding of Fact #5 also stated that "The required parking can readily be provided on-site and in enclosed structures." Mr. Day believed the argument of the applicant is that it is not enclosed and therefore does not qualify as a garage. Mr. Keys explained that this is the argument, but it actually violates the MPD. The MPD states that all parking will be in enclosed structures on-site. As a result, the Planning Commission erred, because either it is an unenclosed structure and it doesn't comply with the Sweeney MPD, which requires parking to be in enclosed structures on-site, or it is a garage. If it is a garage, then it counts towards the total footprint amount.

Mr. Keys reviewed the Park City LMC definition of garage and parking area, which are as follows:

- Garage, Private: An Accessory Building, or a portion of the Main Building, used for the storage or motor vehicles for the tenants or occupants of the Main Building and not by the general public.
- Parking Area: An unenclosed area or lot other than a street used or designed for parking.

Mr. Keys pointed out that the word enclosed is not in the definition of garage. The parking area, on the other hand, specifically mentions an unenclosed area. It is his belief that what is proposed is a garage and therefore it should be counted towards the total amount. Even if it is not considered to be a garage, the Sweeney MPD requires that there be parking on-site in an enclosed structure. Previously, Staff found that the building footprint does not comply under the LMC. He shared an image from the January 24, 2024, Staff Report, which was incorporated into the February 14, 2024, Staff Report. It shows how the total footprint was measured based on the LMC. Looking at everything that is counted under the HR-1 Zone LMC measurement, it was 11,300 square feet. He shared some example renderings with those present for reference.

Language from 15-2.2-5 – Building Height and Roof Pitch was shared. Mr. Keys pointed out that it clearly states that the roof pitch of a structure's contributing roof form shall be between 7:12 and 12:12. This structure contemplates a 3:12 pitch roof. The City's own consultant stated that it did not comply with the HR-1 Zone and was not in keeping with what was contemplated. In the applicant brief, a new argument was made that the roof is not the contributing form, because it was not viewed from the nearest public right-of-way. As he understands contributing under the Code means any aspect of a structure that gives it a historic feel or provides a historic element.

The reason the driveway issue was appealed is because earlier versions of the Staff Report required his client's written consent to the modifications that were going to be made to 200 King Road. Mr. Keys explained that there is a private access easement over 200 King Road that provides driveway access to 220 King Road, but it is a non-exclusive easement. The easement actually provides access under the Sweeney MPD documents to the building envelope for 200 King Road and 220 King Road. All of the early versions from Alliance showed 8-foot retaining walls running on both sides of the access easement that currently exists. The grade on the driveway once it is dug down is 13.9%. The maximum grade under the code is 14%. As was

indicated by Staff, after the February 14, 2024, hearing, an adjustment was made to the exhibit to have 4-foot and 2-foot walls. That is still a violation of rights for the property owner and co-holder of the easement. It is a non-exclusive easement.

The City has now said that consent and sign-off for the Building Permit will be required. Mr. Keys felt that was helpful, but noted that opposing counsel will likely disagree. He informed the Appeal Panel that there is now a lawsuit over a dog issue. The second set of claims in that lawsuit relates to this easement. In that lawsuit, the applicant claims that his client is preventing them from taking advantage of this access easement. Mr. Keys does not believe that is the case. Since it is a non-exclusive easement, the applicant simply needs to make sure they are not impairing the right to access the property in that location. That issue is currently on appeal before the courts.

Mr. Day asked whether Mr. Keys was comfortable with the Staff's response. Mr. Keys explained that the issue is not settled, because there was a condition in the original Staff Report requiring the consent of his clients, but that was removed. Staff believed it was unnecessary because there needs to be an access agreement anyway before it is possible to move forward. His concern is expressed in the briefing. What was granted was a Steep Slope CUP, but the Steep Slope CUP factors were not considered and this is clearly in the steep slope. Those factors are intended to protect neighboring property owners. He felt the Steep Slope CUP factors should have properly been reviewed before the Steep Slope CUP was granted. Mr. Keys stated that the argument as to why they didn't have to is that the Steep Slope CUP factors aren't necessary because those are addressed by the Sweeney MPD. He does not agree with that. Additional discussions were had about Steep Slope CUPs and the impacts on adjoining properties.

Mr. Keys explained that his clients live directly adjacent to this property. It will be built next to their home. If it is over the height, it will obstruct views, and light, and will impact their ability to enjoy their property. The entire purpose of the HR-1 Zone is to preserve the Historic District. His clients like living in the Historic District, because of the historic feel that the area has. It has a historic feel because, over time, the City has regulated the type of construction that can occur there. It has been restricted to historic-style homes with smaller footprints, lower building heights, and steep roofs. That is what maintains the look and feel of the community. Having a modern-style home looming over Old Town will impact the entire area. This issue is more specific to his client who lives directly next door to the proposed project. His clients complied with the HR-1 Zone when constructing their homes and did not do anything that was not allowed. LUDMA recognizes that adjoining property owners are more directly impacted and more likely to be harmed.

Mr. Day pointed out that the garage is proposed to be underground. He wondered how that will impact others in the area. Mr. Keys reiterated that the garage increases the size of the structure. The applicant is playing games with the definitions in order to have a larger home. A 20,000-square-foot structure has more of an impact on a neighboring property than a 10,000 or 5,000-square-foot structure. He referenced a landslide in King's Crown last year. Digging down too far destabilizes the mountainside. Mr. Keys shared some example scenarios with the Appeal Panel.

It was determined that the Appeal Panel would take a 5-minute break before continuing.

Wade Budge, representing the applicant, shared presentation slides for the 220 King Road appeal. He explained that he is joined by Urban Planner, Jason Bull, and co-counsel Mr. Baird. Matthew and Tatiana Prince are also present and are the owners of the property. Mr. Budge appreciates the care and attention that has been taken on this matter so far. There have been

several interactions with Staff and the Planning Commission. On January 24, 2024, the architect was present at the Planning Commission Meeting, and models of the building were shared. Additionally, there was a hearing on February 14, 2024, and there was a detailed discussion.

Mr. Budge reviewed the presentation slides. The slides indicated the locations of those who provided comment, including the supporters of the project. The green parcels on the map that surround the large yellow middle parcel make it clear that this is a project that has elicited a lot of support, including support from notable institutions such as the Historic Society. Mr. Budge shared some context about what the Sweeney MPD represents. Under the Sweeney MPD, two homes were built on Lot 2, which is the subject lot. He shared images of the other homes already built in the Sweeney MPD. He pointed out Lot 2, Lot 3, Lot 4, Lot 5, Lot 6, and Lot 7.

This particular subdivision authorized the construction of these homes in a certain way. The homes shown are nothing like the HR-1 Zone homes seen in the typical 25x75 lot. While there are references to the HR-1 Zone, that means something different at different times during the life of the Sweeney MPD. It is also important to remember that these homes have specific requirements that apply to them that would not apply to a home in the HR-1 Zone, not within the Sweeney MPD.

Mr. Budge explained that what is being discussed is a set of standards that arise from an MPD that was approved in 1986, amended to include these parcels in 1987, and then had additional requirements and restrictions placed through the platting process. In the prior presentation, a lot of time was spent discussing what happened in 1986. What is important to remember is that in 1986, these parcels were not involved in the Sweeney MPD, as those were not yet platted lots.

The undeveloped lot within the Sweeney MPD is Lot 1, which is owned by the appellant. The applicant lot has been developed. Lot 5 is the open space lot and there is no intention to have a home there. Mr. Budge reviewed house sizes and explained that these are different in size and scope than what is typically seen on an HR-1 Zone lot. In the case of Lot 3, there is a building area of 17,000 square feet, it is over an acre, and there is a building footprint of 2,620 square feet. However, looking at Lot 4, Lot 6, Lot 7, and Lot 8, there are much bigger homes. The footprints are larger and the square footage is much larger as well. As for the architectural drawings shared by Mr. Keys, he did not think those should be considered. Mr. Keys told him previously that he had hired an architect and would share in advance anything he intended to present, but that did not occur. It was something intended to elicit a reaction rather than be an accurate representation.

Mr. Budge shared the modeling that was previously presented to the Planning Commission. It helped to create context and make it easier to understand what is on the site currently and what is proposed. He noted that the blue shows the existing structures and the light grey shows the proposed structure. There is a non-conformity being fixed with respect to height and footprint.

Mr. Budge explained that the task is to look at what the Planning Commission did, apply the standards, and determine whether the appellant carried their burden. He does not believe the appellants have carried their burden. That conclusion can be reached by reading the Staff Report and by carefully reviewing some of the things the Planning Commission felt were important to put into the findings and conditions. To the extent there was any ambiguity, there is clarification in State Law and the LMC that the ambiguities need to be read in favor of the property owner.

It is important to keep in mind some of the facts associated with this property. Mr. Budge stated:

- The property has vested rights under the Sweeney MPD;
- The Planning Commission was authorized to amend the Subdivision Plat, and the Amended Plat is consistent with the Sweeney MPD;
- The proposed home complies with:
 - The Sweeney MPD's height requirements;
 - The LMC interior height requirements;
 - Treasure Hill Phase 1 plat notes, including - footprint, height, massing, facade, and step out.
- The Planning Commission appropriately amended the Treasure Hill Phase 1 Plat, as allowed by the LMC and the Sweeney MPD;
- Historic Design Review is in process and a decision will follow this appeal.

Mr. Budge noted that the Sweeney MPD has been analyzed many times. He was pleased that the Staff Report includes information about the 2009 analysis. That analysis looked at what it meant to have vested rights under the Sweeney MPD. Those vested rights are the same that are being applied in this case, but the ones being applied are for Lot 2 in the Sweeney MPD.

A slide was shared about the plat amendment procedure for Lot 2. Mr. Budge explained that in 1986, the distinction was not as clear as it is today, because LUDMA came about in 2005. He reported that the MPD was approved by the City Council and the plats were approved by the City Council. When the MPD was approved in 1986, it didn't authorize any particular structure where the six homes and seven lots are currently. In 1987, there was an addition. With the parcels, there is not a lot on which to build until the owner moves forward with a plat. In this instance, which happened on September 15, 1995. The City Council approved that plat by ordinance. That ordinance is what set the dimensional limits of height, but it also set a number of other criteria that apply to this particular lot. That is notable, as it represents the implementation of the MPD. The MPD sets forth a number of values, standards, and uses, and contemplates that these homes would be built on these seven lots. To implement it, there was a process that involved the City Council. While each lot has a unique history, he is here to review the history of Lot 2.

On April 17, 1997, Lot 2 was amended. Mr. Budge reported that the lot was amended with respect to some of the boundaries of the buildable area by the City Council. On February 14, 2024, the most recent application, was approved by the Planning Commission. The reason that the application didn't go to the City Council is because the LMC has changed. This is a result of changes to State Law. Plats are now resolved and decided by the Planning Commission. In this instance, the City Council granted authority to the Planning Commission to approve and amend plats. In February, the plat was amended to reflect certain items. Those items are consistent with the MPD. This ensured there was approval consistent with the Sweeney MPD and LMC.

Mr. Budge noted that building height has been discussed a lot during this process. He shared a chart with building height information. Before 2009, the way height was handled in this zone was that it was a 27-foot height with a +25% increase. That meant a little over 6 feet could be added. In this instance, the lot height was set when the plat was first obtained. The plat explicitly states there are two height elements. There is a height of 30 feet and there is 3 feet for certain types of mechanical and other elements. Then there was the amended plat and the height stayed the same at 30 and 33 feet. What changed with the amended plat is that the notes were clarified so the particular element that allowed for elevators or other details to extend above was applied to a particular lightbox feature. This was done at the request of the Planning Commission after the

January 24, 2024, hearing. What was done by the Planning Commission was done with delegated authority, consistent with State Law, to authorize an amendment to the plat to accommodate that.

Mr. Budge referenced an earlier comment about whether someone can act to restrict the rights of the Sweeney MPD. In his view, this cannot be done, because that would be going against the vested rights case law. Since 1980, in Utah, it has been the law of the State that when someone files their application, there are vested rights under the law that applies at that time.

Information was shared about interpretation issues. Mr. Budge explained that the MPD grants rights and then the plat provides those rights. The property owner is entitled to rely and act upon that which is most allowing of their property rights. As a regulator, it is important to remove ambiguity. As for how to handle the LMC versus the MPD, the same analysis applies. If the MPD allows something and the LMC does not, then the MPD controls and governs. However, if the MPD is silent on an item, he explained that the LMC applicable at the time would govern.

Mr. Nunez asked about the discrepancy between what is built there right now and the earlier argument that it should not be past 25 feet. The HR-1 Zone rule applied to specific properties, however, in the MPD it says zones and not specific properties. Mr. Budge stated that he does not accept the argument that the plat is in violation or contrary to the MPD. The plat is an implementation of the MPD. The way that height was allowed for this particular lot was in the 1995 plat. If a neighbor wanted to prevent that, the time to appeal would've been back then. Mr. Budge shared language about the HR-1 Zone. He clarified that the subject property is in the HR-1 Zone. The only lot in the MPD that is not in the HR-1 Zone is the property at the top.

Discussions were had about the MPD. Attorney Godfrey stated that if the MPD doesn't apply, then the City code applies, but there is an implementation of those two elements with a plat approved in 1995 and a plat approved in 1997. He believed it is the position of Mr. Budge that those are vested rights, the same as an agreement or any land use approval would create. This was confirmed. That is an argument that was made to the Planning Commission and an argument that is consistent with the careful analysis that was done in the 2009 Sweeney MPD vested rights memo. What it reflects is Utah law. Mr. Budge explained that Utah law talks about reliance. Property owners need to know that they are able to rely on those prior approvals. In this particular instance, this is a continuing implementation of the MPD, and it is done as specifically contemplated in the MPD. When the Planning Commission was faced with the question of what to do with the application, they knew under the LMC and under State Law, it says that the CUP shall be approved unless it is not possible to mitigate reasonably anticipated detrimental effects.

The Planning Commission acted in accordance with State Code and in accordance with the City ordinances. In the case of the plat, the Planning Commission was acting in accordance with what they were authorized to do and what had been done previously by the City Council. Contrary to what was indicated by the appellant, a careful analysis was done over many meetings. To do what the appellant was inviting the City to do would result in a taking of the rights that his client as a property owner has been relying on. Mr. Keys indicated that the steep slope analysis was not done, but that is not correct. Every one of the criteria of the Steep Slope Ordinance is referenced in the Findings of Fact and Conclusions of Law, which is included in the Staff Report.

The Site Plan was shared. Mr. Budge explained that it shows the area where the steep slopes are indicated. There was consideration of all those elements. Chair Strachan asked if Staff issued a steep slope determination. Mr. Budge explained that there is information in the February 14, 2024, Staff Report. The Staff did an analysis of that particular element. As part of the Planning

Commission hearing, time was spent to show that all of the criteria were analyzed. There was a question about whether it had been appropriately analyzed. To assist this body in considering that, in the appeal brief that was filed on Friday, there was a quote included from Attorney Harrington. That quote indicated that there was compliance with those elements.

Mr. Budge shared a slide of the Approved Site Plan with Topography. The weekend before the February 14, 2024, hearing, there were reviews with the engineer. The 8-foot walls referenced earlier were noticed at that time. Those were near or extending beyond the driveway easement. As a result, Alliance Engineering updated the drawing. The updated drawing shows that all of the driveway activity will be within the existing driveway easement that has been there since the property was platted. This drawing showed that all of the driveway activities are physically located within the driveway easement. The Planning Commission then added as a condition that the driveway not be any wider than 12 feet, unless dictated or required by the Fire Code as the building process occurs. There is currently access for Lot 1 from below, but if Lot 1 wants access off of the driveway easement because it is non-exclusive, that would be granted. The driveway needs to be operated and used in a way that does not interfere with or prevent them from access. Mr. Budge stated that Page 118 of the Staff Report shows the correct driveway easement.

A summary was shared with the Appeal Panel. Mr. Budge stated that the appellant has not carried its burden, has failed to show illegality, and has not shown prejudice. He reported that the Planning Commission is now authorized to handle plat amendments. The Planning Commission clarified a number of details related to this lot. Additionally, he pointed out that there are at least four other properties in this MPD that allow for an area underground without a garage door. This particular set of plat amendments allows the applicant to act like the other properties within the Sweeney MPD and have a similar parking arrangement to those existing structures.

Mr. Budge shared two documents with the members of the Appeal Panel. He noted that the Utah Supreme Court has made it clear that if someone is going to challenge a case, it needs to be shown that it is illegal and prejudiced. It was noted that an email exchange with his client from two years ago had been handed out. It stated that the owner of Lot 1 previously said that there are no plans to build and they purchased the property to prevent construction above them. Mr. Budge believed the Planning Commission deserved the respect of having their decision upheld, particularly when there was so much care to arrive at their ultimate conclusion.

Mr. Day pointed out that under LUDMA, an adjacent property owner does not need to show proof of a particular damage. Mr. Budge explained that to get standing, there does not need to be damage shown if someone is an adjacent property owner. However, to win, prejudice needs to be shown. The plat notes were reviewed. Mr. Budge noted that there was a previous comment about how the parking area was arrived at. It is language from other lots in the Sweeney MPD applied to this particular lot, so this lot could have the same benefit as the other lots in the area:

- That portion of any garage, carport, mechanical space, parking area, or living space that is located below existing grade and which has landscaping or deck (as provided in 1(A)) located above it.

A good cause determination was listed in the Staff Report. It included the fact that the plat amendment also included a reduction in the buildable area and resulted in a shift of the building area, so impacts are being taken away from people who live downhill. There is also the fact that it has an improvement to allow for fire access and turnaround within the parking area. Those

elements are detailed in the approval that was received from the Planning Commission. Chair Strachan asked whether good cause is a static standard or if can change over time. Mr. Budge explained that good cause is designed to give the decision maker the ability to not have the decision be second-guessed by a review in court. Unlike the case law, which is wide-ranging, Park City has a clear definition. When good cause arguments are made, that is considered.

Prior City Councils allowed for an underground parking area/garage carport not to be counted as part of the square footage in other Sweeney MPD lots. That element applied to the subject property and this was determined by the Planning Commission. One of the five elements of good cause is related to the parking area, specifically because it is designed to allow fire truck access.

Mr. Budge spoke about building height and referenced Plat Note #5. The note talked about heights of 30 and 33 feet. It stated, "...33 feet for pitch roofs shall be permitted for the express purpose of accommodating access and light features no greater than 24 feet in length." He noted that the Planning Commission ultimately broadened the language to include the reference to the light feature. If the Appeal Panel didn't like that element, the net result isn't that the project goes away, but that the feature is lost. It will then return to the plan that existed as of January 24, 2024.

Mr. Budge discussed the step out on the structure, which depending on how it is being looked at, could be considered a step back. The ambiguity was removed and there was a clear reference to a step-out made. The Planning Commission last week recommended a change of code that will be considered by the City Council. In the future, properties with a step back will only be interpreted as going back. The Code as it existed when the Planning Commission acted contemplated or at least allowed what was ultimately approved. This particular plat note simply adds some clarification about that. The final page of the plat notes was shared. There were some additional elements added that the Planning Commission thought were important to make sure everything discussed during the meetings was memorialized. One was about lighting, one had to do with glazing, one was about the steep slope, and the last plat note stated that it will not be a nightly rental. As represented during the meetings, this project will be used as a single-family home.

The Planning Commission considered the LMC and MPD. Additionally, the Commission made sure they understood the plat and even the plats of the neighboring Sweeney MPD lots. Mr. Budge asked that the appeal be rejected or denied. To grant the appeal would not serve any interest, would not result in any sort of betterment of the community, and there are insufficient grounds to do so. He did not believe the appellants have met the burden the LMC imposes on someone who wants to challenge a decision, like the one that was made by the Commission.

Mr. Day asked if the appellant has to show prejudice to win. Attorney Godfrey believed so because the case law is fairly clear on that point. It is not clear that it has to be shown at the appeal stage, but it would need to be shown at the District Court level. It likely is applicable to this proceeding and it is separate and distinct from any standing argument. Chair Strachan explained that this is now the time for Staff to rebut and share comments about this matter.

Director Ward shared the Findings of Fact from the 1985 Sweeney MPD. As the appellant indicated, the two King Road properties were not contemplated at this time as part of the 1985 Sweeney MPD. However, Finding of Fact #3 talks about the open space preservation and conceptual site planning attributes resulting from the cluster approach to the development of the hillside. That was sufficient justification for the requested height variation necessary. The review criteria outland at that time were considered. In Finding of Fact #10, it stated that the site planning

standards set forth through the MPD process can be reasonably achieved at the time of Conditional Use review and approval. The Conditions of Approval were next reviewed.

In Condition of Approval #1, it stated: "At the time of Conditional Use or subdivision review, the Staff and Planning Commission shall review projects for compliance with the adopted codes and ordinances in effect at the time, in addition to ensuring conformance with the approved Master Plan." Condition of Approval #2 stated: "The official Zone Map will be amended to clearly identify those properties included within the Master Plan." It later said, "At the time of Conditional Use review, final building configurations and heights will be reviewed in accordance with the approved Master Plan, applicable zoning codes and related ordinances." Director Ward noted that a lot has been said about the HR-1 Zone. When the City Council approved the zoning for the Sweeney MPD, 200 and 220 King Road were zoned from HR-1 to HR-1-MPD. This is further reiterated in the plat notes that were carried forward for the Treasure Hill Subdivision.

In the Treasure Hill Subdivision approval in 1995, the ordinance states that the Planning Commission forwarded a positive recommendation to the City Council, with conditions regarding building size. The plat approval required that prior to final plat recordation, the Community Development Department review and approve notes on the plat addressing limits of disturbance, building footprint, building area limits, building height, and massing. The plat notes that were recorded include information about precedence. It stated that the plat notes were consistent with the Sweeney MPD and "final house design shall be reviewed under the Small Scale Master Plan Process in accordance with the Sweeney Master Plan." The Small Scale Master Plan Process is now the Conditional Use Permit process. There was information written about height as well.

- Treasure Hill Subdivision Plat Notes:
 - Height: The maximum height, in general, shall be 25 feet for flat roofs and 30 feet for pitched roofs. A maximum height of 28 feet for flat roofs and 33 feet for pitched roofs shall be permitted for the expressed purpose of accommodating access, i.e. stairwells and/or elevators between floor levels.

The plat notes with the height were established pursuant to the Sweeney MPD and prior to changes to the HR-1 Zone with the Treasure Hill residences in the HR-1-MPD Zoning District. Director Ward explained that the massing is more restrictive than would be allowed in the HR-1 Zoning District. Through the LMC, the building mass could go up to 4,500 square feet, considering the lot size. In this case, the structure is limited to 3,500 square feet and breaks up the massing into 1,500 square foot configurations. The following information was shared:

- The Planning Commission excluded the unenclosed underground parking area from the single-family dwelling building footprint;
- This is aligned with approvals for single-family dwellings in the Treasure Hill Subdivision and Sweeney MPD;
- On June 25, 1998, the City issued Building Permit BD-97-02851 for a shared entry tunnel to access Lots 3 and 4;
- On June 29, 2024, the City issued a Building Permit BD03-08481 for a shared tunnel to access Lots 6 and 7 from Woodside Avenue.

Director Ward reported that the Planning Commission found the following:

- 220 King Road is notably larger than most other buildable lots in the Sweeney MPD and the ratio of lot size to the residence is significantly smaller than neighboring residences;
- The residence will be adequately setback and buffered from the surrounding properties.
- The residence is designed to break up the perceived mass and follows the plat notes breaking up the structure into at least four massing elements that are each less than 1,500 square feet with an overall footprint of less than 3,500 square feet;
- The site is designed to respect the existing topography and site features such as existing trees and vegetation. Cut, fill, and retaining walls will be located behind the residence to minimize visible impact on neighboring uses.

Director Ward reported that the Sweeney MPD was approved prior to the enactment of the Sensitive Land Overlay that was enacted in 1992. The Planning Commission approved a Steep Slope CUP. That is a permit that is required through the current HR-1 Zoning District for construction on steep slopes. It requires the Planning Commission to make the findings that are outlined in LMC Section 15-2.2-6 – Development on Steep Slopes. She explained that this outlines nine considerations for approval. The Planning Commission issued approval for a CUP for the single-family dwelling and also approved a Steep Slope CUP for the proposed project, pursuant to the steep slope criteria outlined in the LMC. The steep slope determination for the approval of this project was done through the CUP criteria.

Attorney Harrington discussed good cause standards. Notwithstanding the later adoption of LUDMA, good cause and no material harm were both standards by prior statute. Those were part of the 1995 and 1997 ordinances. There was a legislative good cause finding by the City Council on both of those. He noted that this information is shown in the exhibits. Chair Strachan asked if there are documents that show the City Council analyzed good cause. Attorney Harrington stated that there is the ordinance itself and the findings for that determination. He clarified that the current definition was not in effect at that time. Attorney Harrington agrees with the Staff characterization that the vesting under the MPD is the principal justification that the Commission relied on as opposed to past good cause findings within the plat.

Chair Strachan noted that the MPD states that no height exceptions will be entertained. Attorney Harrington stated that there is no allegation that the height provisions of the MPD are being violated in terms of the strict numeric amount. Mentions have been made about internal height and definitional issues about how height is measured. Attorney Harrington reported that the Legislature has taken away design authority from municipalities in Utah. There is an exemption for Development Agreements in Historic Districts. That is because the protections are recognized.

Attorney Harrington explained that the Appeal Panel is considering whether the Planning Commission correctly applied the code and the MPD. It is not whether there are disagreements about some of the facts of the application, but whether the Planning Commission erred. As it relates to standing, there is agreement with the appellants that standing is defined by the LMC. So far, the presentations have been related to the scope of the appeal of the appellants. He doesn't think that voting to increase the scope will solve the standing issue. Additional information about standing was shared. It was explained that the Appeal Panel may do the following:

- Affirm the Planning Commission's approval;
- Reverse the Planning Commission's approval;
- Affirm or reverse in part the Planning Commission's approval and remand the matter to the Planning Commission;

- Request additional information and continue to a date certain.

Chair Strachan opened the public hearing.

Teri Orr noted that during this current land dispute, the focus is on two properties at the base of what passes for a sacred mountain in the area. Treasure Hill has held a special place in the hearts of residents for many years. Generations have recreated there and also watched from afar. The City tried for years to come up with a solution with the owners to purchase the land. Many years ago, the price the owners wanted was approximately \$9 million. In 2017, under the stewardship of Jack Thomas, the deal was resurrected, but the price from the owners was now \$64 million. There was rallying and bonding and the mountain now belongs to the residents of Park City, who pay for it on their tax bill every year. Ms. Orr explained that what the Appeal Panel is deciding on is a dispute about how Park City governs the protection of that land and the view they voted on to save. The job appears to be administrative, but it is actually a sacred trust.

Eric Hermann explained that he does not look forward to living next to a building the size of the Marsac building and he is deeply disturbed at the thought of that hillside coming down. Old Town is a quirky gem. Drove of tourists wander through, and snow and garbage removal are always challenges, but still, this is an area that is loved. It is the historical heart of Park City and is what makes the area different from other ski towns. Anyone who builds in Old Town knows about the restricted building codes that preserve the character of Old Town. Many people, including his family, have navigated the long and onerous process of obtaining Planning Commission approval. The Prince family took a very different path. Instead of designing their house to meet Code, they pressured the City to change the rules in order to accommodate the massive design they desired.

When Mr. Hermann realized that the Prince proposal violates Old Town guidelines on mass, scale, height, and footprint, he trusted that the City would enforce the Building Code and hold the Prince family to the same standards enforced on everyone else. Unfortunately, the Planning Commission approved the project by a very narrow margin. Mr. Hermann explained that their objective is to ensure that the City treats everyone equally under the law. It is his right under the code to appeal the Planning Commission's approval of a 130-foot-long, 4 ½ story house that is out of proportion with any other residence in Old Town. There are also proposed additional structures that will partly be buried in very steep slopes and environmentally sensitive lands. The proposal blatantly violates many Old Town HR-1 rules and regulations designed to preserve Old Town and the environment. When the appeal right was exercised, a campaign of harassment and intimidation began with the intention of suing them into submission. Days after the appeal, a lawsuit was filed by the Prince family against their dogs. They have owned Bernese Mountain Dogs for 14 years and never received a single complaint until the appeal was filed.

Within weeks of the appeal, Mr. Prince spent millions to purchase property next to them and filed another lawsuit, this time, alleging a tiny encroachment by an old stone wall. Mr. Prince has set up surveillance cameras and posted No Dog signs over the longstanding pedestrian easement across his property to the trail system. Mr. Prince argues that dogs are not pedestrians, which Mr. Hermann pointed out has damaging implications for dog owners in Park City.

Ms. Fredston-Hermann stated that they received a threatening letter telling them to cooperate with Mr. Prince. As the new owner of the local paper, he has used every tool imaginable to silence their free speech and that of anyone else opposing the project. He has turned a once widely respected newspaper into his personal megaphone. She believes that Mr. Prince has made or

promised major donations to non-profits that otherwise would have opposed the project. Almost all citizens who have spoken with journalists about the massive mansion have refused to do so on the record due to fear of retaliation, similar to what they are currently enduring. Ms. Fredston-Hermann believes the Park City government has endured similar pressure and intimidation.

During the past year, the Planning Department has experienced a lot of changes. Both the Director of Planning and Senior Planner working on the Prince project quit. Ms. Fredston-Hermann wonders if this is reflective of the relentless pressure and intimidation her family has suffered. The Sweeneys were overheard stating that if the project wasn't approved, they would be in Attorney Harrington's office the next day to sue the City. Mr. Prince was overheard saying he had the City in his pocket. If planning decisions are going to be made through political pressure and backroom dealing, Old Town will be lost. The precedent will enable the next ultra-wealthy arrival to Park City to purchase whatever property they can, tear it down, and build another out-of-scale structure. The only silver lining to this horrible experience is the tremendous outpouring of community support they have received as residents have become aware of the project. She is grateful that fellow citizens share her concerns and support these efforts. Ms. Fredston-Hermann asked the City to enforce the rules of the City equitably and transparently.

Written comments were received that day from Jim Doilney, John Vrabel, and Gwen Reddish.

Jim Doilney explained that he lives near the driveway that would service this application. He was on the City Council from 1983 to 1988 and he voted against the Sweeney MPD at the time, because he believed it was deeply flawed. Mr. Doilney stated that he has lived on Sampson Avenue for decades and it took him years to receive approval to build his home. His rear yard sits just steps from the Prince's driveway. It is very clear that the Prince house violates common sense. Common sense says that the approval must be overturned and so does the law. Mr. Doilney pointed out the fact that the law was changed on February 1 to accommodate the plat note changes. This speaks volumes about the pressure that has been placed on Park City.

The whole process has been riddled with hasty decisions. Mr. Doilney stressed the importance of all citizens being treated the same way. If this matter goes to court, people will be put under oath, and the truth about why Mr. Prince has been given special treatment may be revealed. Mr. Doilney informed the Appeal Panel that the plat note revision process was used inappropriately.

Jeff Raybender stated that he has property adjacent to the applicant, as he is 28 feet away from the lot line. He previously provided a support letter for this project, because the Princes spent time with the neighbors and showed them what was planned. Many others also found what was proposed to be valuable. He felt the Planning Commission did an excellent job during the process. This project will be a positive addition to the area and to the neighborhood. It is his belief that the Planning Commission did a good job of vetting the application. He reiterated his support.

Ginger Tolman lives across the street from the previous speaker and is within the 300 feet radius that is directly impacted. She is an adjacent neighbor to Mr. DeSisto. Ms. Tolman pointed out that her adjacent neighbors were never contacted by the Prince family. She believed the reason they were not contacted is because they are in direct line of sight. Her view matters and it will be impacted by this. Ms. Tolman reiterated that the Princes have not reached out to everyone and the neighborhood is not in agreement about this project. Ms. Tolman is an appellant and stated clearly that this project will obstruct her view. In terms of the steepness, she has concerns about what could happen in bad weather. This neighborhood requires people to help one another and care for one another. It is a steep street and everyone needs to rely on one another for safety.

Pat Sweeney explained that he has 40 years of knowledge, which he has gained from being involved in the Sweeney MPD. He thought what Mr. Budge said is correct about the Master Plan. Additionally, what Director Ward said about the wording of the original Master Plan approval was correct and well-stated. It is his opinion that the Planning Commission carefully considered the application and were thoughtful during the process. He does not believe the Commission erred.

Nic Schapper pointed out that the building they are all standing in is the same size as what is being proposed. He discussed his past work history and the avalanche that occurred in the late 1980s. Sensitive lands and steep lands are talked about in words and codes, but the reason those codes actually came about is discussed less often. Mr. Schapper trusted the Planning Commission to do the right thing, follow the code, and consider all residents in Park City. While he may not have legal standing, he noted that he has been standing in this town for a long time.

Mr. Schapper did not believe the Planning Commission articulated the difference between a parking area and a parking garage. People in Park City will see a garage. Most people will not understand the nuances between the MPD, HR-1, and LMC. Additionally, most residents will not understand how the attorneys articulate the difference between finished and unfinished space. He did not feel the Commission articulated the differences well or were clear about how the conclusion was reached. He stated that the newspaper is now a propaganda piece for one person in this community. What he has learned from this process is that the average citizen cannot come in here. There is a very clear access problem. If the community learns that it is okay to compare one home to the other in order to create a new standard, then the Prince home will become the new standard. Each one of the plat maps is unique and has its own notes. Comparing them every time a new applicant comes forward means the standards will continue to change.

The Planning Commission erred because it sets new precedence whenever there is a comparison to the last house that was built in the area. Mr. Schapper noted that there was not a discussion about footprint versus open space. Increasing the footprint means the open space is being decreased. Every time the footprint is altered, then the open space should be recalculated.

Mike Sweeney stated that the hillside is the only place in Old Town where there has not been total development. That is due to the fact that Andy Beerman asked what would be done with the hillside and if there was a willingness to sell it. At that time, he stated that there was an openness to sell and an offer was made. There was a desire to preserve the hillside. The number of units that can be built there have been designated and there is a certain amount that is for open space. Some open space was donated to make sure the view corridor was maintained. Mr. Sweeney does not believe the project will be larger than the other homes that have been built.

David Constable explained that approximately 10 years ago, his family started a historical renovation expansion. That took four and a half years with the Planning Department. Everything from building size, window size, height of the building, and preserving historical trees was considered. Even though the original plan was within the setback and floor area lot ratio, the Planning Department stated that it was too big. They didn't hire an attorney to argue with them and chose to downsize the proposal instead. Mr. Constable thought there were enough questions about this project that it warrants a second look. Residents are asking for a level playing field. If others have been asked to downsize their proposals, it makes sense that the Prince family do that also.

Tina Lewis reported that in 1980, the Park City Chamber created a survey that was given to tourists as they rode up the gondola or checked into lodges. Visitors were asked why they chose Park City and what made it unique. Overwhelmingly, visitors said the same things that residents said. According to visitors, Park City is a real historic mining town with a real Main Street and real historic houses surrounded by real mining structures. The steep slopes enveloping it felt like a “cosmic hug.” People fell in love with Park City the same way residents did. Park City worked for decades to define a new future and to create an environment that reflected a collective vision. Guidelines and codes were written and grants were created that would prevent demolition and would encourage the restoration of historic buildings. This process ensured that new buildings and homes would be complementary and blend into the historic feel of Old Town.

Ms. Lewis explained that small decisions can become large issues, especially with the passage of time. A few weeks ago, she attended the Planning Commission Meeting, where the project was explained, discussed, and voted on. In the 50 years she has spent attending hundreds of Planning Commission Meetings, she has never experienced a meeting quite like that one. It was chaotic, rushed, mismanaged, confusing, and lacked clarity. She has never seen Commissioners with so much divergence in their views of a project. Ms. Lewis stated that it is important to have trust in institutions and believe that there is equality under the law. Decisions should be free of pressure or intimidation. There needs to be certainty in the system of government. Ms. Lewis explained that she hopes that the Appeal Panel can bring clarity to the chaos that she witnessed.

Michael Anderson was attending the meeting virtually and stated that he is supportive of the Prince project. He pointed out that years have been spent with the Planning Commission to make sure this is right. Mr. Anderson attended the Planning Commission Meeting on February 14, 2024, and the Commission asked a lot of detailed questions. It felt like a transparent and open process. The Planning Commission ultimately arrived at a decision and he supported that.

Ben Dahl attended the Planning Commission Meeting on February 14, 2024. He stated that the Princes have been collaborative throughout this process and have spent time with neighbors. He has known them for years and appreciated their collaborative relationship in the neighborhood. Mr. Dahl believed the approach to the project has been respectful to the history of Park City. He feels the process the Planning Commission went through was full and complete. The fire turnaround is extremely important on a broad level. Mr. Dahl is supportive of the project and reiterated his belief that the process was complete. He asked that the appeal be rejected.

Lola Beatlebrox stated that she is not here in an official capacity as a member of the Historic Preservation Board. However, she has experience with the history of Park City and is familiar with the LMC. Ms. Beatlebrox referenced the language in 15-13-8 – Regulations for New Residential Infill Construction and Non-Historic Residential Sites in Historic Districts:

- New infill residential buildings shall differentiate from historic structures but be compatible with historic structures in materials, features, size, scale, proportion, and massing to protect the integrity of the Historic District as a whole. The massing of the new infill residential buildings shall be further broken up into volumes that reflect the original massing of historic buildings; larger masses shall be located at the rear of the lot.
- The size and mass of a structure shall be compatible with the size of the site so that lot coverage, building bulk, and mass are compatible with Historic Sites within the Streetscape or character area.

Ms. Beatlebrox stated that this comes down to common sense. The character area is the broader Park City historic area, the district, and the whole of Park City. The entire project needs to be examined as it relates to the impact on the Historic District. Ms. Beatlebrox suggested that the Appeal Panel consider continuing the decision to a date uncertain. There has been a lot heard during the Appeal Panel Meeting so far and all of the information needs to be carefully considered.

David Bennett explained that the way business is done is as important as the decisions that are made. He noted that there has been a lot of contention regarding this case. The filing of nuisance lawsuits and the whole process doesn't feel right. He encouraged the litigants to examine their processes and procedures. The attorneys have done a fine job of presenting their cases. Mr. Bennett encouraged the litigants to focus on healing the community regardless of the outcome.

Patricia Constable reported that she and her husband have lived in Park City for 50 years and have always been in the historic area. This project would cause the eastern sun to glare through their windows and decrease their view. Additionally, it does not fit in with the historic nature of the town. She wants to see the project correspond more with the historic nature of the area.

Matthew Prince informed those present that he grew up in Park City. He appreciates all of the comments that have been made. On some level, this is a complicated issue, because it is difficult to build in the HR-1 Zone. On the other hand, what makes this simple is that this isn't HR-1, but it is actually HR-1-MPD. There was a specific deal made by the Sweeney's when 50 acres of land was given in exchange for the creation of seven special lots. All but one of those lots today has a home on it and all but one of those homes are well over 30 feet tall and well over 3,500 square feet of footprint. Many of them are well in excess of 10,000 square feet of interior footage.

When 220 King Road was purchased, there was a reliance on what is there currently. Mr. Prince pointed out that if what was there now burned down, it would not be possible to rebuild it, which seems unfair. Four years ago, he sat down with the former Planning Director, Gretchen Milliken, and asked what he should do. She suggested not copying the historical guidelines, but gaining inspiration from them. A lot of work was done to find an architect who understood historic mining districts and culture. Mr. Prince stated that the planting that he committed to was intended to make sure the home completely blended in. At the direction of the Planning Commission, over 150 trees will be planted. A lot of work was done to determine how to build something that was inspired by what is here already. While he understands this is not what everyone wants, seven special lots were part of a deal the Sweeneys made to give up 50 acres of land.

Mr. Prince stated that the Planning Commission found good cause. Previously, homes were being used as nightly rentals and were a nuisance to the neighborhood. As for the comments about the newspaper, he stated that it was purchased to keep it alive. He stressed the importance of local news and there being a newspaper in the community. It is a passion project for the family.

Mr. Prince reported that what is being built is shorter than what is there currently. Additionally, he noted that there was an attempt to respond to the concerns of the neighbors. The Planning Commission heard the work that was done to try to fit into the neighborhood and established there was good cause because of that. The firetruck turnaround is expensive to put in, but it is the right thing to do because if that side of the hill catches fire, the area can be protected. Mr. Prince stated that he is not asking for anything that hasn't been done before. He appreciates the work done by Staff and the Planning Commission. He also appreciates the thorough process.

There were no further comments. Chair Strachan closed the public hearing.

The Appeal Panel took a short break before continuing the appeal discussions.

Chair Strachan stated that the appellant and applicant have an opportunity to respond after the public comment. He asked that the comments be five minutes or less, due to the time.

Mr. Keys clarified the argument that was being made. When both the LMC and MPD address the same topic, the stricter one controls, based on the plain meaning of the MPD terms. The applicant argued in response that in that scenario, the MPD controls. The arguments made during the Appeal Panel Meeting were made using their argument as the assumption. Even under their theory, the structure does not comply, because it does not comply with the MPD. The 1987 amendment to the MPD made clear that the original requirements of the 1985 MPD applied to this lot. There was no question about the height and footprint that applied, nor was there any question that the other requirements of the 1985 MPD applied. The revised Conditions of Approval to the Sweeney MPD dated October 14, 1987, was shared. He read the following language:

- That all conditions of the original Sweeney MPD remain in effect.

Mr. Keys explained that all conditions of the original Sweeney MPD apply and it is not possible to pick and choose. As for the comments shared by the applicant about the HR-1-MPD Zone, there has not been clarity about the difference between the HR-1 Zone and the HR-1-MPD Zone. There has been an argument made that the parking structure is a garage, but it is not a garage, as it is not enclosed. The MPD requires enclosed parking. If the parking is enclosed, then there is no compliance with the footprint requirements that apply in the HR-1 Zone and the MPD.

Mr. Keys stated that there have been many misrepresentations made at the meeting that are referenced in the briefing. The main takeaway is that the language of the plat notes has been played with to achieve additional density. He stressed the importance of considering the precedent this decision will set. The non-conformance of others in the area is not a justification for more non-conformance. Mr. Keys appreciates the work done by the Planning Commission and acknowledged that the Commissioners were under a tremendous amount of pressure. The Planning Commission tried to get it right, but he did not believe that they did. He encouraged the Appeal Panel to go back and listen to the hearings and the justifications made. He was also asked by the Appeal Panel to read the Staff Reports and make sure a fair decision is made.

Mr. Budge did not feel that what was stated by Mr. Keys was accurate. There was no attempt made to vary the rules or to change the standards in a way that is inconsistent with the original approval. The bump out was done so the home could be located in a way that achieved the variation in mass that was anticipated in the plat note first approved by the City Council. Everything was done in the context of existing law and existing MPD. What was done relative to the plat notes is what has been done with respect to the other lots in the MPD. In this particular instance, the MPD contemplated that those site-specific restrictions would be imposed on the property through a plat. He pointed out that this is a very limited area with only seven lots.

Any allegations that an attempt was made to change something or force a decision is not supported by the record. Mr. Budge explained that this has been a four-year process. This particular structure has evolved. It doesn't reflect an effort to force something on the community or within this MPD, but it reflects the input that has been received and considered. He reported

that there is no special treatment or change of law being sought out. If there was a desire to change the law, a rezone or a text amendment would have been considered. Instead, the processes that were contemplated were considered. The MPD explicitly contemplated that those restrictions will be imposed by plat. The plat itself says the home will be evaluated as a CUP. All of those applications were brought forward. The Planning Commission recognized all the work that was done to listen to the input and ultimately reached the conclusions they did.

Chair Strachan believed the Appeal Panel should start by addressing the standing issue. After that, he thought it would be best to look at the plat amendment, followed by the CUPs, and the easement issue. The Appeal Panel started by discussing standing. Mr. Day was not necessarily ready to say that the State standing law supersedes the Park City standing law. That being said, it is not necessary for the Appeal Panel to make a decision on that. His view is that there was one single appeal, and regardless of the other appellants included or not included in that appeal, the Hermanns have standing for all of the appeal items that were brought forward today.

Mr. Nunez stressed the importance of clarification. If someone has standing, it essentially means that their appeal is valid and it is within the purview of the Appeal Panel to consider. Mr. Day confirmed this. Under State Law, they are adjacent properties and have standing. Under Park City law, they have standing. It is clear that the Hermanns have standing. The question is whether there were two separate appeals. He believed that under Park City law, the additional appellants have standing to appeal those items. Other Appeal Panel Members agreed. Chair Strachan did not see a standing issue based on what has been presented. As a result, the Appeal Panel denied the motion to dismiss for lack of standing, based on the reasons stated.

The plat amendment was discussed next. Chair Strachan stated that this was what he considered most. He listened to the hearing, read the transcript that was submitted, and reviewed the information. This good cause finding has some potential errors. One is that there was no Sensitive Land Overlay determination submitted by Staff to the Planning Commission. It might have been reviewed by the Planning Commission as part of the deliberation on the Plat Amendment and incorporated into the Final Action Letter, but the Sensitive Land Overlay Zone requires that the Staff make that determination first and that the Planning Commission review that determination and make findings. The citation to that Sensitive Land Overlay 15-2.21-3(C) is:

- SENSITIVE LANDS DETERMINATION. The Planning Department shall review the information presented in the Sensitive Lands Analysis, as described in Section 15-2.21-3(A) and Section 15-2.21-3(B), and provide a recommendation to the Planning Commission determining and delineating all Sensitive Lands on the parcel, including Steep Slope Areas, Ridge Lines Areas, Entry Corridors, Wetlands, Stream Corridors, Irrigation Ditches, Wildland and Wildfire Interface Areas, and Critical Wildlife Movement Corridors and Habitat Areas.

Chair Strachan pointed out that some of that was lacking. He has not been able to find a Sensitive Land Overlay determination in the record that the Planning Commission was able to consider and then take Final Action on. Even if he is incorrect about that, a good cause finding to amend a building footprint into the Sensitive Land Overlay is a second layer of trouble. There needs to be good cause to do that, regardless of what the Sensitive Land Overlay determination is. A good cause determination to change a building footprint is easy and happens all the time. However, building footprints are not normally changed and then put into the Sensitive Land Overlay. Many times, building footprints are amended to remove something from the overlay.

Chair Strachan noted that the Planning Commission decision was split and he did not believe the Final Action Letter addressed that. He asked whether a Sensitive Land Overlay determination was made and presented. Director Ward reported that the Planning Commission reviewed this under the HR-1-MPD lens. Finding of Fact #9 in the CUP acknowledges that City Staff have questioned whether the Sensitive Land Overlay Zone applies to the property. The way the zoning of the Sensitive Land Overlay in the 220 King Road property is, it doesn't fully encompass the property, but it does encompass a portion of the property. Staff recommended that the applicant comply with the Sensitive Land Overlay requirements that are cited in 15-2.21-4.

The CUP Finding of Fact #9 was ratified by the Planning Commission. The Commission found that after carefully considering the Staff concerns and supporting documentation submitted by the applicant, the Sensitive Land Overlay does not apply to the property. Director Ward stated that the zoning ordinance that established the zoning for 220 King Road was enacted in 1990 and that the zoning designation was the HR-1-MPD. The Sensitive Land Overlay was enacted in 1992. The applicant presented material to the Planning Commission regarding the interpretation of the Sensitive Land Overlay and how it would apply to the Treasure Hill Subdivision and Sweeney MPD properties. Director Ward explained that the proposed plat amendment is to reallocate square footage from the eastern side and shift that to the western side, in what is now the overlay.

Chair Strachan noted that if this was the pre-February 2024 plat, there would not be a Sensitive Land Overlay issue. That is the finding that he believed was erred on. When the building footprint was moved into the Sensitive Land Overlay and no proper analysis was done for that, that was in his view, an error. Mr. Day believed the argument is that the Sensitive Land Overlay doesn't apply to the lot at all, because it was put in place later. This could be a vested rights issue. Chair Strachan pointed out that they have a vested right to what is on the pre-amended plat. Moving into a zone that doesn't allow them to develop doesn't make sense. Mr. Nunez wondered whether Chair Strachan believed the Planning Commission erred in the determination due to the assumption that the Sensitive Land Overlay didn't apply to the applicant's plans. Chair Strachan confirmed this and noted that the footprint was moved into the Sensitive Land Overlay without an analysis that looked into the impacts. Discussions were had about the process timeline.

Chair Strachan stated that the Sensitive Land Overlay Zone has a prohibition on development on very steep slopes, which are defined as 50 degrees and over. There was no determination made as to what the slopes were, how steep they were, whether there was significant vegetation, and what the impacts of building the accessory structure inside that overlay would be. He did not believe the Planning Commission checked off this box and that is something to consider.

Mr. Day explained that all of those comments presuppose that the Sensitive Land Overlay applies to the subject property. Chair Strachan stated that it applies to a portion of the property. Mr. Budge explained that if anyone were to produce a map showing that it actually was in the Sensitive Land Overlay, then the steep slope analysis done, including the geotechnical information submitted, would satisfy those requirements. No one has produced a map showing that they are in the Sensitive Land Overlay. The map in the record shows the boundary is uphill from the lot.

Mr. Day asked if there are rules about being within a certain distance of a steep slope. Mr. Budge confirmed that there is a setback for steep slopes. The Sensitive Land Overlay is uphill from the lot line. Since the steep slope analysis was done and coupled with the geotechnical work, any criteria for evaluating and developing in a Sensitive Land Overlay were satisfied. Furthermore, the Planning Commission explicitly adopted the findings that Director Ward mentioned. Mr.

Budge believed Chair Strachan is referring to the set of criteria for platting lots in the Sensitive Land Overlay. That set of criteria wasn't evaluated, because this lot was in existence before the Sensitive Land Overlay even bordered this particular lot.

Attorney Godfrey recalled that there was a dispute between Staff and the applicant about whether the Sensitive Land Overlay applied. He shared a map of the area and pointed out that it clearly cut through the property. Mr. Budge referenced the LMC language on the Sensitive Land Overlay. It says it is the intent of the Sensitive Land Overlay not to bisect properties and it will only be allowed to bisect properties if there was intention reflected in the adoption of the map, showing it was intended to bisect a property. He has not seen a map that shows that it clearly comes onto the subject property, nor has anyone produced information showing that the Council in adopting any version of the Sensitive Land Overlay map intended to bisect the property. From a legal perspective, Mr. Budge stated that the Sensitive Land Overlay is not applicable to this lot.

Those present reviewed a map of the area and discussed the location of the Sensitive Land Overlay. Chair Strachan asked where the official zoning map placed the Sensitive Land Overlay. Mr. Budge stated that the graphical representation of the line cannot be read in isolation, because the code states that it is not intended to bisect properties unless intent is reflected. He reported that this is in LMC 15-1-6. He has not seen any evidence that there was any intent to bisect. Mr. Budge explained that the Sensitive Land Overlay does not prevent development, but it requires consideration of certain items. All of those items were considered in connection with the steep slope analysis and geotechnical work. There was a lot of care put into this matter. Chair Strachan pointed out that as it stands, the applicant could demolish the existing structure and build a new one without disturbing the Sensitive Land Overlay in any way. Mr. Budge confirmed this.

Mr. Nunez wondered whether the Sensitive Land Overlay Zone was disclosed or discussed during the Planning Commission Meeting. Chair Strachan reported that Commissioner Johnson brought up the matter. Mr. Nunez asked whether the appellant provided something that says the Sensitive Land Overlay is encroached on or it wasn't properly addressed. Mr. Keys explained that Commissioner Johnson quoted the letter that he sent to the Planning Commission. That was referred to in the appeal documents as well. It was noted that Commissioner Johnson voted for the plat amendment, but was not supportive of the Steep Slope CUP. Mr. Day wanted clarification about whether the footprint of the property goes over the Sensitive Land Overlay. Mr. Budge does not believe that under the maps and statute, it comes onto the property.

Mr. Keys referenced the last paragraph of Page 6 of the appeal letter, which stated:

- Finally, the approval of the Steep Slope CUP violates the Sensitive Land Overlay Zone regulations. The applicant is shifting the building envelope into the very steep slope of the Sensitive Land Overlay. Park City's Land Management Code has strict requirements for development in a Sensitive Land Overlay Zone. An applicant is required to provide a sensitive lands analysis that is then reviewed by Staff, who is to issue a sensitive lands determination. Here, no analysis has been provided and no affirmative determination made. Where steep slopes are involved, an applicant must also prove that the development will have no significant adverse impact on adjacent properties. The Planning Commission can only determine that the steep slope requirements are met if:
 - The applicant proves the density is compatible with that of adjacent properties;
 - The architectural detail, height, building materials, and other design features of the development are compatible with the adjacent properties;

- The applicant has set up appropriate mitigation measures, such as landscaping, screening, illumination standards, and other design features to buffer the adjacent properties from the developed land.

Mr. Keys explained that Staff has to make this analysis because that is what the code requires. He believed that is what Chair Strachan is saying as well. It is a formal determination under the code that Staff has to make based on information provided by the applicant. The applicant argued that Staff didn't need to make that determination. As a fallback, the applicant stated that the Planning Commission made the determination in the Findings of Facts and Conclusions of Law. However, he noted that this is not what the code contemplates. Mr. Budge stated that he doesn't have control over what Staff does, but that the necessary materials were provided. Mr. Day believed everything that would be in an analysis was in the record already. Mr. Keys pointed out that the error was in the fact that Staff did not perform the analysis, as stated in Code.

Director Ward called attention to the February 14, 2024, Staff Report that was prepared for the Planning Commission. Page 32 of that report outlines the Sweeney MPD approval prior to the adoption of the Sensitive Land Overlay as well as the purpose behind the Sensitive Land Overlay. In September 1995, the City Council adopted Ordinance 95-50, approving the Treasure Hill Subdivision. There was information about the allocation of the building area limits. The platted area limits do not encroach into the Sensitive Land Overlay. However, the applicant requested an amendment to the building area limits, shifting a portion into the Sensitive Land Overlay. There was an analysis outlined in the January 24, 2024, Staff Report of what the requirements are for the very steep slopes. That analysis was incorporated into the February 14, 2024, Staff Report.

What was presented to the Planning Commission and what was addressed in the February Staff Report is a September 1992 letter from the City Attorney regarding the status of the Sweeney MPD and the Sensitive Land Overlay. The question was whether the Sensitive Land Overlay Zone will apply to the Treasure Hill portion. The City Attorney concluded that it applies to the property if there is a change in concept, unit type, configuration, or number, and the Planning Commission reviews the entire Sweeney MPD. The conclusion of that letter was that the Sensitive Land Ordinance was being adopted in the form of an overlay zone and would not by itself impact the approved Sweeney MPD. Unless the MPD was amended, it would not be triggered. There was an informal analysis outlining the code requirements in the Staff Report.

Chair Strachan pointed out that there was no analysis done to look at the impacts. He agreed that the issue has been addressed, but did not think the analysis gave the Planning Commission the evidence needed. The impacts haven't been identified. The purpose of having a sensitive lands determination is so Staff can look at the impacts and analyze them with their professional background to determine whether those impacts have been mitigated appropriately. The Planning Commission cannot make that kind of determination without the assistance of Staff. That is the reason there is language requiring a formal determination.

Attorney Godfrey stated that the Appeal Panel is entitled to receive his advice outside of the session. Chair Strachan suggested that other issues on the plat amendment be discussed aside from the Sensitive Land Overlay issue. After that, the Appeal Panel can convene with Attorney Godfrey privately. If there is no good cause for the plat amendment, the CUPs are secondary to that. He asked if there are any other discussion items related to the good cause finding for the plat amendment. Mr. Day thought the Planning Commission applied the LMC and Sweeney MPD appropriately as it relates to the plat amendment. Mr. Nunez stated that he is inclined to agree.

There was a break in the meeting while Attorney Godfrey spoke to the Appeal Panel.

Chair Strachan explained that after deliberations with counsel, there is a desire to make a motion. There can be deliberations if the motion garners a second. After the discussion will be a vote. Chair Strachan made a motion to remand to the Planning Commission the Sensitive Land Overlay issue so Staff has the opportunity to follow the Sensitive Land Overlay code and specifically provide the determination in 15-2.21-3(C) and determine whether the accessory structure in the amended plat has impacts, and if so, whether or not they are mitigated. Matthew Day seconded the motion. Chair Strachan explained that there will now be discussion on the motion.

Chair Strachan believed the Planning Commission has done a good job overall, but believed they missed the Sensitive Land Overlay issue. There is disputed evidence in the record about where the Sensitive Land Overlay line is and whether it can even bisect a lot like this. The Planning Commission needs to consider all of the impacts. He explained that he does not like remanding something back to the Planning Commission, but that is the error that he found through this process. Mr. Day agreed. He noted that this is a difficult situation because he can understand the arguments made, but neither party has provided an appropriate map or reason for the line running through the property. Since this relates to safety, he is supportive of sending the matter back to the Planning Commission for only this specific issue. It is necessary to double-check this, as it is a safety issue. Mr. Nunez appreciates all of the time and effort that has been put into this process. He tends to agree with what has been presented by the applicant during this meeting, that if the Sensitive Land Overlay did apply, that should've already been addressed. He pointed out that when there is ambiguity, the ruling is normally in favor of the property owner.

Attorney Godfrey asked the Appeal Panel to clarify their positions on the other issues that were raised during the meeting. For instance, if the Appeal Panel wants to remand only this specific Chair Strachan didn't find an error in the Planning Commission's analysis of the CUP for the pool and dwelling or in the Steep Slope CUP. If the Appeal Panel remands the matter, those are not part of the scope of the remand. To clarify, those items would not be included in the motion language. Attorney Godfrey asked whether the appeal is being denied for those issues and the Appeal Panel is remanding solely the Sensitive Land Overlay issue as it relates to the plat amendment. Chair Strachan confirmed this. He also noted that the motion would not encompass the issue related to the easement for the driveway.

Chair Strachan informed Staff that he is troubled by the use of plat notes to essentially achieve a legislative change in the LMC. It is not the way the code should be structured or carried out. Plat notes are not intended to be used for that purpose. He cautioned the Planning Commission from making legislative determinations in the context of a plat note in this way moving forward.

Attorney Harrington wanted to be clear about the scope of the remand to the Planning Commission. With the Sensitive Land Overlay, he wondered whether there should be more briefing on the boundary dispute and a follow-up on the 1992 letter as well as an analysis. Chair Strachan outlined the questions that he has and believes still need to be addressed:

- Whether the Sensitive Land Overlay can even apply to the lot.
- If it does apply, can the amended plat footprint breach it?
- If it can, what are the impacts of that and how are they mitigated?

MOTION: Adam Strachan moved to REMAND to the Planning Commission the Sensitive Land Overlay issue so Staff has the opportunity to follow the Sensitive Land Overlay code and specifically provide the determination in 15-2.21-3(C) and determine whether the accessory structure in the amended plat has impacts, and if so, whether or not they are mitigated. Matthew Day seconded the motion.

VOTE: Adam Strachan-Aye; Matthew Day-Aye; Esteban Nunez-Nay. The motion passed of 2-to-1.

6. ADJOURNMENT

MOTION: Adam Strachan moved to adjourn.

The meeting adjourned at approximately 11:23 p.m.

Approved 06.03.2024



220 KING ROAD APPEAL

SUMMARY

Existing:

- 1.23-acre lot
- 4,235-square-foot single-family dwelling (1998)
- 4,189-square-foot guest house (2000)
- Lot 2 Treasure Hill Subdivision Phase 1, First Amended
- Sweeney Master Planned Development
- Historic Residential – 1
- Partially in the Sensitive Land Overlay

Proposal:

- Demolish existing single-family dwelling & guest house
- Construct new single-family dwelling, accessory building, outdoor pool, and underground parking area



Figure 1 Excerpt from the Zoning Map with the Sensitive Land Overlay indicated by the red dashed line. Property to the left of the dashed line is in the Sensitive Land Overlay and property to the right is outside of the Sensitive Land Overlay.

SUMMARY

Review:

- Conditional Use Permit (CUP), single-family dwelling
- Plat Amendment
- Conditional Use Permit, outdoor pool
- Steep Slope Conditional Use Permit

Appeal Panel:

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.

APPEAL

The Appellant argues:

Planning Commission erred in their approval because two eight-foot concrete retaining walls are proposed to be constructed within a platted driveway access easement for the benefit of 220 King Road and on very steep slopes within the Sensitive Land Overlay (SLO).

- No City approval may modify underlying property ownership or easement rights
- The driveway easement is not within the SLO
- No further analysis is required for construction within platted elements
- Updated plans submitted for ratification of approval on 2.21.2024

APPEAL

The Appellant argues:

The Planning Commission's decision relied on the incorrect assertion by the Applicant that only the restrictions in the Master Planned Development (MPD) and Subdivision Plat, rather than the Land Management Code (LMC), apply to this property.

- Plat Amendment and CUP approval is subject to the LMC, the Sweeney MPD, and the Treasure Hill Subdivision

APPEAL

The Appellant argues:

The proposed structure does not meet the express requirements of the LMC as expressly required by the MPD and the Restrictive Covenants.

- 1980 MPD process established Planning Commission authority to grant variations in height.
- Sweeney MPD and Treasure Hill Plat Notes established a review process for the lots in the subdivision.
- MPD requires review for compliance with adopted codes and ordinances in effect at the time, in addition to compliance with the Master Plan

APPEAL

The Appellant argues:

The Planning Commission did not review restrictive covenants for the property.

- LMC § 15-1-3 – The City does not enforce private restrictive covenants, nor shall any such covenant have the effect of modifying the regulations herein
- Planning Commission review is through the lens of applying the LMC to the application

220 King Road Appeal

Applicant will address standing (10 mins).

Appellant will rebut (10 mins).

Appeal Panel determines standing.

Appellant will present appeal (15 mins).

Applicant will rebut (15 mins).

Staff will present the Planning Commission decision (15 mins).

Public Hearing (comments limited to three minutes).

Appellant may respond (5 mins).

Applicant may respond (5 mins).

Appeal Panel deliberation and potential Final Action.



220 King Road Appeal

1985 Sweeney Master Planned Development

Findings of Fact:

3. The open space preserved and conceptual site planning attributes resulting from the cluster approach to the development of the hillside is sufficient justification for the requested height variation necessary, and that the review criteria outlined in Section 10.9 (e) have been duly considered.

10. The site planning standards as set forth in Section 10.9(g) of the Land Management Code have either been satisfied at this stage of review or practical solutions can be reasonably achieved at the time of conditional use review/approval.

220 King Road Appeal

1985 Sweeney Master Planned Development

Conditions of Approval:

1. The Sweeney Properties Master Plan is approved based upon the information and analysis prepared and made a part hereof. While most of the requirements imposed will not be imposed until individual parcels are created or submitted for conditional use approval, certain specific obligations are also identified on the approved phasing plan. At the time of conditional use or subdivision review, the staff and Planning Commission shall review projects for compliance with the adopted codes and ordinances in effect at the time, in addition to ensuring conformance with the approved Master Plan.

220 King Road Appeal

1985 Sweeney Master Planned Development

Conditions of Approval:

2. Upon final approval of the proposed Master Plan, a recordable document (in accordance with the Land Management Code) shall be prepared and submitted. The Official Zone Map will be amended to clearly identify those properties included within the Master Plan, and the hillside property not included within either the Town Life Mid-Station or Creole Gulch sites (approximately 110 acres) shall be rezoned to Recreation Open Space. At the time of conditional use review, final building configurations and heights will be reviewed in accordance with the approved Master Plan, applicable zoning codes and related ordinances. A minimum of 70% open space shall be provided within each of the development parcels created except for the Coalition properties.

220 King Road Appeal

1990 Sweeney Master Planned Development Zoning

Recorded at the request of and return
to: Park City Municipal Corp.

P. O. Box 1480, Park City, UT 84060

ATTN: CITY RECORDER

Ordinance No. 90-24

RED NOTE AB 2/1 C

335573

Park City Municipal Corp

91 JAN 18 AM 9:49

ALAN SPRIGGS
SUMMIT COUNTY RECORDER

Fee Exempt per Utah Code
Annotated 1953 21-7-2

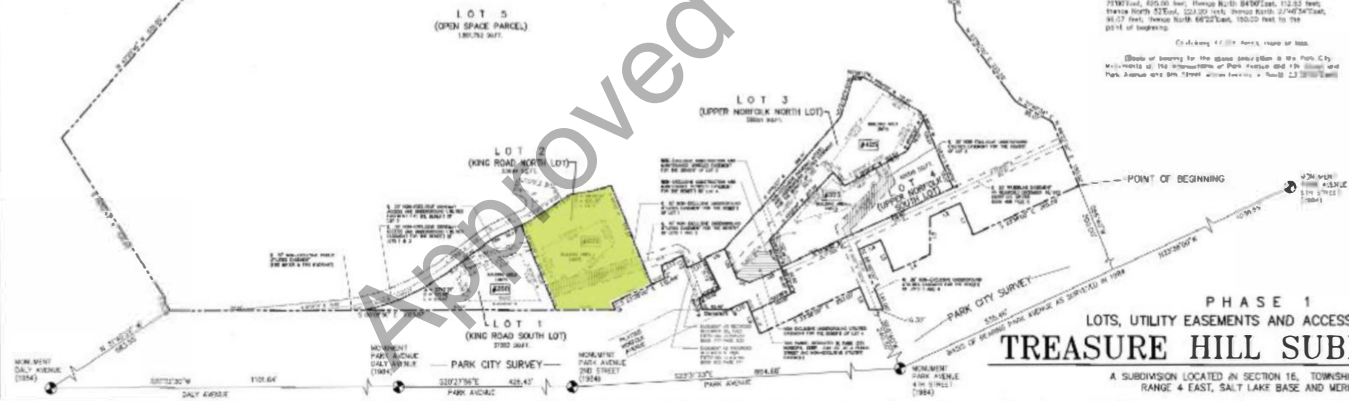
An Ordinance zoning portions of the Historic District; specifically 109 acres of hillside on Treasure Mountain from Estate to Recreation Open Space and several development parcels, specifically; two Fifth Street single family lots from HR1 to HR1-MPD; and two upper Norfolk (approximately 400 Upper Norfolk) single family lots from HR1 to HR1-MPD; and two King Road (approximately 200 King Road) single family lots from HR1 to HR1-MPD; and one Lower Norfolk Avenue (approximately 700 Lower Norfolk) single family lot from HR1 to HR1-MPD; and a 3.75 acre condominium/commercial lot at the Town Lift Midstation from HR1 to Estate-MPD; and a 7.75 acre hotel/condo/commercial lot at the Creole Gulch site from Estate to Estate-MPD; and a .543 acre hotel/condo/commercial lot at the Coalition West Site at approximately 775 Park Avenue from HRC to HRC-MPD and from HR-1 to HR-1-MPD; and a 1.57 acre hotel/condo/commercial site at approximately 770 Park Avenue from HRC to HCB-MPD; and amending the Official Zoning Map of Park City, Utah



1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100
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STREET ADDRESSES
 LOT #1 = 200 KING ROAD
 LOT #2 = 220 KING ROAD
 LOT #3 = 425 NORFOLK AVENUE
 LOT #4 = 375 NORFOLK AVENUE



SURVEYOR'S CERTIFICATE
 I, **DAVID L. WYATT**, certify that I am a Registered Land Surveyor and that I have carefully examined the plat hereon and find that it is a true and correct representation of the land shown thereon and that a copy of the same has been filed for record in the office of the proper recording officer. My commission expires on the 31st day of December, 1994.
 David L. Wyatt
 Registered Land Surveyor
 No. 4-17-8
 Date

PROPERTY DESCRIPTION
 Beginning at a point which is South 49°22'West, 75.00 feet and North 23°32'East, 58.00 feet from the Northeast corner of Block 22, Park City Survey, Acreage Plat, and point also being South 61°14'West, 160.00 feet and North 22°28'East, 528.46 feet from a 1983 Monument at the intersection of Park Avenue and 4th Street;
 and running thence South 23°58'East, 294.00 feet; thence South 89°07'West, 75.00 feet; thence South 22°28'East, 18.57 feet; north or 1983, 50 feet; north 40 Acre Line of Section 16, Township 2 North, Range 4 East, Salt Lake County and thence thence South 82°56'47'East, 82.71 feet; north or 1983, along road 40 Acre Line, thence South 23°22'East, 50.00 feet; north or 1983, to the Northwest corner of Lot 3, Block 1 as shown on the plat; and of the aforesaid Park City Lock Mining claim 10.00 Lot 5, Block 1, thence South 58°22'West, 75.00 feet to the Northwest corner of Lot 12 of 1983 Block 1, thence South 23°22'East, 10.00 feet to the Southwest corner of Lot 13 and 14 and 15 and 16 and 17 and 18 and 19 and 20 and 21 and 22 and 23 and 24 and 25 and 26 and 27 and 28 and 29 and 30 and 31 and 32 and 33 and 34 and 35 and 36 and 37 and 38 and 39 and 40 Acre Line and east West Line, thence South 68°48'West, 50.00 feet; north or 1983, to the Northwest corner of said mining claim, thence South 23°22'East, 105.00 feet to the Northeast corner of Lot 27; thence South 23°22'East, 105.00 feet to the Northeast corner of Lot 28; thence South 23°22'East, 105.00 feet to the Northeast corner of Lot 29; thence North 62°28'East, 105.00 feet; thence South 23°22'East, 105.00 feet; thence South 68°48'West, 27.12 feet; thence North 23°22'East, 105.00 feet; thence South 62°28'East, 105.00 feet; thence South 23°22'East, 43.70 feet; thence South 10°17'West, 28.43 feet; thence South 23°22'East, 50.00 feet; thence North 70°20'West, 25.87 feet; thence South 23°22'East, 124.68 feet; thence North 10°17'West, 76.50 feet; north or 1983, to said 40 Acre Line and east West Line and said West Line to a point on the 40 Acre Line and east West Line at North 37°40'57'East, 58.16 feet from a Park City Monument on the Centerline of 40 Acre Line, thence South 23°22'East, 105.00 feet; north or 1983, to said 40 Acre Line and east West Line and said West Line and east West Line to a point on the 40 Acre Line and east West Line at North 37°40'57'East, 58.16 feet from a Park City Monument on the Centerline of 40 Acre Line, thence South 23°22'East, 105.00 feet; north or 1983, to said 40 Acre Line and east West Line and said West Line and east West Line to a point on the 40 Acre Line and east West Line at North 37°40'57'East, 58.16 feet from a Park City Monument on the Centerline of 40 Acre Line, thence South 23°22'East, 105.00 feet; north or 1983, to said 40 Acre Line and east West Line and said West Line and east West Line to a point on the 40 Acre Line and east West Line at North 37°40'57'East, 58.16 feet from a Park City Monument on the Centerline of 40 Acre Line, thence South 23°22'East, 105.00 feet; north or 1983, to said 40 Acre Line and east West Line and said West Line and east West Line to a point on the 40 Acre Line and east West Line at North 37°40'57'East, 58.16 feet from a Park City Monument on the Centerline of 40 Acre Line, thence South 23°22'East, 105.00 feet to the point of beginning.

**PHASE 1
 LOTS, UTILITY EASEMENTS AND ACCESS EASEMENTS
 TREASURE HILL SUBDIVISION**

A SUBDIVISION LOCATED IN SECTION 16, TOWNSHIP 2 SOUTH, RANGE 4 EAST, SALT LAKE BASE AND MERIDIAN.

<p>SNYDERVILLE BASIN SEWER IMPROVEMENT DISTRICT REQUEST FOR CONFORMANCE TO SNYDERVILLE BASIN SEWER IMPROVEMENT DISTRICT STANDARDS ON THIS 12TH DAY OF April, 1994 A.D. BY <i>[Signature]</i> S.E.S.D.</p>	<p>PLANNING COMMISSION APPROVED BY THE PARK CITY PLANNING COMMISSION THIS 10TH DAY OF April, 1994 A.D. <i>[Signature]</i> PARK CITY ENGINEER</p>	<p>ENGINEERS CERTIFICATE I HEREBY CERTIFY THAT THIS IS AN ACCORDANCE WITH THE REQUIREMENTS OF THE CITY OF PARK CITY, UTAH, AS OF THE DATE OF THIS CERTIFICATE. BY <i>[Signature]</i> PARK CITY ENGINEER</p>	<p>APPROVAL AS TO FORM APPROVED AS TO FORM THIS 25TH DAY OF April, 1994 A.D. BY <i>[Signature]</i> PARK CITY ATTORNEY</p>	<p>CERTIFICATE OF ATTEST I HEREBY CERTIFY THAT I AM A REGISTERED LAND SURVEYOR AND THAT I HAVE CAREFULLY EXAMINED THE PLAT HEREON AND FIND THAT IT IS A TRUE AND CORRECT REPRESENTATION OF THE LAND SHOWN THEREON. BY <i>[Signature]</i> PARK CITY SURVEYOR</p>	<p>COUNCIL APPROVAL AND ACCEPTANCE APPROVAL AND ACCEPTANCE BY THE PARK CITY COUNCIL THIS 27TH DAY OF SEPTEMBER, 1994. <i>[Signature]</i> MAYOR</p>	<p>RECORDED DEPOSITED IN THE OFFICE OF THE CLERK OF THE DISTRICT OF COLUMBIA, DISTRICT OF COLUMBIA, THIS 12TH DAY OF APRIL, 1994. BY <i>[Signature]</i> CLERK</p>
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220 King Road Appeal

Treasure Hill Subdivision – September 7, 1995

Ordinance No. 95-50

**AN ORDINANCE APPROVING THE FINAL PLAT OF TREASURE HILL
SUBDIVISION LOCATED AT 200 AND 220 KING ROAD
AND 375 AND 425 NORFOLK AVENUE, PARK CITY, UTAH**

WHEREAS, the owners of the property indicated above, MPE Inc., petitioned the City Council for approval of the final plat; and

WHEREAS, proper notice was sent and the Planning Commission held a public hearing on August 30, 1995 and the City Council conducted a public hearing on September 7, 1995 to receive testimony on the proposed plat amendment; and

WHEREAS, on August 30, 1995 the Planning Commission forwarded a positive recommendation of approval to the City Council, with conditions regarding building size, public utility, fire protection, trails, the Infrastructure Review Ordinance, and setbacks; and

WHEREAS, it is in the best interest of Park City, Utah to approve the amended plat;



220 King Road Appeal

Treasure Hill Subdivision – September 7, 1995

SECTION 2. PLAT APPROVAL. The Treasure Hill Subdivision is approved as shown on Attachment A with the following conditions:

1. All original conditions of approval for the Preliminary Plat shall apply (Exhibit B).
2. Prior to final plat recordation, the Community Development Department shall review and approve notes on the plat addressing limits of disturbance, building footprint, building area limits, building height, and massing.

Approved 06.03.2024

220 King Road Appeal

Treasure Hill Subdivision Plat Notes

9. PRECEDENCE. The above special restrictions are consistent with the Sweeney Master Plan approved by the Park City Municipal Corporation on October 16, 1986 and as subsequently amended on October 14, 1987 and December 30, 1992. Final house design shall be reviewed under the Small Scale Master Plan Process in accordance with the Sweeney Master Plan.

Approved 06/03/2024

220 King Road Appeal

Treasure Hill Subdivision Plat Notes

1. FOOTPRINT. The maximum footprint, calculated from the outside face of walls and subject to the massing requirements of Note 7, shall be three thousand five hundred (3500) square feet including garages. The following shall not count towards the foot print calculations:
 - (a) Decks which are open on at least two sides (but which may have railings as required), covered or uncovered, and which do not have above grade living space below or above them;
 - (b) Exterior walkways;
 - (c) Exterior stairs;
 - (d) Driveways.

220 King Road Appeal

Treasure Hill Subdivision Plat Notes

4. HEIGHT. The building height shall be measured from existing grade to the top of flat roofs and to the ridge of pitched roofs. The maximum height, in general, shall be twenty five (25) feet for flat roofs and thirty (30) feet for pitched roofs. A maximum height of twenty eight (28) feet for flat roofs and thirty three (33) feet for pitched roofs shall be permitted for the expressed purpose of accommodating access, i.e. stairwells and/or elevators, between floor levels.

220 King Road Appeal

Treasure Hill Subdivision Plat Notes

6. MASSING. House designs may be comprised of one or more connected or unconnected building masses. No one building mass within the 3500 square foot footprint referenced in Note 1 above, shall have a footprint that exceeds 1,500 square feet. Massing elements shall be separated by horizontal and/or vertical facade breaks.

220 King Road Appeal

The Planning Commission excluded the unenclosed underground parking area from the Single-Family Dwelling Building Footprint.

This is aligned with approvals for Single-Family Dwellings in the Treasure Hill Subdivision and Sweeney Master-Planned Development.

On June 25, 1998, the City issued Building Permit BD-97-02851 for a shared entry tunnel to access Lots 3 and 4.

On June 29, 2004, the City issued a Building Permit BD03-08481 for a shared tunnel to access Lots 6 and 7 from Woodside Avenue.



220 King Road Appeal

The Planning Commission found:

220 King Road is notably larger than most of the other buildable lots in the Sweeney MPD and the ratio of lot size to the residence is significantly smaller than neighboring residences.

The residence will be adequately setback and buffered from the surrounding properties.

220 King Road Appeal

The Planning Commission found:

The residence is designed to break up the perceived mass and follows the plat notes breaking up the structure into at least four massing elements that are each less than 1,500 square feet with an overall footprint of less than 3,500 square feet.

The site is designed to respect the existing topography and site features such as existing trees and vegetation. Cut, fill, and retaining walls will be located behind the residence to minimize visible impact on neighboring uses.



220 King Road Appeal

The Appeal Panel may:

Affirm the Planning Commission's approval.

Reverse the Planning Commission's approval.

Affirm or reverse in part the Planning Commission's approval
and remand the matter to the
Planning Commission.

Request additional information and continue
to a date certain.

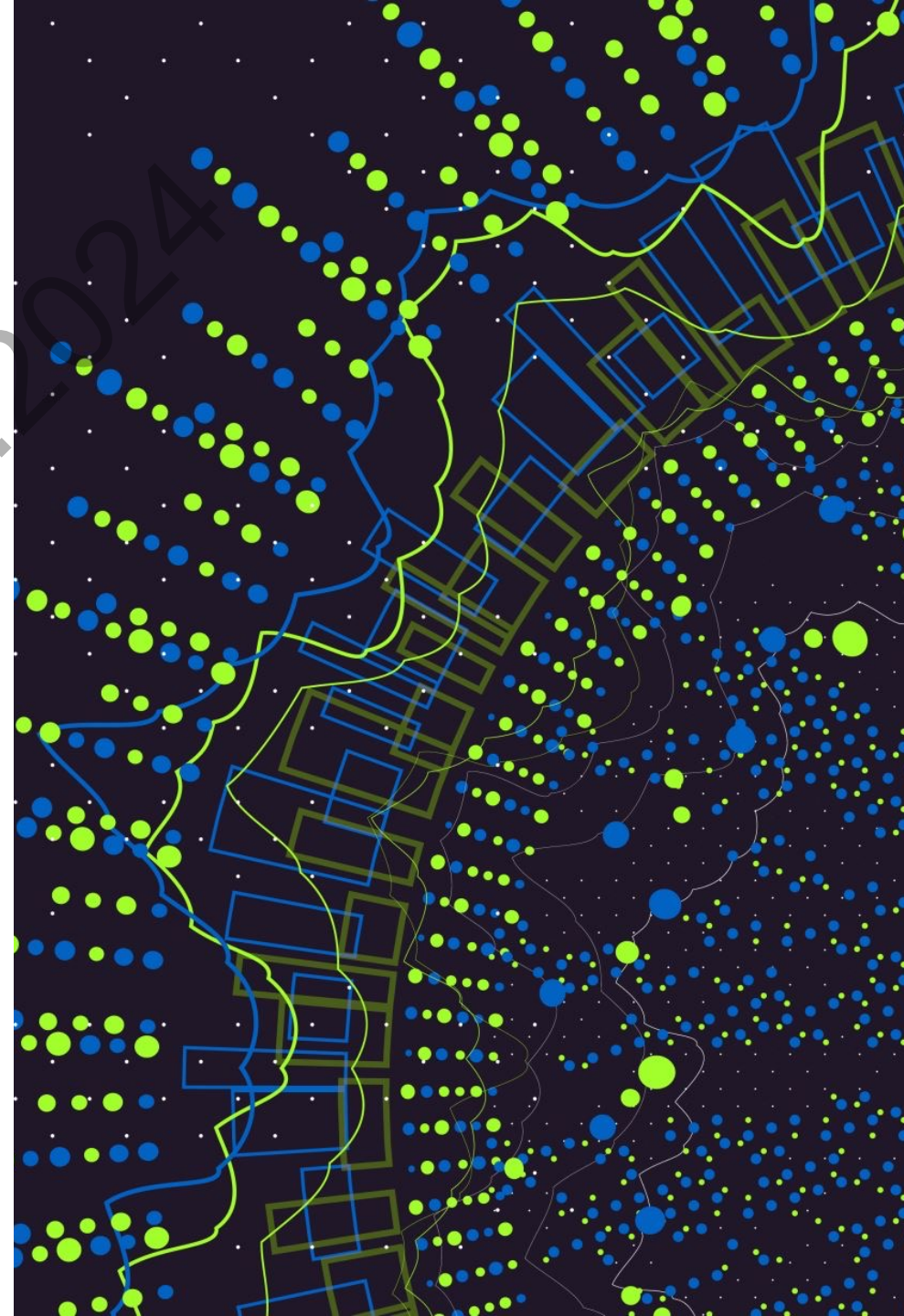


220 King Appeal

PARK CITY APPEAL PANEL

APRIL 30, 2024

Approved 06.03.2024





Sweeney MPD Treasure Hill Lots

For reference, other Single Family Lots in the Sweeney MPD include:

Address	Parcel No.	Lot Area (acres)	Building Area Limits (SF)	Approximate House Size ² (SF)	Zoning District
200 King Road	THILL-1	0.86	12,700	NA	HR-1
220 King Road	THILL-2-AM	1.23	11,250	~6,000 (existing) ~16,000 (proposed)	HR-1
425 Norfolk Ave	THILL-3-AM	1.31	17,000	~3,300	HR-1
375 Norfolk Ave	THILL-4-AM	1.1	7,500	~9,600	HR-1
503 ½ Woodside Ave	THILL-II-6	0.79	7,650	~8,000	HR-1
503 Woodside Ave	THILL-II-7	0.92	7,500	~8,000	HR-1
445 King Road	THILL-3-8-1AM	11.9	29,084	~5,600	Estate

*THILL-5-X is a 42.74 acre Lot that was dedicated to Park City Municipal as Open Space.

APPEAL STANDARD:

Park City LMC § 15-1-18G instructs that the Appeal Panel “shall act in a quasi-judicial manner.” “The appeal authority shall review **factual matters de novo**, without deference to the land use authority’s determination of factual matters.” And “[t]he 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.” Finally, the Appeal Panel’s review is not limited to the record below; rather, “[n]ew evidence may be received so long as it relates to the scope of the appeal.”

Sweeney MPD – Basic Conditions

III. DEVELOPMENT PARAMETERS and CONDITIONS

The staff's recommendation that the Sweeney Properties Large Scale Master Planned Development be approved by the Planning Commission, and subsequently by the City Council, is predicated upon the following terms and conditions. Upon approval, MPE Inc./Sweeney Land Company, its successors or assignees, shall become bound by and obligated for the performance of the following:

1. The Sweeney Properties Master Plan is approved based upon the information and analysis prepared and made a part hereof. While most of the requirements imposed will not be imposed until individual parcels are created or submitted for conditional use approval, certain specific obligations are also identified on the approved phasing plan. At the time of conditional use or subdivision review, the staff and Planning Commission shall review projects for compliance with the adopted codes and ordinances in effect at the time, in addition to ensuring conformance with the approved Master Plan.

The Proposed Structure does not Comply with the External Buildings Height Requirements of the Sweeney MPD

5. Building heights shall be limited to the maximum envelope described on the Restrictions and Requirements Exhibit. At the time of conditional use approval, projects shall be reviewed for conformance with the heights prescribed thereon, and the following:
- (a) The various parcels located within the Historic Residential (HR-1) zone district shall abide by the Land Management Code and no height exceptions will be considered. Maximum building height on the single

3

family lots shall be limited to 25' in order to reduce potential visibility.

1987 Revised Conditions of Approval to the Sweeney MPD

Staff recommends approval of the proposed revision in the Sweeney MPD based upon the following findings:

1. The modification to the Sweeney MPD is minor and does not result in increased height in any of the development parcels.
- b. Relocating 2 unit equivalents from the Sheen parcel and 2 from the MPE parcel. Two of these units would be relocated off the King Road, one off of Upper Norfolk, and one off of 5th Street.

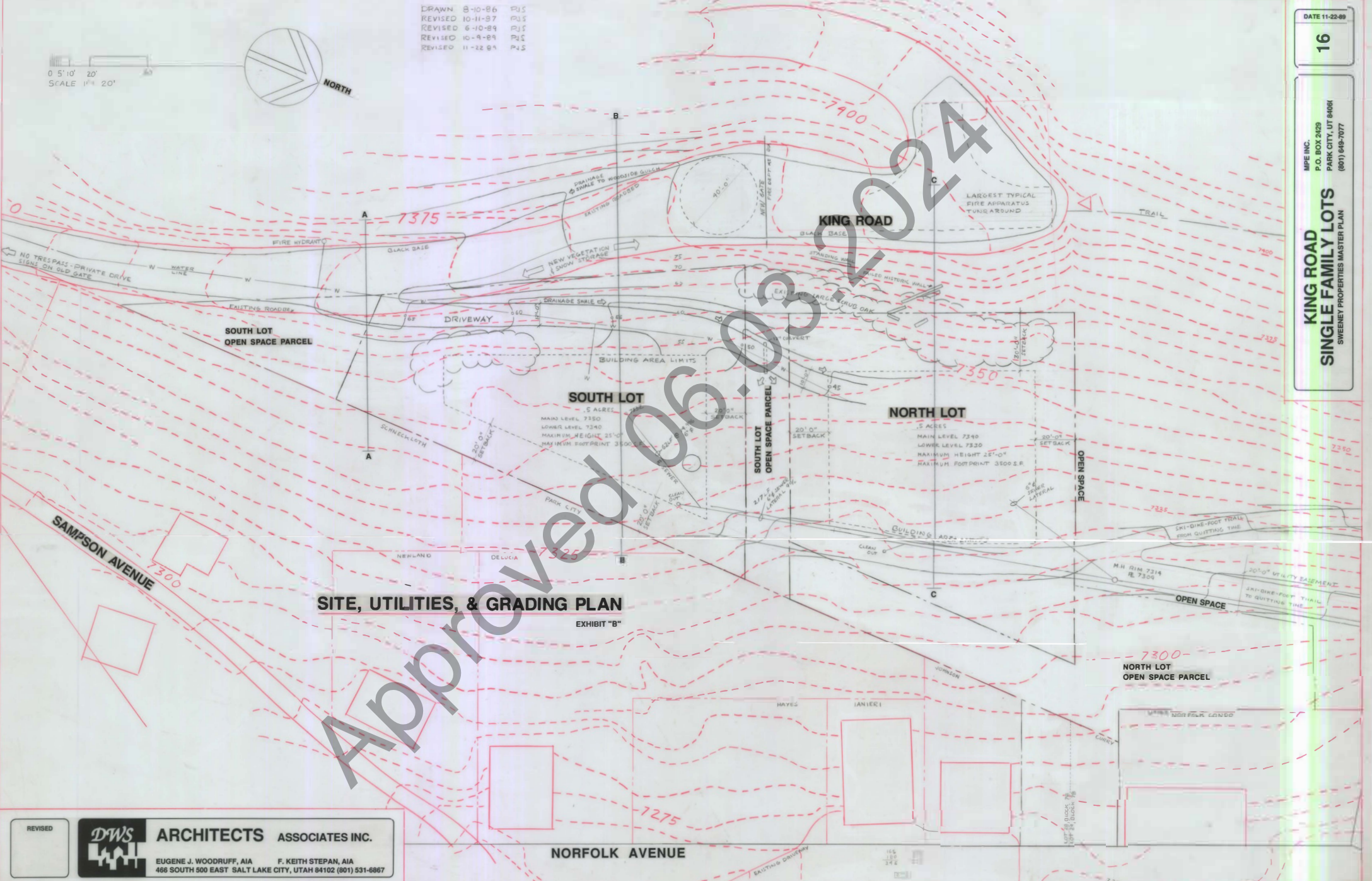
The Planning Commission and Staff shall review these proposals as conditional uses. This shall include review of the design of the structures to insure that they are designed to minimize visual impact. The design shall be consistent with the Historic District Guidelines.



DRAWN 8-10-86 PJS
 REVISED 10-11-87 PJS
 REVISED 6-10-89 PJS
 REVISED 10-9-89 PJS
 REVISED 11-22-91 PJS

MIPE INC.
 P.O. BOX 2459
 PARK CITY, UT 84066
 (801) 649-7077

**KING ROAD
 SINGLE FAMILY LOTS**
 SWEENEY PROPERTIES MASTER PLAN

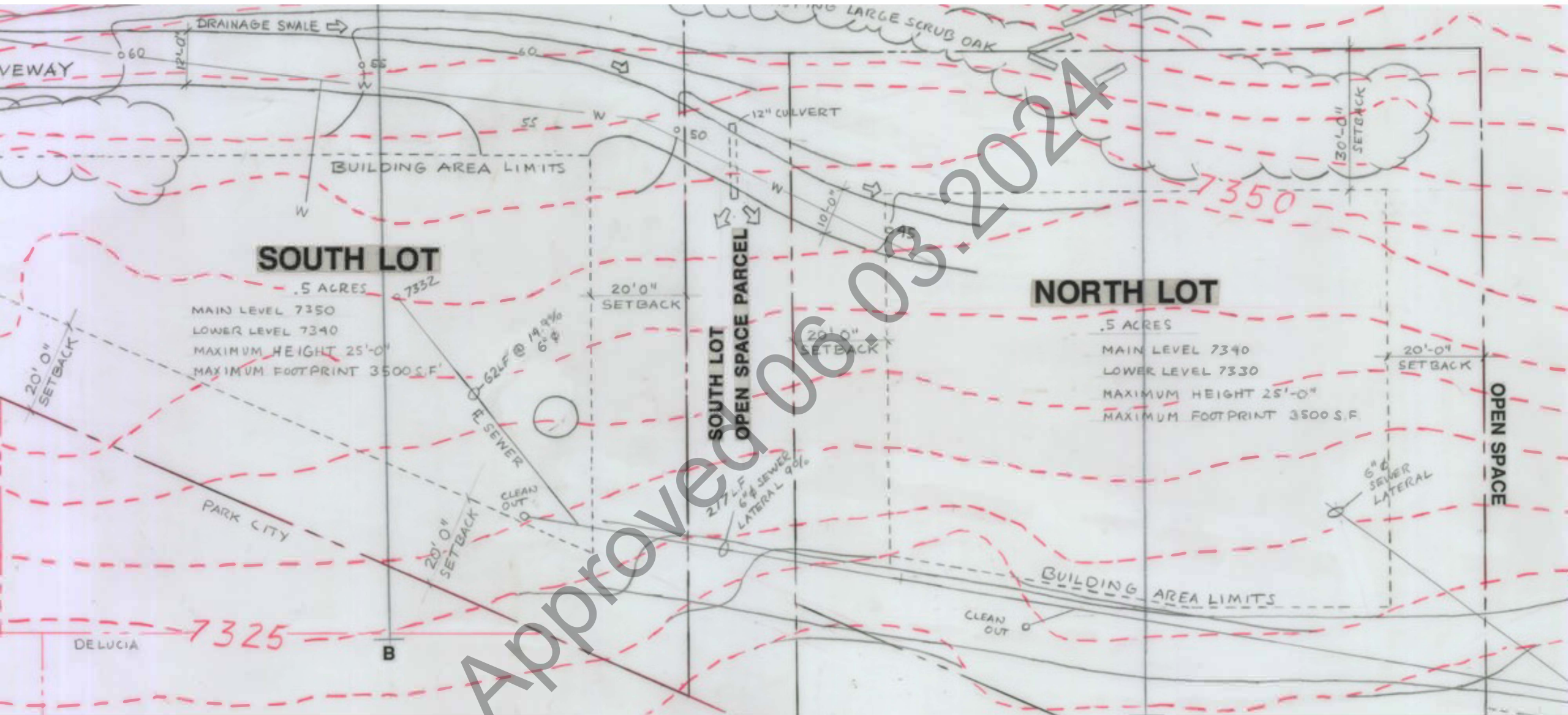


SITE, UTILITIES, & GRADING PLAN
 EXHIBIT "B"

REVISED

DWS ARCHITECTS ASSOCIATES INC.
 EUGENE J. WOODRUFF, AIA F. KEITH STEPAN, AIA
 466 SOUTH 500 EAST SALT LAKE CITY, UTAH 84102 (801) 531-6867

NORFOLK AVENUE



Approved 06.03.2024

Current LMC Height Requirements:

15-2.2-5 Building Height

No Structure shall be erected to a height greater than twenty-seven feet (27') from Existing Grade. This is the Zone Height. Final Grade must be within four vertical feet (4') of Existing Grade, except for the placement of approved window wells, emergency egress, and a garage entrance. The following height requirements must be met:

A. A Structure shall have a maximum height of thirty five feet (35') measured from the lowest finish floor plane to the point of the highest wall top plate that supports the ceiling joists or roof rafters.

B. A ten foot (10') minimum horizontal step in the downhill façade is required unless the First Story is located completely under the finish Grade on all sides of the Structure. The horizontal step shall take place at a maximum height of twenty three feet (23') from where the Building Footprint meets the lowest point of existing Grade. Architectural features, that provide articulation to the upper story façade setback, may encroach into the minimum ten foot (10') setback but shall be limited to no more than twenty five percent (25%) of the width of the building encroaching no more than four feet (4') into the setback, subject to compliance with the Design Guidelines for Historic Sites and Historic Districts.

Although the exterior Building Height complies with existing Plat Notes, Planning staff is concerned that the interior Building Height does not comply with LMC [§ 15-2.2-5\(A\)](#), which limits interior height to a total of 35 feet in the HR-1 Zoning District. The Planning Department calculates the interior Building Height at 53.5 feet, an excess of 18.5 feet. As a result, we seek Planning Commission clarification after discussing directly with the Applicant.

Neither the 1985 nor the current version of the LMC allow the height exception the Planning Commission Granted.

In the Appeal Panel Staff Report, the City justifies the excess height under the LMC MPD height exceptions provisions: “The 1980s MPD process established Planning Commission authority to grant variations in height requirements, allowing an increase in height up to 25% of the maximum building height (Attachment 6). Today’s MPD code grants the Planning Commission similar authority (see LMC Section 15-6-5(F)).”

But at page 32 of the February 14, 2024 Staff Report, Staff concluded:

On January 24, 2024, the Planning Commission confirmed no amendment to the Sweeney MPD or rezone is necessary. As a result, staff recommends addressing the Sensitive Land Overlay site mitigation pursuant to the Steep Slope Conditional Use Permit application as outlined in recommended Conditions of Approval outlined in the next section.

1985 LMC – Variation in Height Requirements

(e) Variations in Height Requirements. The height requirements of Section 7 shall apply to Master Planned Developments, except that after review by the Planning Commission, the Commission may approve, disapprove, or approve with modifications a request for an increase in the allowable height of some or all of the buildings in the development by up to 25% of the maximum building height established for that zone in Chapter 7 of this Code (not including those adjustments permissible under Section 8.17) after due consideration of the following site specific review standards, in addition to the other standards established for Master Planned Developments by this Chapter. If the

11. Height variations shall not be permitted in the HR-1, RM, R-1, and HRL zones.

Current LMC – 15-6-5(F.) Master Planned Development Requirements

1. BUILDING HEIGHT. The Building Height requirements of the Zoning District in which a Master Planned Development is located shall apply, except that the Planning Commission may consider an increase in Building Height based upon a Site specific analysis. Height exceptions will not be granted for Master Planned Developments within the HR-1, HR-2, HRC, and HCB Zoning Districts. The Applicant must request a Site-specific determination and shall bear the burden of proof to the Planning Commission that the necessary findings for an increase in Building Height can be made, according to Subsections (1) through (5) below. In order to grant Building Height in addition to that which is allowed in the underlying Zoning District, the Planning Commission must find that:

1. The increase in Building Height does not result in increased square footage or Building volume over what would be allowed under the zone-required Building Height and Density, including requirements for Facade variation and design, but rather provides desired architectural variation, unless the increased square footage or Building volume is from the Transfer of Development Credits;
2. Buildings have been positioned to minimize visual impacts on adjacent Structures. Potential problems on neighboring Properties caused by shadows, loss of solar Access, and loss of air circulation have been mitigated as determined by the Site specific analysis;
3. There is adequate Landscaping and buffering from adjacent Properties and Uses;
4. Increased Setbacks and separations from adjacent projects are proposed;
5. The additional Building Height results in more than the minimum Open Space required and results in Open Space that is publicly accessible;
6. The additional Building Height is designed in a manner that provides a transition in roof elements in compliance with Chapter 15-5, Architectural Review, or the Design Guidelines for Park City's Historic Districts and Historic Sites if the Building is located within the Historic District. If and when the Planning Commission grants additional Building Height based on a Site specific analysis, the approved additional Building Height shall only apply to the specific plans reviewed and approved by the Planning Commission. Additional Building Height shall be specified as a Finding of Fact in the Master Planned Development Approval, in the Development Agreement, and on each plat within the Master Planned Development that includes a Building with an additional Height allowance.

Plat Notes are inconsistent with the Sweeney MPD and the LMC

54. HEIGHT. THE BUILDING HEIGHT SHALL BE MEASURED FROM EXISTING GRADE TO THE TOP OF THE FLAT ROOFS AND TO THE RIDGE OF PITCHED ROOFS. THE MAXIMUM HEIGHT, IN GENERAL, SHALL BE TWENTY -FIVE (25) FEET FOR FLAT ROOFS AND THIRTY (30) FEET FOR PITCHED ROOFS. A MAXIMUM HEIGHT OF TWENTY EIGHT (28) FEET FOR FLAT ROOFS AND THIRTY-THREE (33) FEET FOR PITCHED ROOFS SHALL BE PERMITTED FOR THE EXPRESSED PURPOSE OF ACCOMMODATING ACCESS AND LIGHT FEATURES NO GREATER THAN 24 FEET IN LENGTH, I.E. STAIRWELLS AND/OR ELEVATORS, BETWEEN FLOOR LEVELS. IN ACCORDANCE WITH THE SWEENEY MPD, WHICH WAS APPROVED BY THE PARK CITY MUNICIPAL CORPORATION ON OCTOBER 16, 1986, AND AS SUBSEQUENTLY AMENDED ON OCTOBER 14, 1987 AND DECEMBER 30, 1992, BUILDING HEIGHT SHALL ONLY BE MEASURED AS OUTLINED IN THIS PLAT NOTE #54 AND THERE ARE NO INTERIOR HEIGHT RESTRICTIONS.

65. FACADE HEIGHT, EASTERLY FACING. THE MAXIMUM FACADE HEIGHT FOR THE EASTERLY FACING FACADES WITHOUT A STEP BACK OR STEP OUT OF AT LEAST FIVE (5) FEET SHALL BE TWENTY FIVE (25) FEET FROM EXISTING OR REESTABLISHED GRADE WHICHEVER IS GREATER.

1985 Sweeney MPD - Visibility

Visibility - The issue of visibility is one which varies with the different concepts proposed and vantage or view points selected. The very detailed visual analyses prepared graphically demonstrated how the various proposals might look from key points around town. The cluster approach, although highly visible from certain areas, does not impose massive structures in the most prominent areas. Instead, the tallest buildings have been tucked into Creole Gulch where topography combines with the densely vegetated mountainside to effectively reduce the buildings' visibility. The height and reduction in density at the Mid-Station site has been partly in response to this concern. The staff has included a condition that an exhibit be attached to the Master Plan approval that further defines building envelope limitations and architectural considerations.

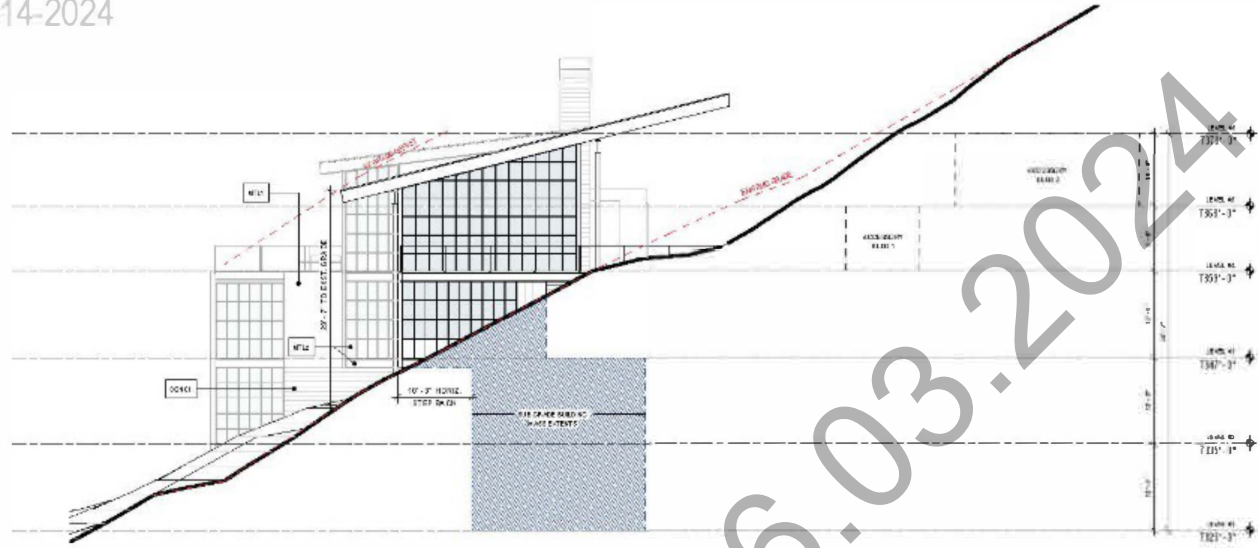
1985 Sweeney MPD - Stepping

Scale - The overall scale and massiveness of the project has been of primary concern. Located within the Historic District, it is important for project designed to be compatible with the scale already established. The cluster concept for development of the hillside area, while minimizing the impacts in other areas, does result in additional scale considerations. The focus or thrust of the review process has been to examine different ways of accommodating the development of the property while being mindful of and sensitive to the surrounding neighborhood. The relocation of density from the Town Lift site was partly in response to this issue. The concentration of density into the Creole Gulch area, which because of its topography and the substantial mountain backdrop which helps alleviate some of the concern, and the requested height variation necessary in order to reduce the mass perceived (higher versus lower and wider), have greatly improved the overall scale of the cluster approach. The sites along Park Avenue have been conceptually planned to minimize scale and have provided stepped facades and smaller-scale buildings to serve as a transition.

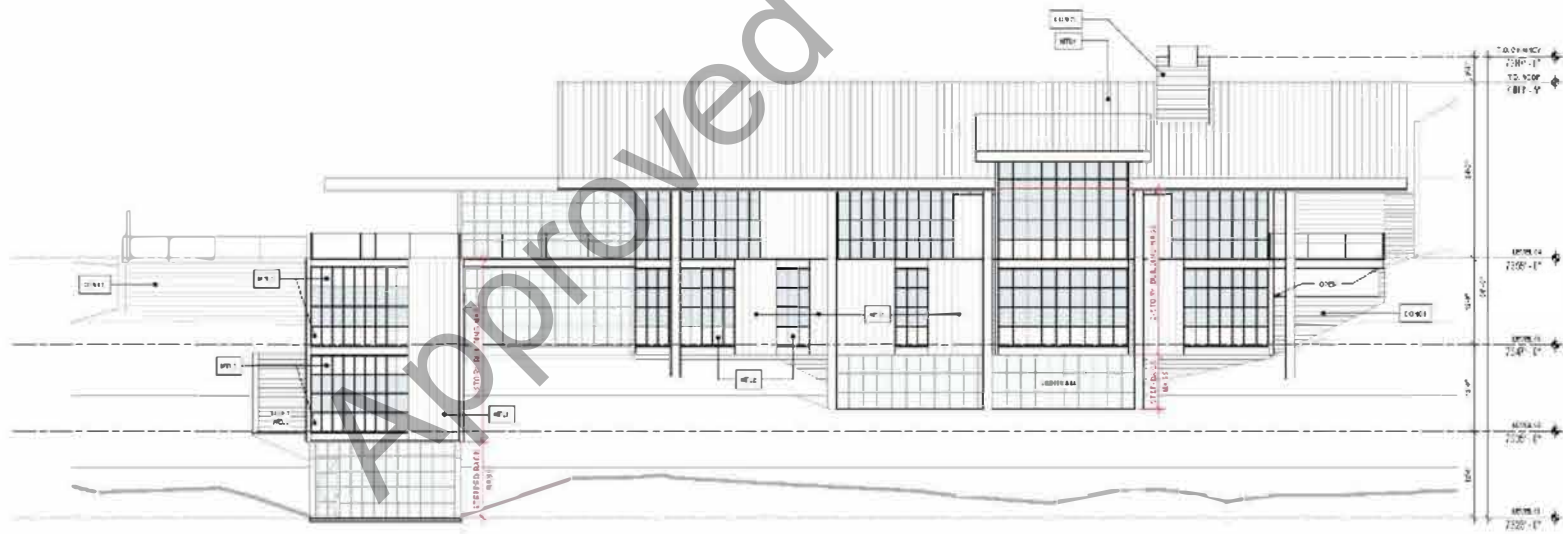
1987 Sweeney MPD - Review

The Planning Commission and Staff shall review these proposals as conditional uses. This shall include review of the design of the structures to insure that they are designed to minimize visual impact. The design shall be consistent with the Historic District Guidelines.

Approved 2-14-2024



2 NORTH ELEVATION
SCALE: 1/8" = 1'-0"



1 EAST ELEVATION
SCALE: 1/8" = 1'-0"

REVISION LOG	
REV. 01	10/15/2023
REV. 02	11/01/2023
REV. 03	11/15/2023
REV. 04	12/01/2023
REV. 05	12/15/2023

Olson Kundig

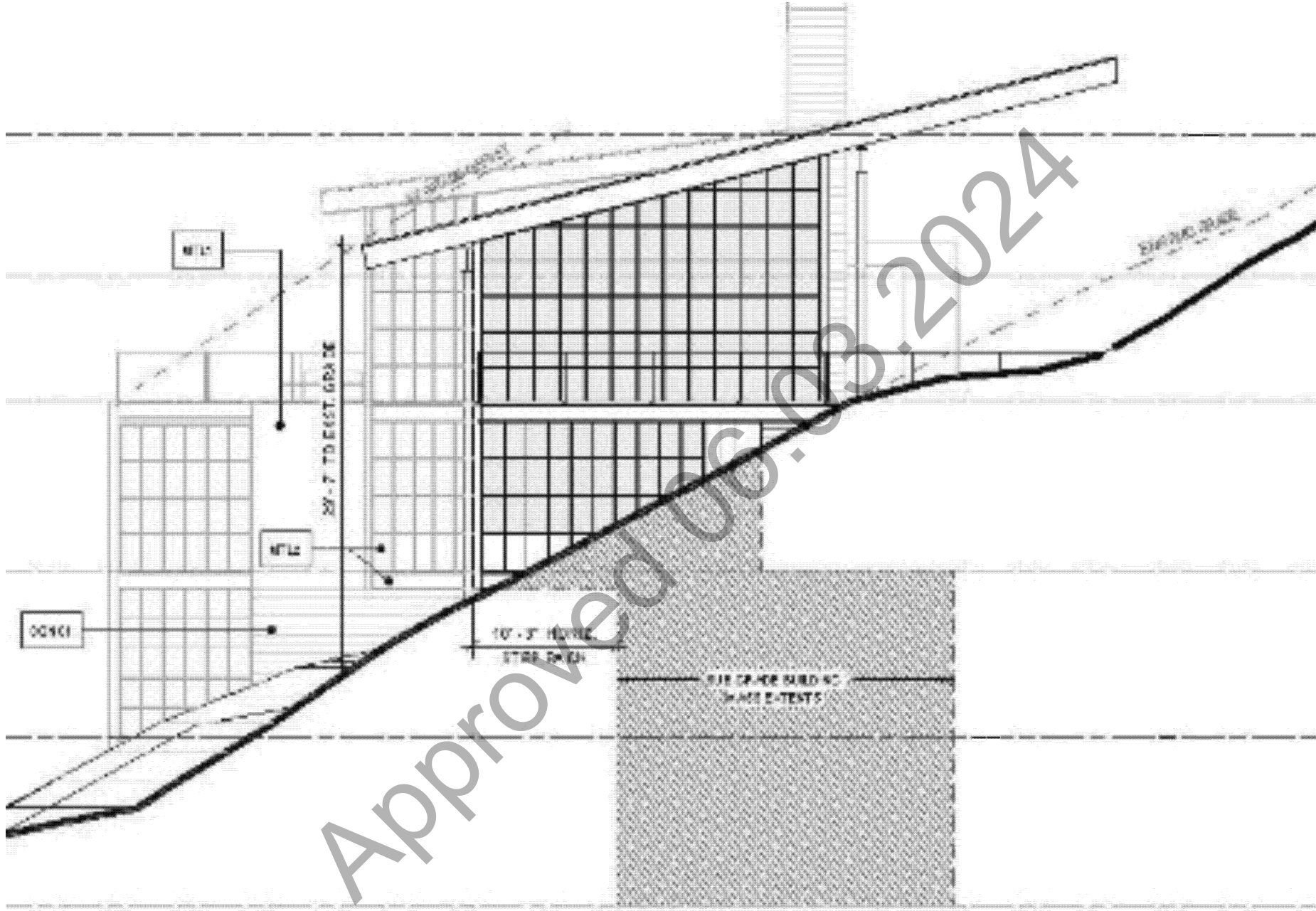
PROJECT:
PARK CITY RESIDENCE - PRINCE
220 4TH AVENUE
PARK CITY, UT 84302

PROJECT NO. _____
 DRAWING NO. _____
 DATE: _____
 DRAWN BY: _____
 CHECKED BY: _____

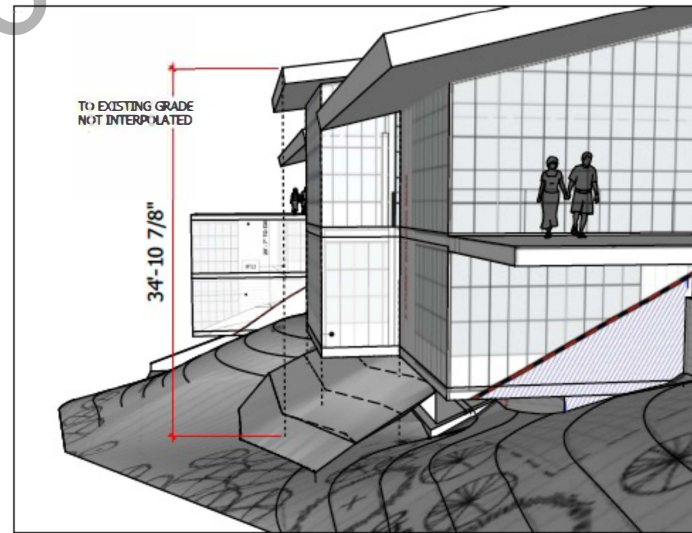
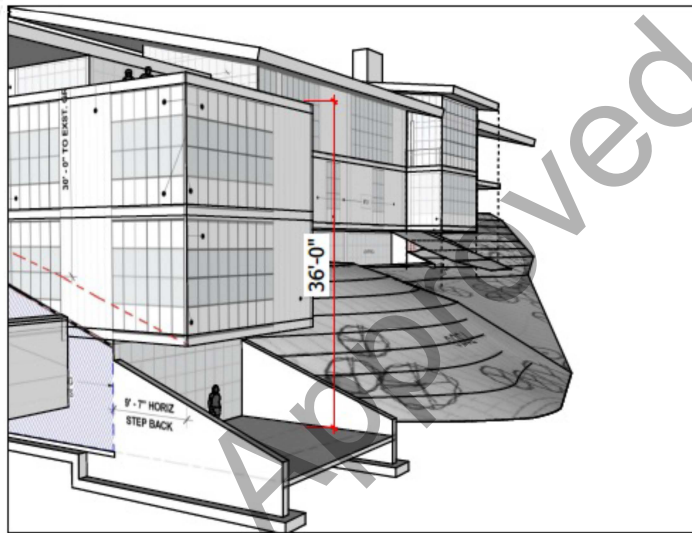
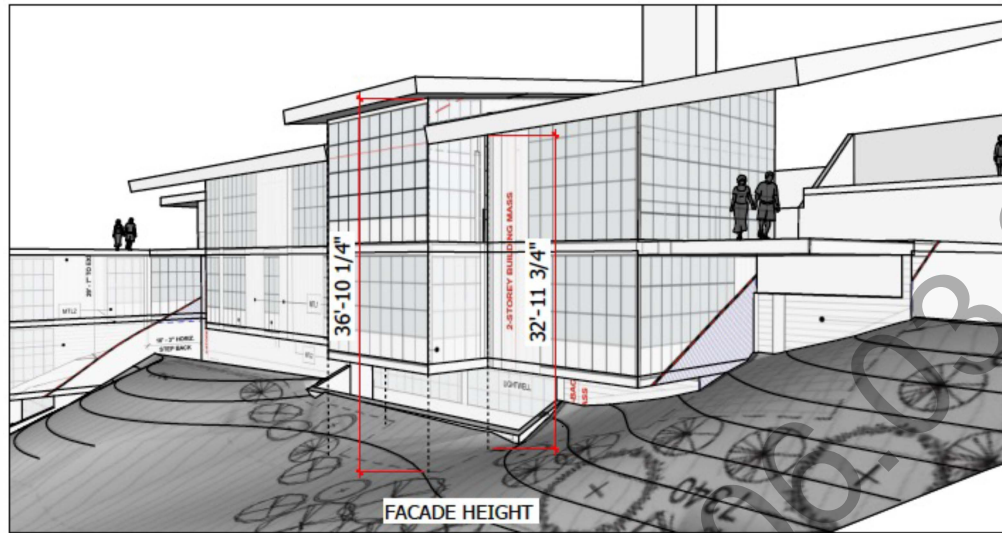
NOT FOR CONSTRUCTION
PLANNING COMMISSION
1.9.2023

EXTERIOR ELEVATIONS

A3.01



Approved 06.03.2024

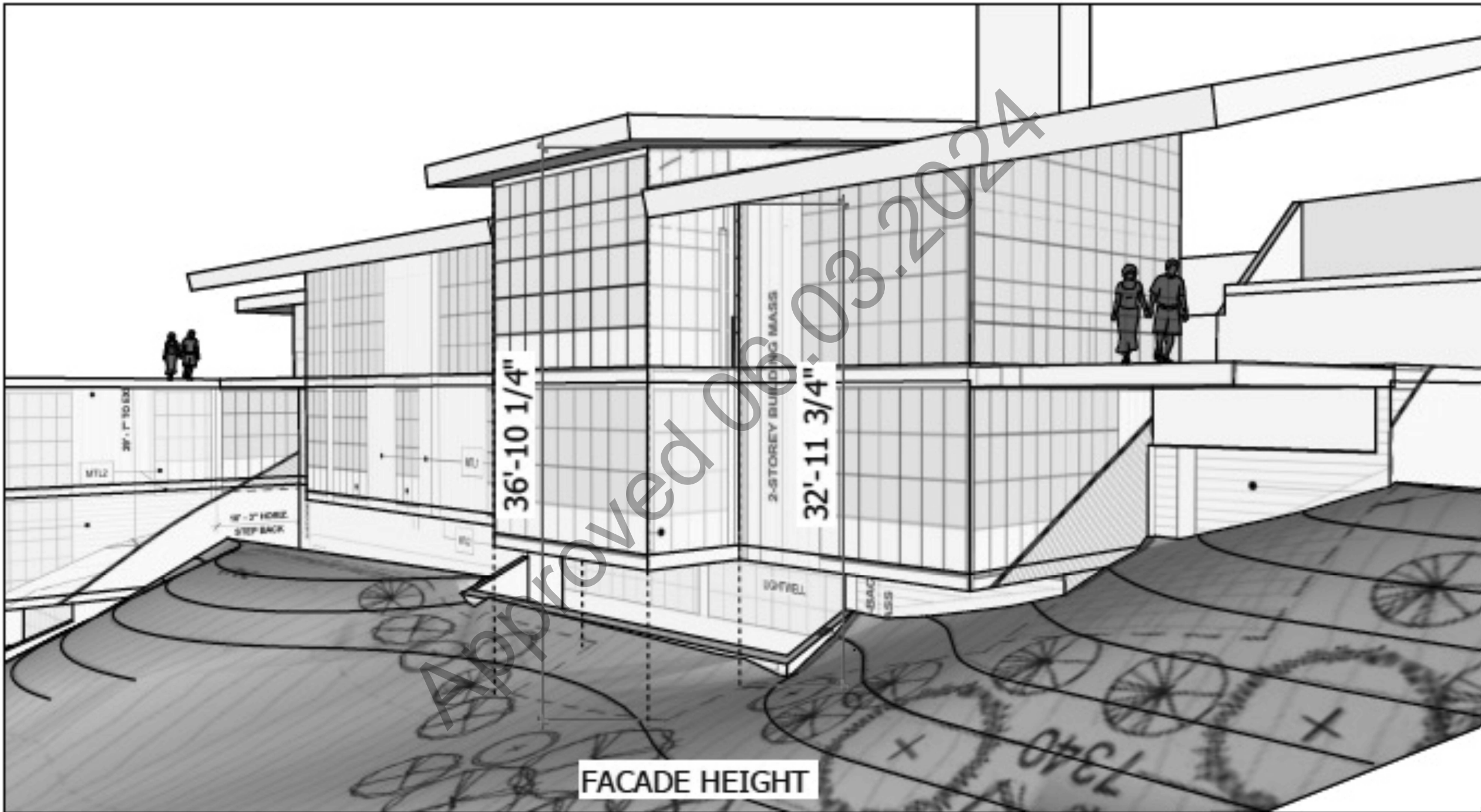


APPEAL ILLUSTRATIONS
220 KING

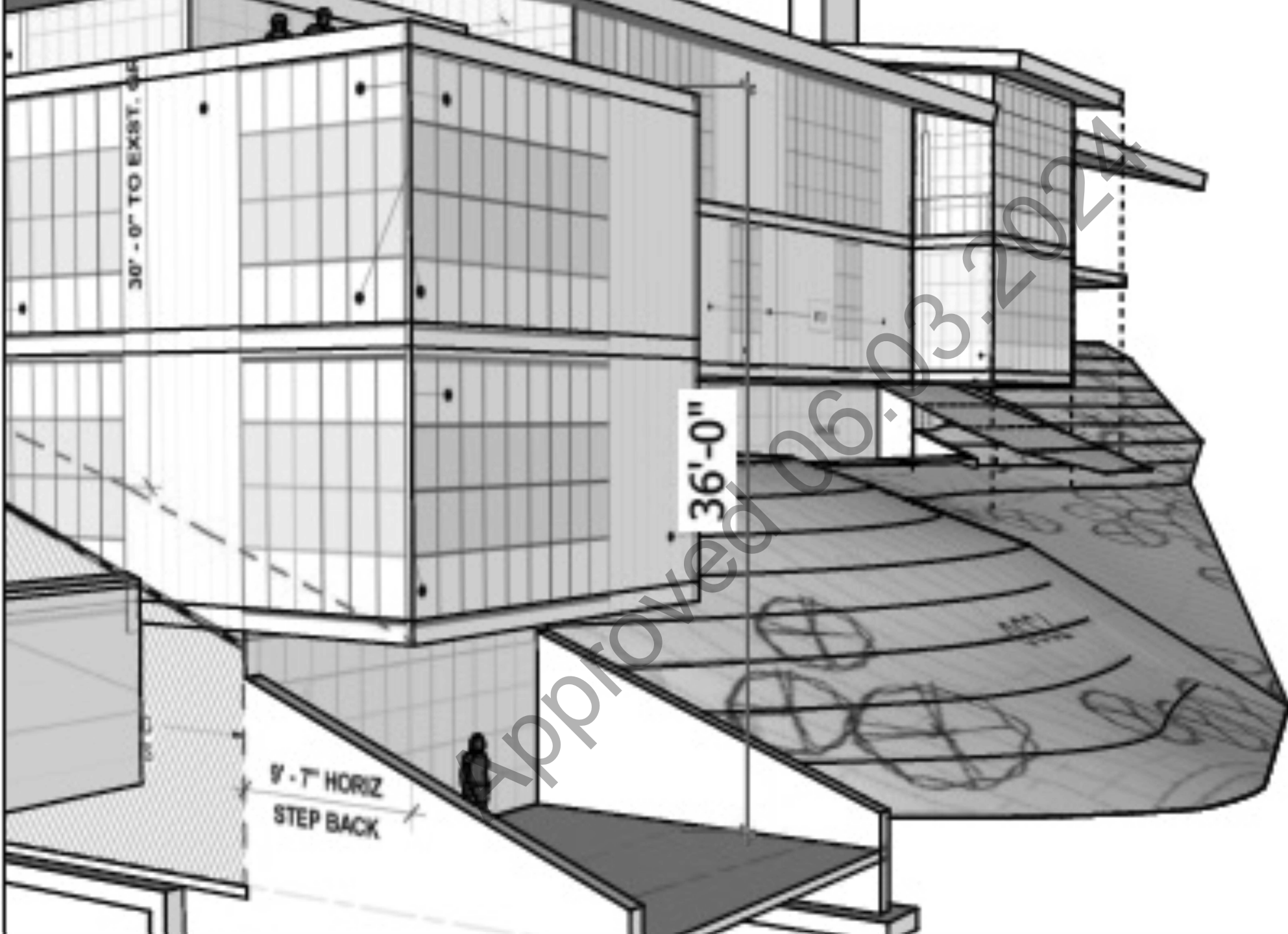
HEIGHT

04/30/24
NO SCALE

3



FACADE HEIGHT



30' - 0" TO EXST. GP

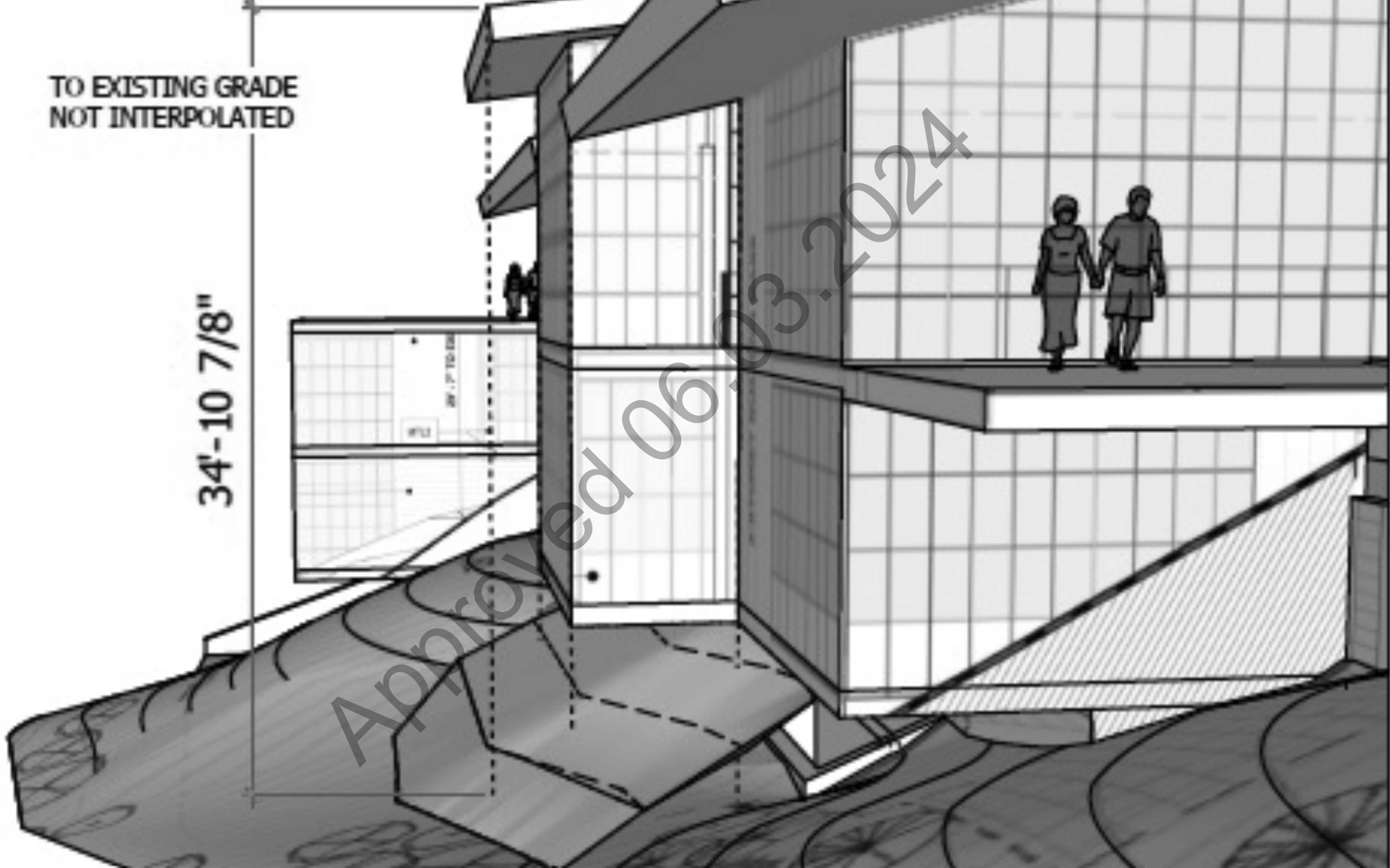
36'-0"

9'-7" HORIZ
STEP BACK

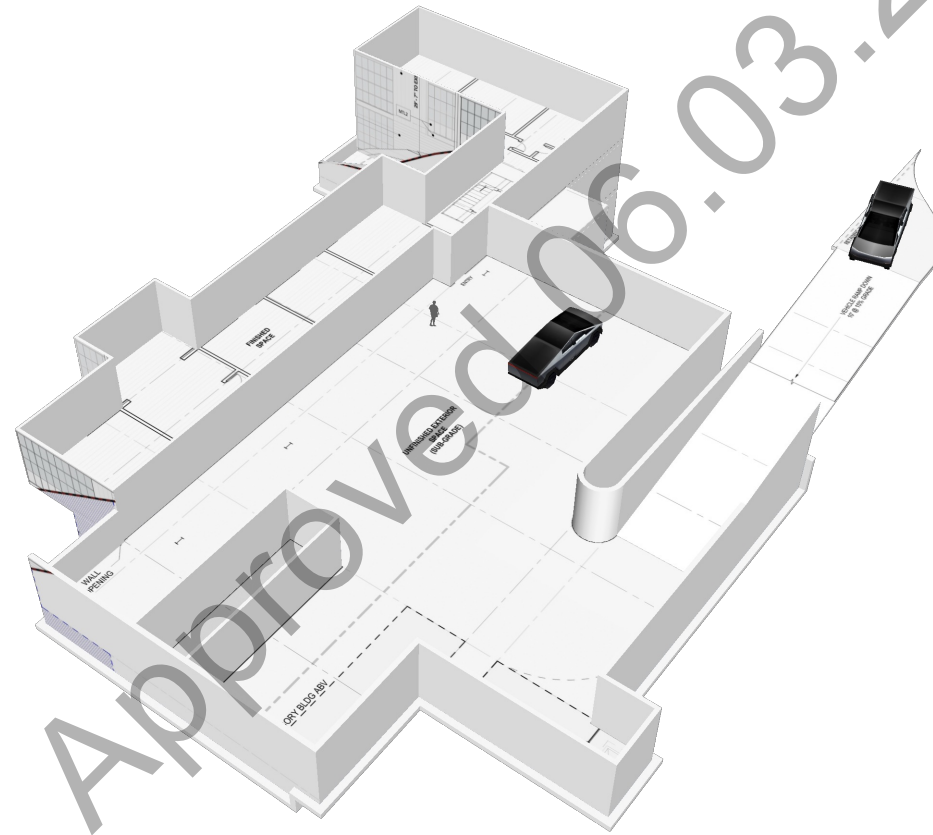
Approved 06.03.2024

TO EXISTING GRADE
NOT INTERPOLATED

34'-10 7/8"



The Building Footprint Does Not Comply under the Sweeney MPD or LMC





SHADED AREA IS THE MARSAC BUILDING

WHITE AREA IS STRUCTURE OF 220 KING ROAD

Approved 06.03.2024

Sweeney MPD – Densities & Parking Requirements

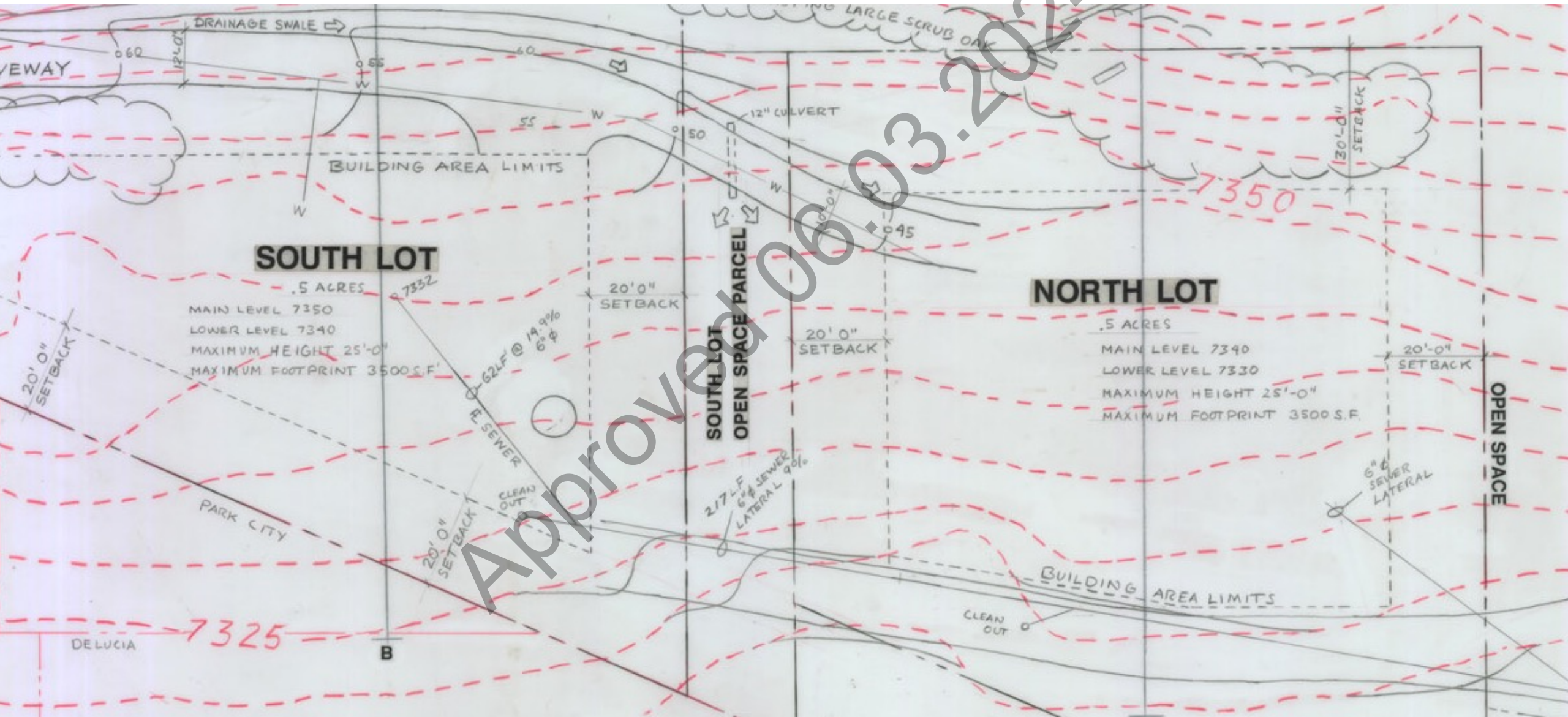
Condition of Approval No. 3

3. The approved densities are those attached as an Exhibit, and shall be limited to the maximums identified thereon. Parking shall be provided on-site in enclosed structures and reviewed in accordance with either the table on the approved Restrictions and Requirements Exhibit or the adopted ordinances at the time of project approval. All support commercial uses shall be oriented and provide convenient service to those residing within the project and not designed to serve off-site or attract customers from other areas.

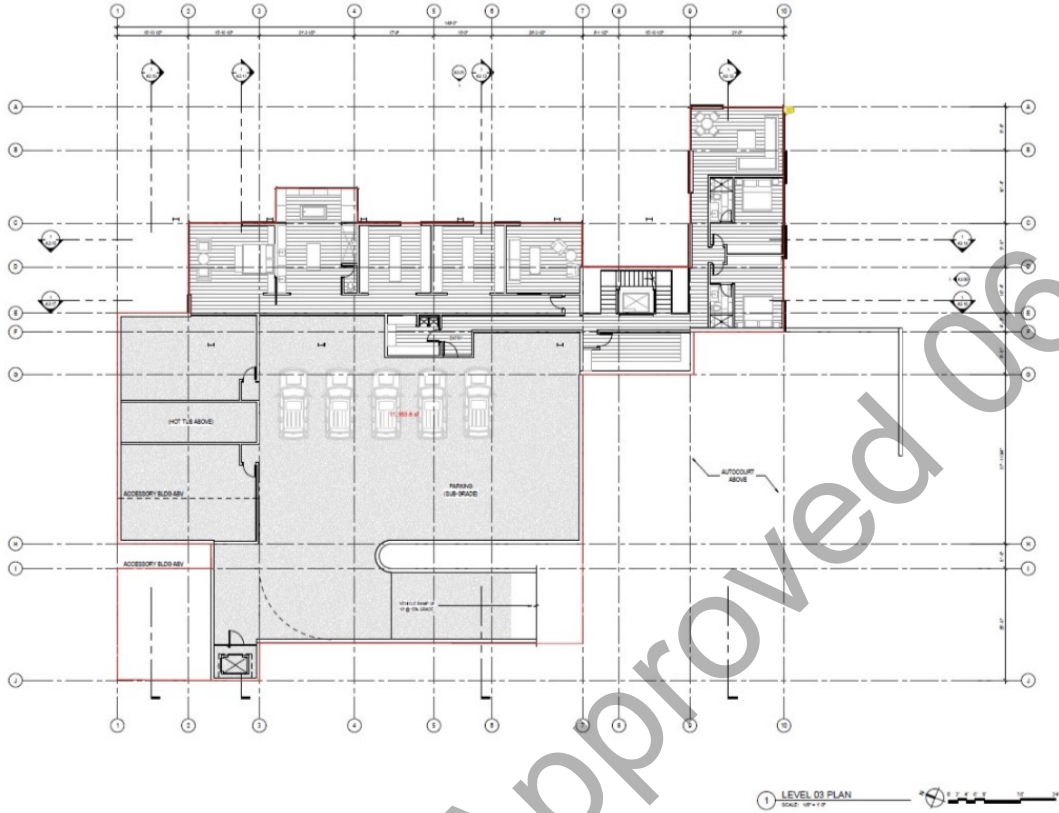
Finding of Fact No. 5:

5. The required parking can readily be provided on-site and in enclosed structures.

Sweeney MPD - Lot Exhibit



The current LMC definition for Building Footprint uses the furthest exterior wall of the Structure projected to Natural Grade. The Planning Department calculates the Applicant's actual building footprint at approximately 11,300 square feet, using the LMC definition's methodology.



Staff found that the Building Footprint does not Comply under the LMC

Figure 6: Footprint area as calculated by the Planning Department outlined in red. This image is from a 2022 submittal and may not be the most recent floor plan. No floor plans were submitted with the December 29, 2023, submittal.

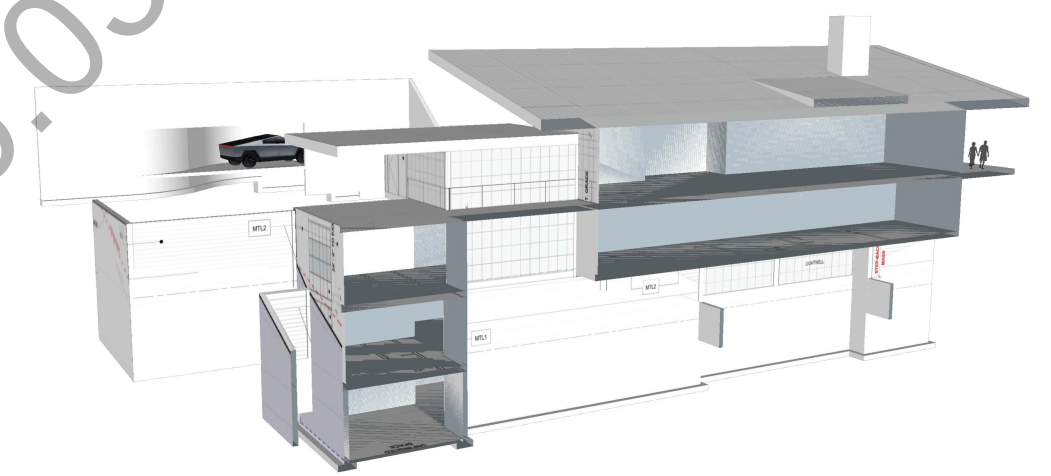
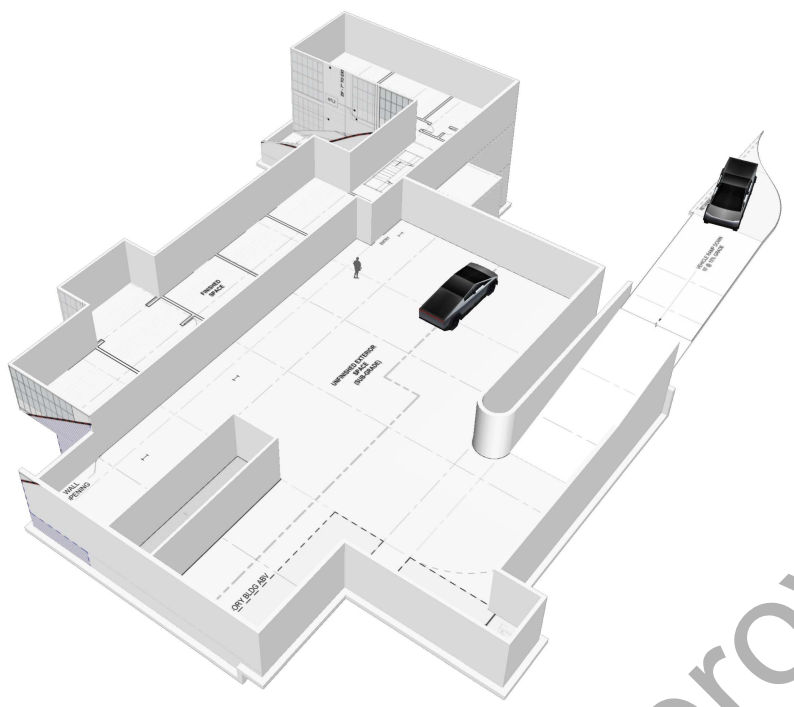
Applicant's Proposed Plat Amendment

- 21. FOOTPRINT. THE RESIDENTIAL FOOTPRINT OF THE DWELLING ("MAIN HOUSE"), TO BE LOCATED ON THE SECOND AMENDMENT FOR LOT 2, PHASE I, TREASURE HILL SUBDIVISION (THE "LOT"), SHALL BE CALCULATED FROM THE OUTSIDE FACE OF WALLS ON **ANY SINGLE LEVEL**, AND A MAXIMUM OF THREE THOUSAND FIVE HUNDRED (3,500) SQUARE FEET FOOTPRINT INCLUDING GARAGES. THE FOLLOWING SHALL NOT COUNT TOWARD THE FOOTPRINT CALCULATIONS:**
- a) DECK WHICH IS OPEN ON AT LEAST TWO SIDES, BUT WHICH MAY HAVE RAILINGS AS REQUIRED, COVERED OR UNCOVERED, AND THAT DOES NOT HAVE ABOVE-EXISTING NATURAL GRADE OR LIVING SPACE LOCATED BELOW OR ABOVE IT;
 - b) EXTERIOR WALKWAYS;
 - c) EXTERIOR STAIRS;
 - d) DRIVEWAY; AND
 - e) **THAT PORTION OF ANY GARAGE, CARPORT, MECHANICAL SPACE, PARKING AREA, OR LIVING SPACE THAT IS LOCATED BELOW EXISTING GRADE AND WHICH HAS LANDSCAPING OR DECK (AS PROVIDED IN 1(A)) LOCATED ABOVE IT.**

The Park City LMC Defines Garage & Parking Area

The Applicant's argument on footprint turns on its assertion that its private underground garage is not a "Garage" but instead is a "Parking Area"; both of which are defined terms under 15-15 of the LMC:

- **Garage, Private.** An Accessory Building, or a portion of the Main Building, used for the storage of motor vehicles for the tenants or occupants of the Main Building and not by the general public.
- **Parking Area.** An unenclosed Area or Lot other than a Street used or designed for parking.



Approved 06.03.2024

An “Unenclosed” Parking Area Violates the Sweeney MPD and the Proposed Garage Violates the Footprint Requirements.

Either the area designated for parking in the Proposed Structure is a garage because it is enclosed and therefore must be counted towards the building footprint, or it is not a garage because it is not enclosed meaning there is no enclosed parking on the property.

These are mutually exclusive.

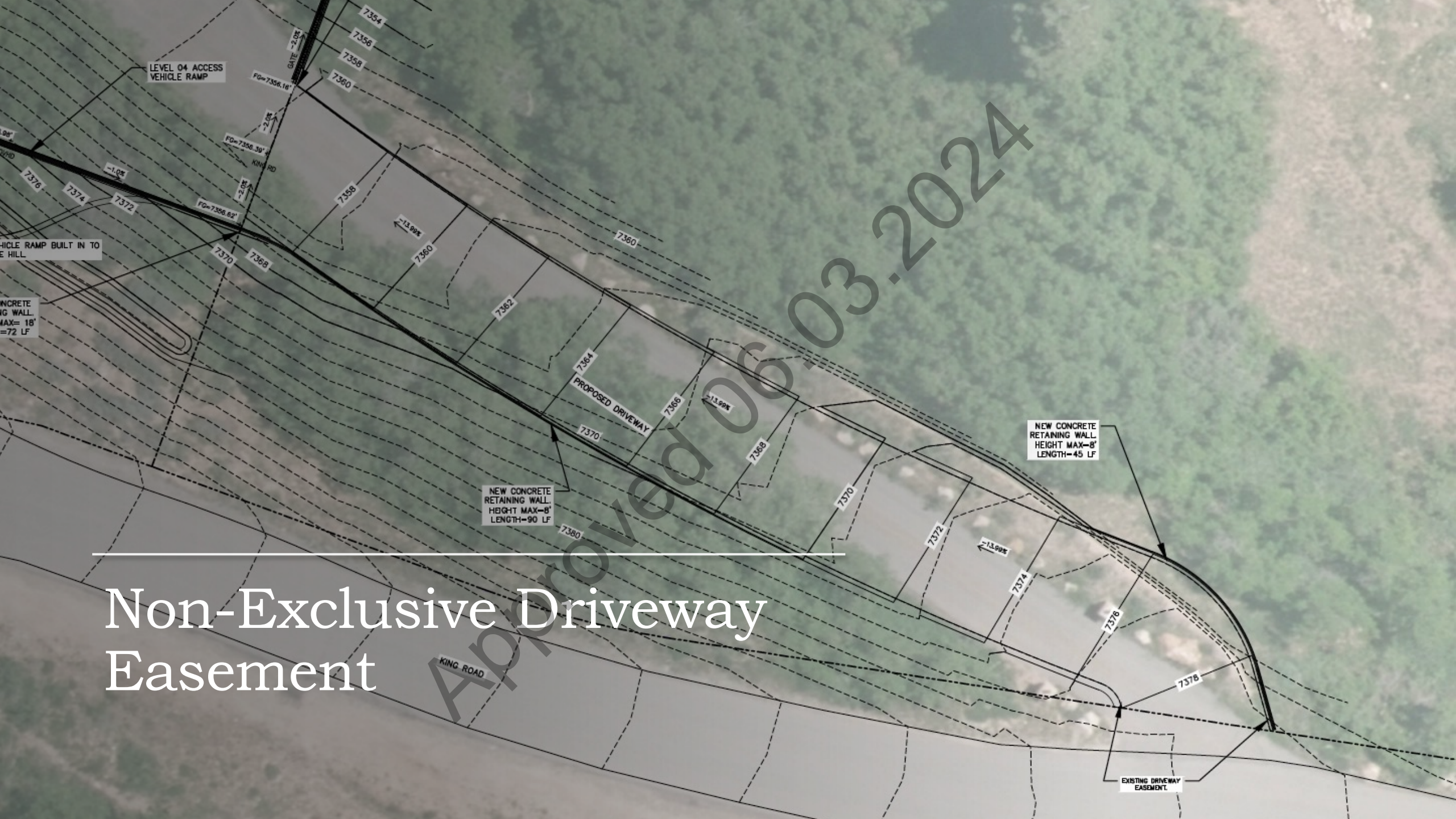
Either way, the Proposed Structure does not comply with the MPD. No reasonable argument can be made that the Proposed Structure complies with both requirements from the MPD, and it illustrates why, notwithstanding the degree of deference, the Planning Commission’s decision was arbitrary, capricious, and illegal under Utah Code § 801(c)(3).

LMC 15-2.2-5 Building Height and Roof Pitch

C. ROOF PITCH. The roof pitch of a Structure's Contributing Roof Form shall be between seven: twelve (7:12) and twelve: twelve (12:12) and shall occupy a minimum horizontal distance of 20 feet measured from the primary façade to the rear of the building, as viewed from the primary public right-of-way. Secondary Roof Forms may be below the required 7:12 roof pitch and located on the primary façade (such as porches, bay window roofs, etc).

1. Secondary Roof Forms may be Rooftop Decks so long as they are not more than 23 feet in height above Finished Grade. This height includes any railings, parapets, stairs, and similar constructions on the Roof Deck.
2. The height of railings, parapets, stairs, and similar constructions on a Green Roof or Flat Roof are included in the calculation of Building Height. Decks, hot tubs, outdoor cooking areas, and seating areas are not permitted on Green Roofs. Green Roofs must be vegetated.
3. A Structure containing a flat roof shall have a maximum height of thirty-five feet (35') measured from the lowest floor plan to the highest wall top plate that supports the ceiling joists or roof rafters. The height of the Green Roof, including the parapets or similar features shall not exceed twenty four inches (24") above the highest top plate mentioned above. Any required railings for a Green Roof shall comply with Building Height.

CONTRIBUTING BUILDING, STRUCTURE, SITE/AREA OR OBJECT. Building (main, attached, detached, or public, Accessory Building, Structure, Site, or Object that is determined by the Historic Preservation Board to meet specific criteria set forth in LMC 15-11-10. A portion of an existing building, an Accessory Building, Structure, or object may also be considered contributory so the historical significance of a Building or Site if it reflects the Historical or architectural character of the site or district as designated by the Historic Preservation Board.



Non-Exclusive Driveway Easement



BUILDING PAD LINE

Driveway is clearly in the Steep Slope Area

ADJACENT PROPERTY LINE

220 King Road Appeal

Approved 06.03.2024

Park City Appeal Panel– April 30, 2024

Standing - (Appeal Supporters)

Schapper
Approx. 5
miles

Tolman
300 Norfolk

Bennett
Approx. 2.5
miles

220 King Rd
Subject
Property

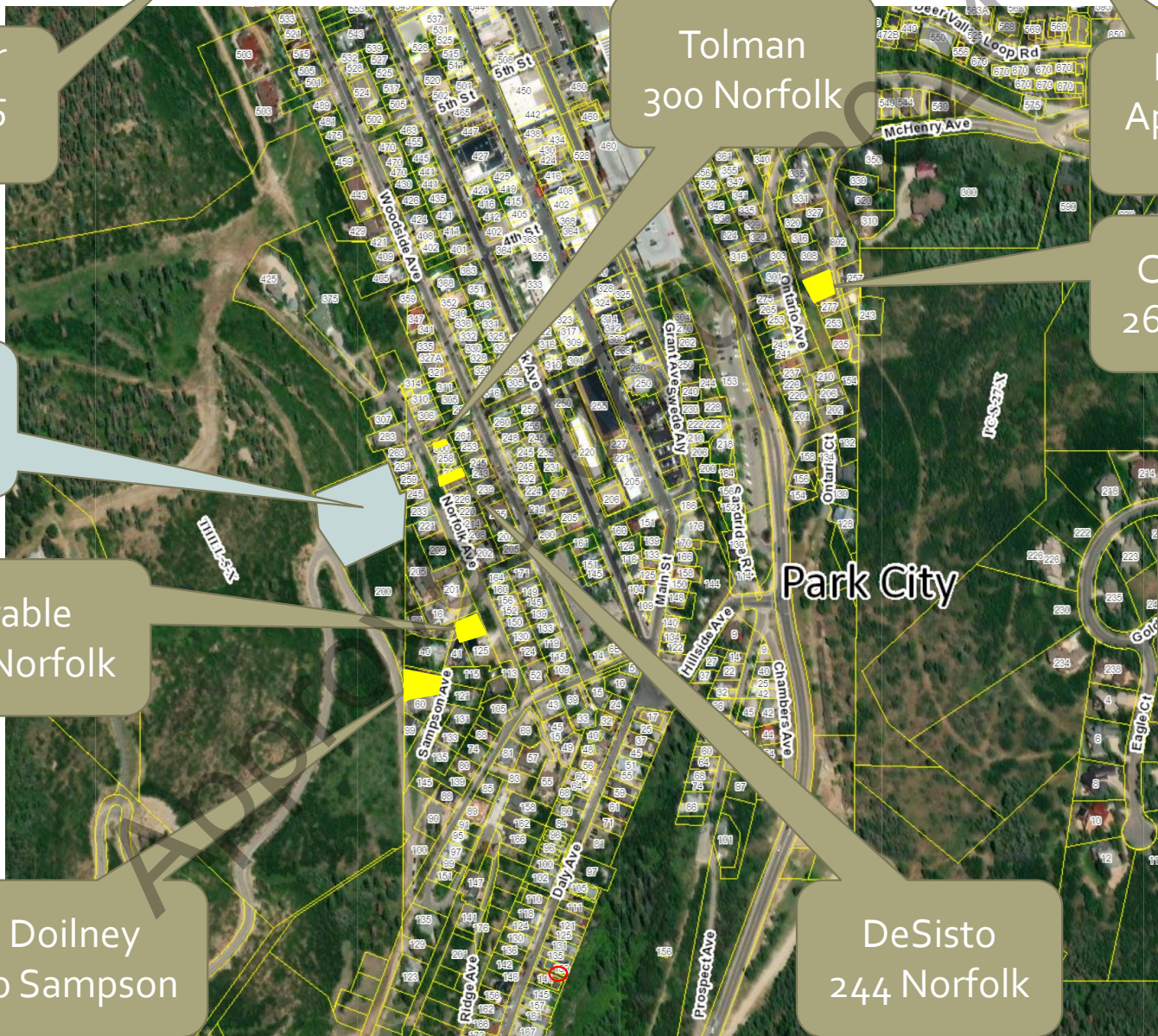
Constable
264 Ontario

Vrable
143 Norfolk


Lewis
Address
Unknown


Doilney
50 Sampson

DeSisto
244 Norfolk



Neighborhood Support in Favor of Project.

 Properties that have submitted letters of support through 2-14-2024.

 Open Space/Vacant Lot

Carol and I are residents of 314 Norfolk Ave, Park City, UT. We know the owners of 220 King Road and totally support the rebuilding of the property as a single family home. The Prince's are very active in the community and will work for a better Park City both past and present. **Carol and I strongly encourage the Planning Commission to approve the proposed changes to 220 King.**

I understand Mr./Mrs. Prince wish to build on lot 2, 220 King Road, and I wish them well. Their approach is no different than what Pat and I did back in the 90s. The quality of their plans and architecture are very impressive. **I fully support their application and look forward to having Mr. Prince and family as neighbors.**

For more than a decade the existing two homes on 220 King Road have been nightly rentals that are within our close visual and aural range. From our perspective, **it will be nice to see these two nightly rentals converted to a single family home that will be owner-occupied by full-time residents who love their community.**

We have talked with the owners of 220 King (Matthew and Tatiana Prince) and seen their plans for a new home. **I am supportive of their request to rebuild a single family home on the property and convert it from a part-time rental property to a residence.** Matthew Prince is a long term Utah resident who grew up here and has the community's interest in mind. He and Tatiana have been a great addition to the neighborhood. The plans for he and Tatiana's house appear to be in keeping with the mining tradition of Park City and will replace two dwellings that look both dated and out of sync with Park City. **I encourage the Planning Commission to approve their project.**

Alexandra - My family owns and spends a great deal of time at our home located at 263 Norfolk Avenue. Our home is adjacent to the 220 King property that is currently the subject of discussion involving proposed redevelopment by Matthew and Tatiana Prince. We know Matthew and Tatiana and are aware of their plans for 220 King. **We support these plans and look forward to the conversion of a part-time rental property to a single family residence.** Further, we are familiar with the architectural plans for 220 King and think this new residence will be a welcome addition to our "neighborhood" in particular and community more generally. Importantly, Matthew and Tatiana are thoughtful, responsible and engaged members of the Park City community (Matthew grew up in Park City and has returned to make Park City his home). **The project at 220 King reflects their commitment to our town.** Please do not hesitate to contact me if you would like to discuss our strong support for this project in greater detail.

I represent the owner of 261 Norfolk Ave (held in Twinkle Weasel Mountain LLC). 261 Norfolk Avenue shares a property border with 220 King Road. My client, the owner of 261 Norfolk Avenue, **has reviewed and is supportive of the plans for 220 King Road, including eliminating it as a nightly rental, converting it into a single-family home, and honoring the historic architectural heritage of the community.** The owner of 261 Norfolk Avenue **encourage the Planning Commission to approve the requested amendments to the 220 King Road plat.**

We are writing to express our support for the plans that our neighbors, Matthew and Tatiana Prince, have for 220 King Road. Our home is on Upper Norfolk Avenue, and their property is adjacent to ours. We have reviewed the plans and trust that the permanent residence they are proposing to build will enhance the property, and **we appreciate that the plans purposefully honor the area's historic mining past.** The Princes have long-standing ties to Park City, and we would like to **encourage the Planning Commission to support them and their exciting project.**

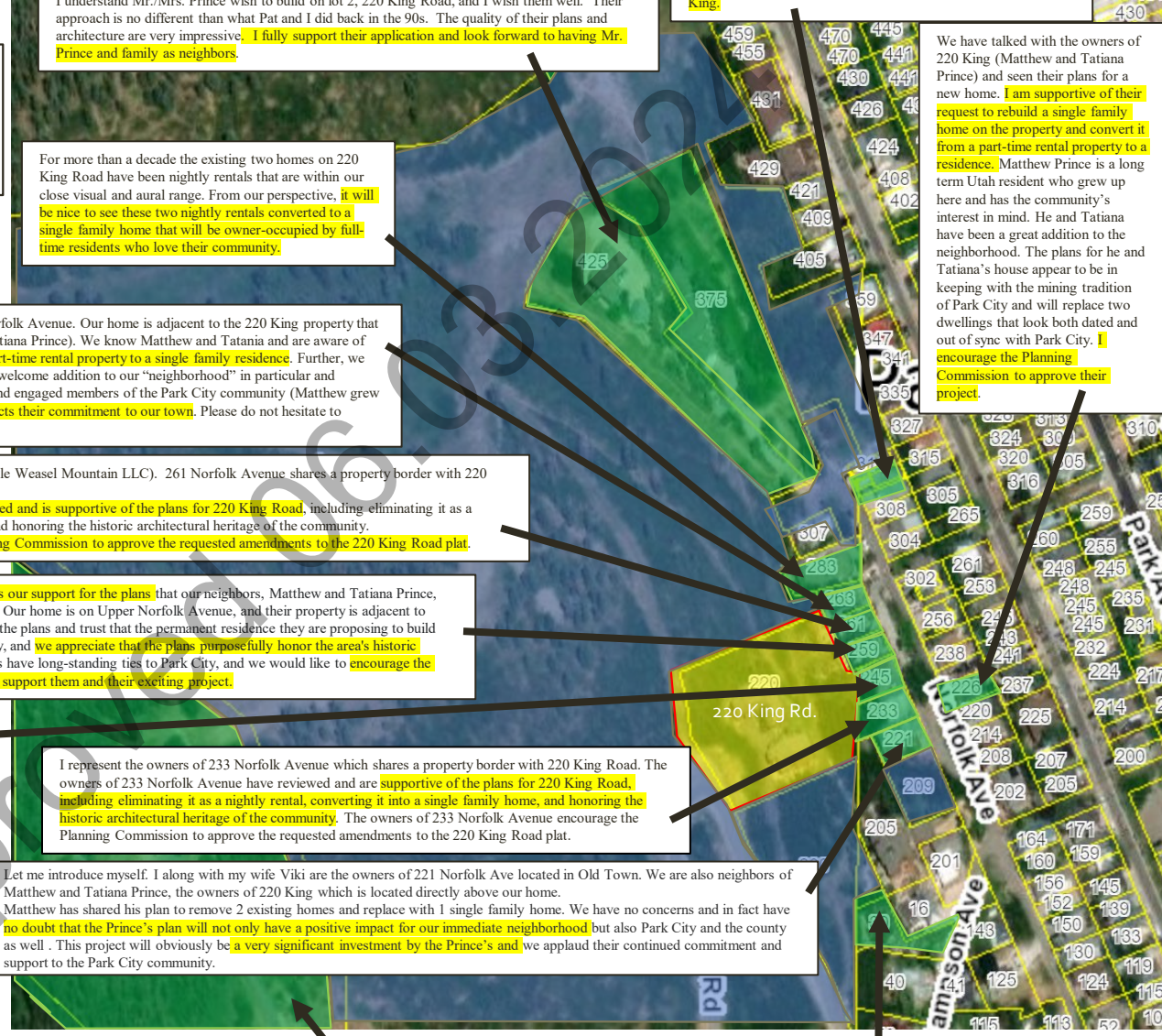
I own 245 Norfolk Avenue. My property is immediately adjacent to 220 King Road (directly downhill). I had a few concerns about the project since it is literally in my back yard... **Based on these explanations, I support their plans to build a single family home at 220 King Road.**

I represent the owners of 233 Norfolk Avenue which shares a property border with 220 King Road. The owners of 233 Norfolk Avenue have reviewed and are **supportive of the plans for 220 King Road, including eliminating it as a nightly rental, converting it into a single family home, and honoring the historic architectural heritage of the community.** The owners of 233 Norfolk Avenue encourage the Planning Commission to approve the requested amendments to the 220 King Road plat.

Let me introduce myself. I along with my wife Viki are the owners of 221 Norfolk Ave located in Old Town. We are also neighbors of Matthew and Tatiana Prince, the owners of 220 King which is located directly above our home. Matthew has shared his plan to remove 2 existing homes and replace with 1 single family home. We have no concerns and in fact have **no doubt that the Prince's plan will not only have a positive impact for our immediate neighborhood** but also Park City and the county as well. This project will obviously be a **very significant investment by the Prince's and** we applaud their continued commitment and support to the Park City community.

I fully support Matthew's effort to amend the plat. Please feel free to call or email me with any questions you may have concerning this or related matters.

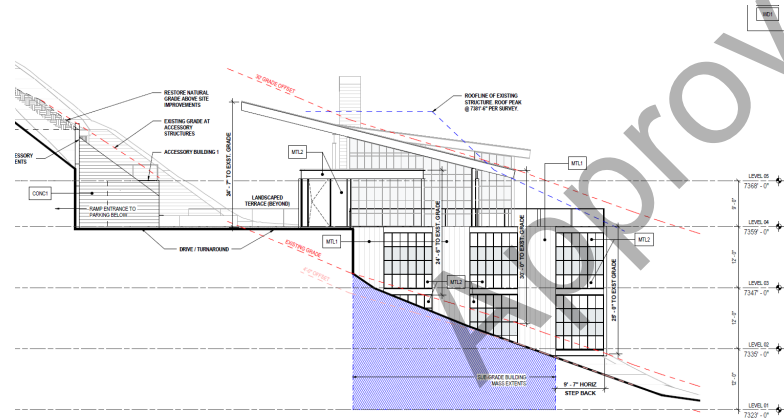
In summary, **we urge the Planning Commission to approve the replat.** Please do not hesitate to contact us with any questions regarding our support.



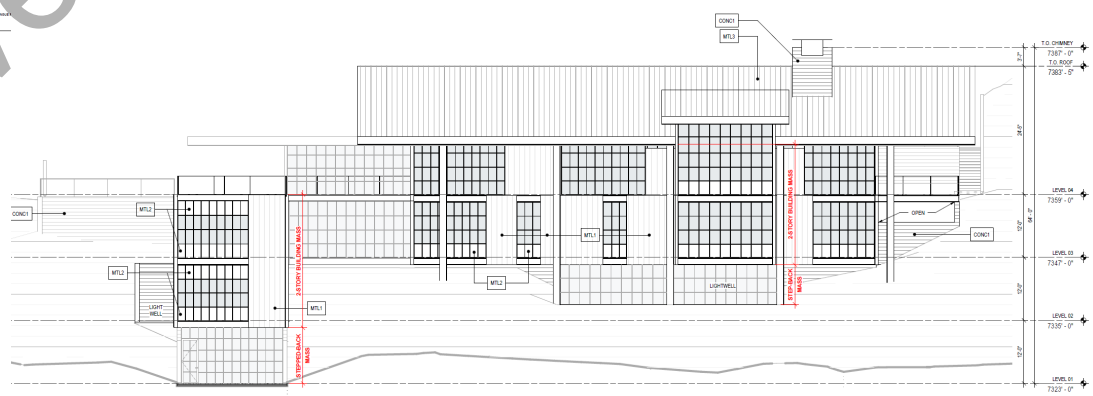
Current homes



Approved Design



1 SOUTH ELEVATION
SCALE: 1/8" = 1'-0"



1 EAST ELEVATION
SCALE: 1/8" = 1'-0"

Sweeney MPD Homes



Sweeney MPD Single Family Lots

Plat	Parcel #	Building Area Limits (sq ft)	Lot Area (acres)	Building Footprint (approx. sq ft)	Building size (sq ft)
Treasure Hill Subdivision Phase 1 - 1996	THILL-1 (200 KING RD)	12,700	0.86	NA	NA
	THILL-2-A-AM/ THILL-2-B-AM (220 King Rd)	11,250	1.23	Existing - 3,936 sq ft (survey) Proposed - 3,500 sq ft	Total - 6,965 sq ft (Summit County Tax Info-both homes) Proposed – 7,461 sf (finished) 5,898 sf (unfinished)
	THILL-3-AM (425 NORFOLK AVE)	17,000	1.31	2,620 sq ft (Google Earth)	Total - 3,881 sq ft (Summit County Tax Info)
	THILL-4-AM (375 NORFOLK AVE)	7,500	1.1	5,178 sq ft (Google Earth)	Total - 10,813 sq ft (Summit County Tax Info)
Treasure Hill Subdivision Phase II - 2003	THILL-II-6 (503 1/2 WOODSIDE AVE)	7,650	0.79	4,268 sq ft (Google Earth)	Total - 9,161 sq ft (Summit County Tax Info)
	THILL-II-7 (503 WOODSIDE AVE)	7,500	0.92	4,182 sq ft (Google Earth)	Total 9,214 sq ft (Summit County Tax Info)
Treasure Hill Subdivision Phase III Amd 1 - 2009	THILL-3-8-1AM (445 KING RD)	29,083.90	11.9	4,280 sq ft (Google Earth)	Total - 8,738 sq ft (Summit County Tax Info)

Standard of Review

- Review as quasi-judicial matter (LMC 15-1-18.G)
- Burden is on the appellant(s) (LMC 15-1-18.G)
- Ambiguities are interpreted in favor of the property owner (Utah Code Ann. 10-9a-306)

Approved 06.03.2024

Summary

1. The Property has vested rights under the Sweeney MPD.
2. The Planning Commission was Authorized to Amend the Subdivision Plat, and the Amended Plat is Consistent with the Sweeney MPD.
3. The Proposed Home Complies with:
 - The Sweeney MPD's Height Requirements.
 - The LMC interior height requirements.
 - Treasure Phase 1 plat notes, including – footprint, height, massing, façade, and step out.
4. The Planning Commission appropriately amended the Treasure Hill Phase 1 Plat, as allowed by the LMC and the Sweeney MPD.
5. Historic Design Review is in the process and a decision will follow this appeal.

Approved 06.03.2024

Plat Amendment Procedure For Lot 2

Action	Approval Date	Decision Body
Plat Approved	9/15/1995	City Council
Lot 2, Phase 1, Amd.	4/17/1997	City Council
Lot 2, Phase 1, 2 nd Amd.	2/14/2024	Planning Commission*

* By ordinance 2024-03, adopted February 1, 2024, the Planning Commission is the land use authority for plats related to Single-Family Dwellings, Duplexes, or Townhomes

Approved 06.03.2024

Building Height

Approved	Date of approval	Height (pitched roof/exception)
Pre-2009 Zone Height		27', +25%
Plat	9/15/1995	30/33
Amended Plat (1st)	4/17/1997	30/33
Amended Plat (2 nd)	2/14/2024	30/33


Approved 06.03.2024

Approved Site Plan with Topography



EARTHWORK QUANTITIES:
 CUT= 11,786 CU. YD. >CUT<
 FILL= 416 CU. YD. >FILL<
 NET= 11,370 CU. YD. >CUT<

- NOTES**
1. SLO BOUNDARY HAS NOT BEEN DEFINED AND WAITING ON CITY FOR LEGAL DESCRIPTION.
 2. RETAINING WALL DESIGN WILL BE PROVIDED WITH THE BUILDING PERMIT PLANS.
 3. NO SIGNIFICANT VEGETATION ON SITE. REMOVE EXISTING TREES PLANTED FOR EXISTING HOUSE AND REPLACE AS NECESSARY. REFER TO LANDSCAPE PLANS FOR DETAILS.

 CONSULTING ENGINEERS LAND PLANNERS SURVEYORS <small>333 South Street P.O. Box 2054 Park City Utah 84060-2054</small>	(435) 648-0467 STAFF: CONNOR DINGMIRE SACHITHI MUNASINGHI	CONCEPTUAL GRADING PLAN 220 KING ROAD STEEP SLOPE	SHEET 2 OF 8
	FOR: SNELL & WILMER - JASON BOAL JOB NO.: 8-3-23 DATE: 02/13/2024 FILE: X:\ParkCitySurvey\dwg\Projects\220 King Rd Steep Slope CUP\080323.dwg		

Summary

Appellant(s) has:

- Not carried its burden
- Failed to show illegality
- Not shown prejudice

The well reasoned decision of the planning Commission should be affirmed.

220 King Road Appeal

Approved 06.03.2024

Park City Appeal Panel– April 30, 2024

Plat Notes

1. PRECEDENCE. THE BELOW SPECIAL RESTRICTIONS ARE CONSISTENT WITH THE SWEENEY MASTER PLAN APPROVED BY THE PARK CITY MUNICIPAL CORPORATION ON OCTOBER 16, 1986 AND AS SUBSEQUENTLY AMENDED ON OCTOBER 14, 1987 AND DECEMBER 30, 1992. FINAL HOUSE DESIGN SHALL BE REVIEWED UNDER THE CONDITIONAL USE PERMIT PROCESS IN ACCORDANCE WITH THE SWEENEY MASTER PLAN.
2. FOOTPRINT. THE RESIDENTIAL FOOTPRINT OF THE DWELLING (“MAIN HOUSE”), TO BE LOCATED ON LOT 2, PHASE I, TREASURE HILL SUBDIVISION (THE “LOT”), SHALL BE CALCULATED FROM THE OUTSIDE FACE OF WALLS ON ANY SINGLE LEVEL, AND A MAXIMUM OF THREE THOUSAND FIVE HUNDRED (3,500) SQUARE FEET FOOTPRINT INCLUDING GARAGES. THE FOLLOWING SHALL NOT COUNT TOWARD THE FOOTPRINT CALCULATIONS:
 - a) DECK WHICH IS OPEN ON AT LEAST TWO SIDES, BUT WHICH MAY HAVE RAILINGS AS REQUIRED, COVERED OR UNCOVERED, AND THAT DOES NOT HAVE ABOVE-EXISTING NATURAL GRADE OR LIVING SPACE LOCATED BELOW OR ABOVE IT;
 - b) EXTERIOR WALKWAYS;
 - c) EXTERIOR STAIRS;
 - d) DRIVEWAY; AND
 - e) THAT PORTION OF ANY GARAGE, CARPORT, MECHANICAL SPACE, PARKING AREA, OR LIVING SPACE THAT IS LOCATED BELOW EXISTING GRADE AND WHICH HAS LANDSCAPING OR DECK (AS PROVIDED IN 1(A)) LOCATED ABOVE IT.
3. BUILDING AREA LIMITS. IMPROVEMENTS, INCLUDING FENCES AND FORMAL LANDSCAPING (UNLESS OTHERWISE PERMITTED UNDER EASEMENTS OR AGREEMENTS OF RECORD OR AS SHOWN ON THE PLAT OR AS CONSISTENT WITH THE APPROVED CONSTRUCTION DRAWINGS OF THE DRIVEWAYS, UPPER NORFOLK TURNAROUND, KING ROAD TURNAROUND, SKI BRIDGE AND UTILITY PLANS) SHALL BE LIMITED TO THE BUILDING AREA LIMITS NOTED ON THE PLAT.

Plat Notes

4. CONSTRUCTION DISTURBANCE. UNLESS OTHERWISE PROVIDED IN AGREEMENTS WITH PARK CITY MUNICIPAL CORPORATION WHICH ARE OF RECORD, TEMPORARY CONSTRUCTION DISTURBANCE SHALL BE LIMITED TO TWENTY (20) FEET BEYOND THE BUILDING AREA LIMITS OR TO ADJOINING LOT PROPERTY LINES WHICH EVER IS CLOSER.
5. HEIGHT. THE BUILDING HEIGHT SHALL BE MEASURED FROM EXISTING GRADE TO THE TOP OF THE FLAT ROOFS AND TO THE RIDGE OF PITCHED ROOFS. THE MAXIMUM HEIGHT, IN GENERAL, SHALL BE TWENTY-FIVE (25) FEET FOR FLAT ROOFS AND THIRTY (30) FEET FOR PITCHED ROOFS. A MAXIMUM HEIGHT OF TWENTY EIGHT (28) FEET FOR FLAT ROOFS AND THIRTY-THREE (33) FEET FOR PITCHED ROOFS SHALL BE PERMITTED FOR THE EXPRESSED PURPOSE OF ACCOMMODATING ACCESS **AND LIGHT FEATURES NO GREATER THAN 24 FEET IN LENGTH**, I.E. STAIRWELLS AND/OR ELEVATORS, BETWEEN FLOOR LEVELS. **IN ACCORDANCE WITH THE SWEENEY MPD, WHICH WAS APPROVED BY THE PARK CITY MUNICIPAL CORPORATION ON OCTOBER 16, 1986, AND AS SUBSEQUENTLY AMENDED ON OCTOBER 14, 1987 AND DECEMBER 30, 1992, BUILDING HEIGHT SHALL ONLY BE MEASURED AS OUTLINED IN THIS PLAT NOTE #4.**
6. FACADE HEIGHT, EASTERLY FACING. THE MAXIMUM FAÇADE HEIGHT FOR THE EASTERLY FACING FACADES WITHOUT A STEP BACK **OR STEP OUT** OF AT LEAST FIVE (5) FEET SHALL BE TWENTY FIVE (25) FEET FROM EXISTING OR REESTABLISHED GRADE WHICHEVER IS GREATER.
7. MASSING. HOUSE DESIGNS MAY BE COMPRISED OF ONE OR MORE CONNECTED OR UNCONNECTED BUILDING MASSES. NO ONE BUILDING MASS WITHIN THE 3,500 SQUARE FOOT FOOTPRINT REFERENCED IN NOTE 1 ABOVE, SHALL HAVE A FOOTPRINT THAT EXCEEDS 1,500 SQUARE FEET. MASSING ELEMENTS SHALL BE SEPARATED BY HORIZONTAL AND/OR VERTICAL FACADE BREAKS.
8. SEWER LATERALS. MAINTENANCE AND REPLACEMENT OF SEWER LATERALS SHALL BE THE RESPONSIBILITY OF THE OWNER(S) AND NOT THAT OF SNYDERVILLE BASIN SEWER IMPROVEMENT DISTRICT.
9. FIRE SPRINKLING. INTERNAL AND EXTERNAL MODIFIED 13d FIRE SPRINKLERS SHALL BE PROVIDED FOR THE HOME. WOOD ROOFING MATERIAL SHALL BE PROHIBITED.

Plat Notes

10. EXTERIOR LIGHTING. ALL EXTERIOR LIGHTING SHALL BE DOWN DIRECTED AND FULLY SHIELDED WITH BULBS 3,000 DEGREES KELVIN OR LESS. FLOOD LIGHTS ARE PROHIBITED. OUTDOOR LIGHTS SHALL NOT BE INSTALLED MORE THAN 12 FEET ABOVE EXISTING GRADE. GROUND-LEVEL FIXTURES SHALL BE FULLY SHIELDED.

11. GLAZING. SIXTY PERCENT (60%) OF THE EASTERN FACING FAÇADE IS PERMITTED TO BE GLAZING AND LIGHTING IMPACTS FROM THE EASTERNFACING FAÇADE SHALL BE MITIGATED BY INTERIOR FIXTURES DESIGNED TO MINIMIZE DIRECT VISIBILITY OF THE LIGHTING ELEMENT FROM RESIDENCES WITHIN 1/3 MILE OF THE RESIDENCE.

12. CONTINGENT UPON A STEEP SLOPE CONDITIONAL USE PERMIT APPROVAL BY THE PLANNING COMMISSION, DETACHED BELOW GRADE ACCESSORY BUILDINGS. BELOW GRADE ACCESSORY BUILDINGS ARE PERMITTED WITHIN THE BUILDABLE AREA. THE FOOTPRINT OF A DETACHED BELOW GRADE ACCESSEORY BUILDING DOES NOT COUNT TOWARDS THE FOOTPRINT AREA OF THE DWELLING AS ALLOWED IN NOTE #1.

13. USE OF RESIDENTIAL STRUCTURE. ANY RESIDENCE CONSTRUCTED AFTER THE DATE OF THIS AMENDMENT SHALL ONLY BE USED AS A SINGLE-FAMILY RESIDENCE. THE NEW RESIDENCE SHALL NOT BE USED AS A CONDOMINIUM, TIME INTERVAL OWNERSHIP, FRACTIONAL OWNERSHIP, OR NIGHTLY RENTALS. HOME OCCUPATIONS SHALL BE PERMITTED IN ACCORDANCE WITH LMC § 15-4-3.

Approved 08/03/2024

Snell & Wilmer

MEMORANDUM

TO: Park City Appeal Panel
FROM: Jason Boal
DATE: April 29, 2024
RE: 220 King Road – Appeals as Filed








This memo presents the appeal applications as they were filed and provided to the applicant on March 5, 2024.

In addition to the files shown below, we have included the email from Rebecca Ward to the DropBox with the files.

The files were organized in the DropBox link as shown below:

Appeal - 220 King Road

Name ↑	Modified	Size
 03 01 24_Appeal App - Justin Keyes.pdf	Last month	2.28 MB
 Appeal App - David Bennett.pdf	Last month	140.22 KB
 Appeal App - David Constable.pdf	Last month	853.02 KB
 Appeal App - Ed Desisto.pdf	Last month	794.26 KB
 Appeal App - Ginger Tolman.pdf	Last month	708.87 KB
 Appeal App - James A Doilney.pdf	Last month	721.07 KB
 Appeal App - John Vrabel.pdf	Last month	796.62 KB

	Appeal App - Mariena Stahlke Lewis.pdf	Last month	440.11 KB
	Appeal App - Nicholas J Schapper.pdf	Last month	344.88 KB
	Attachment 1.pdf	Last month	2.58 MB
	Exhibit A B C.pdf	Last month	4.31 MB
	Exhibit D.pdf	Last month	7.56 MB
	Exhibit E.pdf	Last month	6.26 MB
	Exhibit F.pdf	Last month	21.64 MB
	Exhibit G.pdf	Last month	2.93 MB

JB

Approved 06.03.2024

PARK CITY MUNICIPAL CORPORATION
PLANNING DEPARTMENT
445 MARSAC AVE ° PO BOX 1480
PARK CITY, UT 84060
(435) 615-5060

PARK CITY

RECEIVED
MAR 01 2024

APPEAL OF A LAND USE DETERMINATION

Park City Municipal Corp.

For Office Use Only

BOARD REVIEW _____
APPROVED _____
DENIED _____
PROJECT PLANNER _____

APPLICATION # PL-24-06057
DATE RECEIVED _____
EXPIRATION _____

PROJECT BEING APPEALED

PROJECT NAME: 220 King Road Plat Amendment and Conditional Use Permits
ADDRESS: 220 King Rd., Park City, UT 84060
LAND USE AUTHORITY BEING APPEALED: Planning Commission
DATE OF FORMAL ACTION: 2/21/24

APPELLANT INFORMATION

NAME: Eric Hermann and Susan Fredston-Hermann
MAILING ADDRESS: P.O. Box 1027
Park City, UT 84060
PHONE #: (914) 309 - 5909
EMAIL: ehermann@fhinternational.com

APPELLANT REPRESENTATIVE

NAME: Justin Keys
MAILING ADDRESS: 1225 Deer Valley Drive, Suite 201
Park City, UT 84060
PHONE #: (435) 714 - 7676
EMAIL: Justin@hlhparkcity.com


ACKNOWLEDGEMENT OF RESPONSIBILITY

This is to certify that I am making an application for the described action by the City and that I am responsible for complying with all City requirements with regard to this request. This application should be processed in my name and I am a party whom the City should contact regarding any matter pertaining to this application.

I have read and understood the instructions supplied by Park City for processing this application. The documents and/or information I have submitted are true and correct to the best of my knowledge. I understand that my application is not deemed complete until a Project Planner has reviewed the application and has notified me that it has been deemed complete.

I will keep myself informed of the deadlines for submission of material and the progress of this application. I understand that a staff report will be made available for my review three days prior to any public hearings or public meetings. This report will be on file and available at the Planning Department in the Marsac Building.

I further understand that additional fees may be charged for the City's review of the proposal. Any additional analysis required would be processed through the City's consultants with an estimate of time/expense provided prior to an authorization with the study.

Signature of Applicant: 

Name of Applicant: Eric Hermann and Susan Fredston-Hermann PRINTED

Mailing Address: P.O. Box 1027, Park City, UT 84060

Phone: 914-309-5909 Fax: _____

Email: ehermann@fhinternational.com

Type of Application: Appeal to Appeal Panel of CUPs and Plat Amendment granted by Planning Commission

Approved 06.03.2024

SUBMITTAL REQUIREMENTS – All of the following items must be included in order for the Planning Department to take the application.

1. Completed and signed application form.
2. Application Fee: \$500
3. Appeals must (a) be by letter or petition, and contain the name, address, and telephone number of the petitioner, their relationship to the project or subject Property, and (b) must contain a comprehensive statement of all the reasons for the appeal, including specific provisions of the law, if known, that are alleged to be violated by the action taken
4. Any additional information that will assist in clearly understanding the nature of the appeal.
5. An electronic Excel spreadsheet with property owner, Summit County Assessor Parcel Number, and mailing address for all parties who received mailed notice for the action being appealed. Template is available through <https://www.parkcity.org/departments/planning>.
6. One (1) electronic copy of the required materials in PDF format.

PLEASE NOTE:

STANDING TO APPEAL: The following has standing to appeal a Final Action:

1. Any Person who submitted written comment or testified on a proposal before the Planning Department, Historic Preservation Board, or Planning Commission
2. The Owner of any Property within three hundred feet (300') of the boundary of the subject site;
3. Any City official, Board, or Commission having jurisdiction over the matter; and
4. The Owner of the subject Property

TIMING: All appeals must be made within ten (10) calendar days of the Final Action except for an appeal from a decision by the historic preservation authority which is Staff regarding the Design Guidelines for Historic Districts and Historic Sites or a decision by the Historic Preservation Board regarding a land use application, the applicant may appeal the decision within thirty (30) days after the day on which the historic preservation authority issues a written decision. The reviewing body, with the consultation of the appellant, shall set a date for the appeal. All appeals shall be heard by the reviewing body within forty-five (45) days of the date that the appellant files an appeal unless all parties, including the City, stipulate otherwise.

FORM OF APPEALS: Appeals to the Planning Commission, Board of Adjustment, or Historic Preservation Board must be filed with the Planning Department. Appeals to the City Council must be filed with the City Recorder. Appeals must be by letter or petition, and must contain the name, address, and telephone number of the petitioner; his or her relationship to the project or subject Property; and must have a comprehensive statement of all the reasons for the appeal, including specific provisions of the law, if known, that are alleged to be violated by the action taken. The Appellant shall pay the applicable fee established by resolution when filing the appeal. The Appellant shall present to the appeal authority every theory of relief that it can raise in district court. The Appellant shall provide required envelopes within fourteen (14) days of filing the appeal.



HOGGAN LEE HUTCHINSON

Justin Keys
Justin@hlhparkcity.com
Direct: 435.731.9195

March 1, 2024

VIA EMAIL & HAND DELIVERY

Park City Appeal Panel
Michelle Kellogg, City Recorder
michelle.kellogg@parkcity.org
PO Box 1480
Park City, Utah 84060

Re: Petition to Appeal the Conditional Use Application for 220 King Road Approved at the February 21, 2024 Hearing

Dear Ms. Kellogg,

Eric Hermann and Susan Fredston-Hermann (“Appellants”) file this petition to appeal approval of the Conditional Use Permit # PL-23-05571 (the “CUP”). Appellants submitted written comment and testified in opposition to the CUPs. They also own property within 300 feet of the boundary of the subject site—indeed, their primary residence is adjacent to the proposed project and the CUP contemplates modification of their property without their approval.

BACKGROUND

On February 21, 2024, a split Planning Commission Approved Findings of Fact and Conclusion of Law to (1) Amend the Plat Notes for the Treasure Hill Subdivision, Phase 1, Lot 2; (2) for a Conditional Use Permit for Residential Design of the Proposed Structure and (3) for a Conditional Use Permit to Construct in the Very Steep Slope of the Sensitive Lands Overlay.

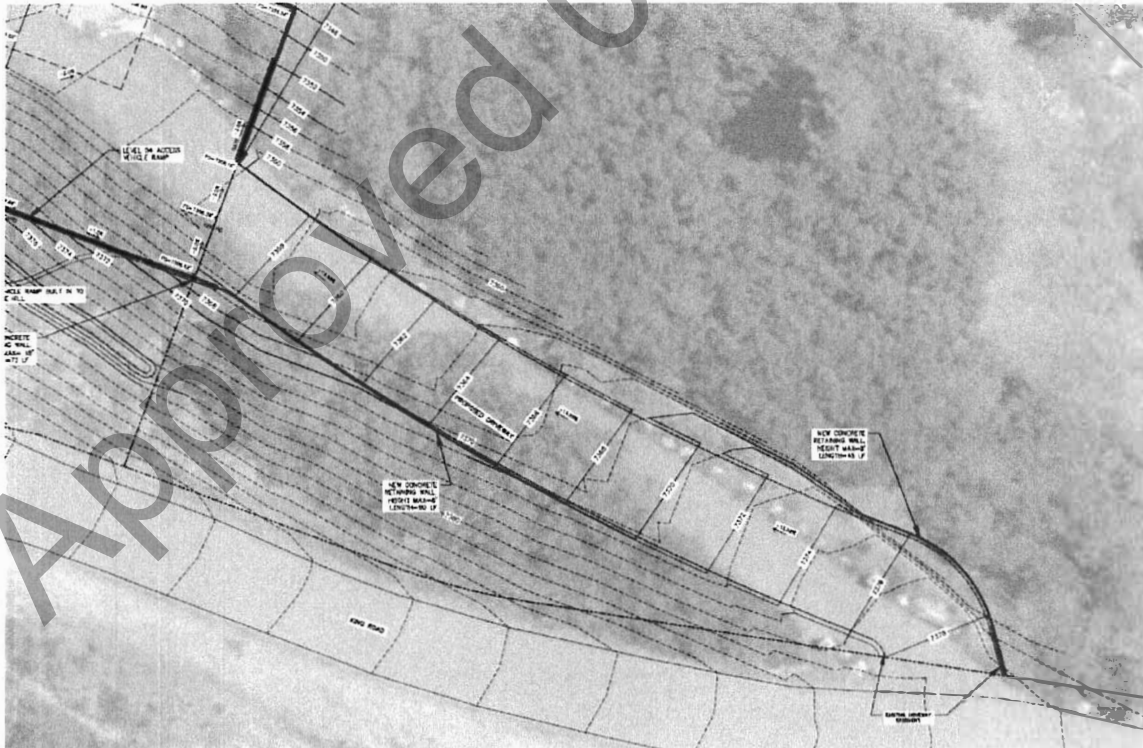
Relative to this appeal, that approval granted the Applicant the unilateral right to cut and re-grade the access driveway that crosses the Fredston-Hermanns’ property at 200 King Road. The Applicant, as the owner of 220 King, has a non-exclusive right of access over a twenty-foot-wide driveway that runs the length of 200 King. This same driveway also serves as the access drive for the 200 King building envelope.

In approving the CUP, the Planning Commission incorrectly granted the Applicant the unilateral right to modify the access easement as long as they stay “within the platted easement.” In earlier

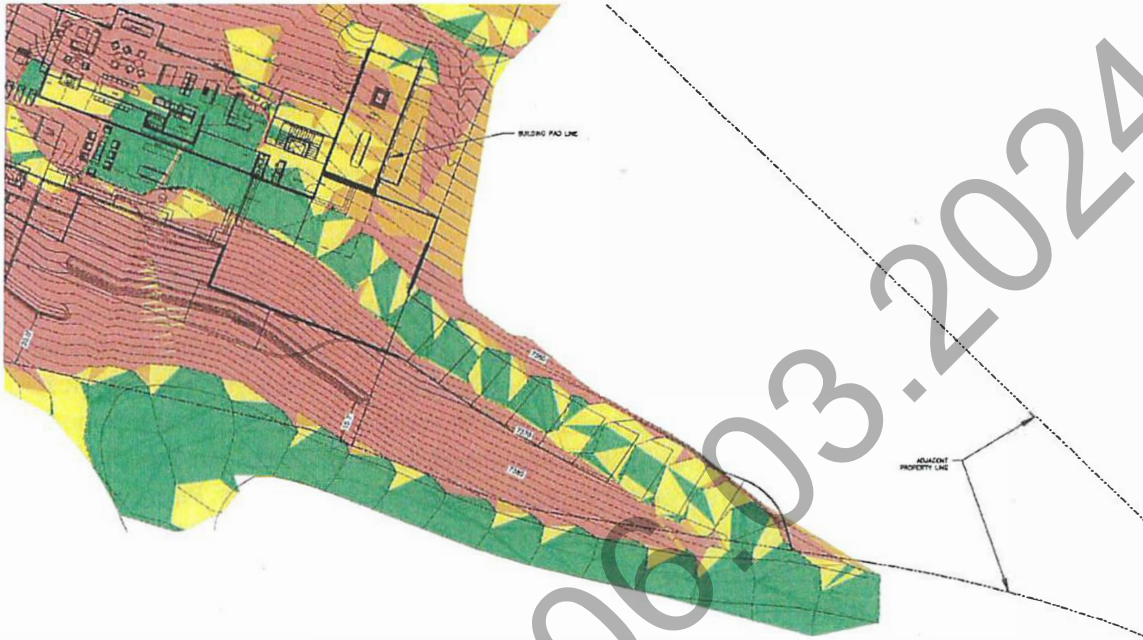
proposed Conditions of Approval Staff recommended that the Planning Commission require that the Applicant obtain my clients' express approval to modify their 200 King property. In the February 14, 2024 hearing, the Applicant objected to this condition of approval. And in the final conditions of approval, City Staff (without any discussion with the Planning Commission) removed this requirement and included only this condition:

To conduct construction across the neighboring 200 King Road property, including any additional width required to accommodate the installed improvements, all work shall be limited within the platted easement. The applicant shall submit required approvals for any work or structures proposed outside of the easement at 200 King Road." See February 21, 2024 Staff Report, Exhibit C.

The Applicant is proposing to re-grade and construct retaining walls on much of my clients' property. During the February 14, 2024 hearing discussion regarding the CUP, Commissioner Johnson asked the Applicant whether there would be any eight-foot retaining walls constructed that would not be hidden from view by the Applicant's proposed structure. The Applicant represented that the only over-height retaining walls would be screened from view by the proposed structure. However, what was not discussed in that context were the substantial eight-foot retaining walls the Applicant proposed to construct on my clients' 200 King Road property. Page two of the Applicant's proposed grading plan, shown below, includes two eight-foot concrete retaining walls on my clients' property. One of these walls is ninety feet long and the other is forty-five feet long. The combined eight-foot wall stretches one hundred and thirty-five feet.

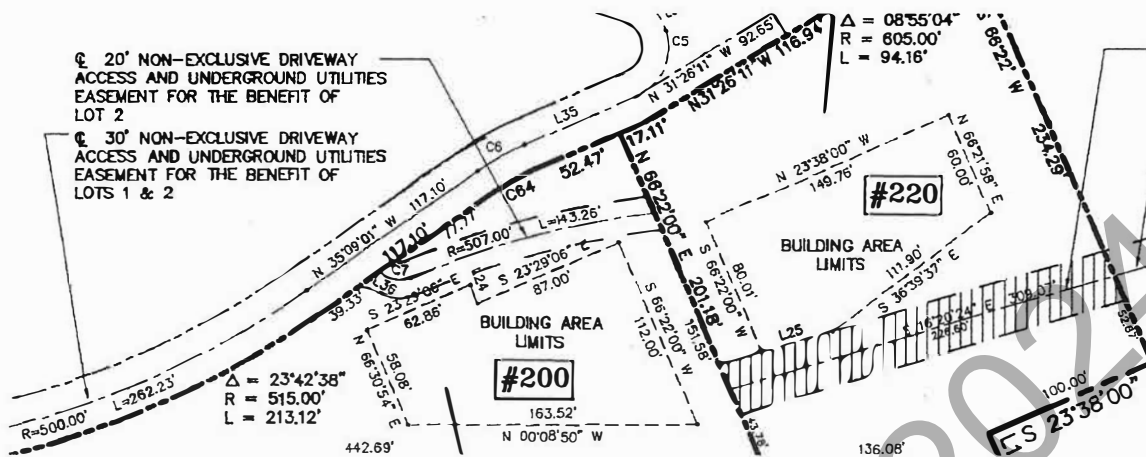


The proposed retaining walls are also located in the Very Steep Slope area of my clients' lot, as demonstrated at page 4 of Alliance Engineering's report provided by the Applicant.



In spite of the fact that they're proposing to install retaining walls along much of my clients' lot, the Applicant did not provide any input on the impact this will have on access for 200 King Road from the non-exclusive easement. Nor have they provided any analysis on the impact this excavation will have on my clients' primary residence, which is located directly down slope from their 200 King lot.

It is important to note that the Applicant's right to access over my clients' 200 King Road property is very limited. The "platted easement" is simply a 20' wide "non-exclusive" driveway and utility access. The entire statement of the easement is included in the following excerpt from the plat:



STANDARD OF REVIEW

Park City LMC § 15-1-18G instructs that the Appeal Panel “shall act in a quasi-judicial manner.” “The appeal authority shall review factual matters de novo, without deference to the land use authority’s determination of factual matters.” And “[t]he 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.” Finally, the Appeal Panel’s review is not limited to the record below: rather, “[n]ew evidence may be received so long as it relates to the scope of the appeal.”

ARGUMENT

Through the CUP, The Planning Commission improperly granted Applicant the unilateral right to modify the non-exclusive access easement over the Fredston-Hermanns’ property.

It is axiomatic that an easement’s use may not unreasonably interfere with the property rights of the servient estate. “Whenever there is ownership of property subject to an easement there is a dichotomy of interests, both of which must be respected and kept in balance. On the one hand, it is to be realized that the owner of the fee title, because of his general ownership, should have the use and enjoyment of his property to the highest degree possible, not inconsistent with the easement. On the other, the owner of the easement should likewise have the right to use and enjoy his easement to the fullest extent possible not inconsistent with the rights of the fee owner.”¹

¹ *Nyman v. Anchor Dev., L.L.C.*, 2003 UT 27.

The rights of the owner of fee title are all the more important where the easement is “non-exclusive” because it is contemplated that they (and potentially others) will also use the easement.

Here, the Fredston-Hermanns reserved the right to use the driveway for access to their lot. The driveway is located directly adjacent to the building area limits for the 200 King Road property. The most efficient means of accessing that building area will be from the already constructed driveway access. The Applicant and Staff are operating under the incorrect assumption that the Applicant may make any modifications to the driveway it desires so long as the work stays within the 20’ non-exclusive easement—regardless of the impact that work may have on the Fredston-Hermanns’ use of their property.

The flaw in this approach is apparent when you consider other non-exclusive easements in the area. For example, my clients have a non-exclusive access right over the Sweeney trails that run through the 220 King Lot. But this does not mean they have the unilateral right to enter the 220 King property (staying within the boundaries of the easement) and re-grade it to make their use of the Sweeney trails more convenient. Like the Applicant’s driveway access, my clients’ right to use the Sweeney trails is limited by its non-exclusive nature. Any attempt to re-grade the Sweeney trails would interfere with 220 King’s rights—along with others who hold non-exclusive rights to the Sweeney Trails.

If the project proceeds as currently conditioned, it will mean that any applicant who holds a non-exclusive easement over another’s property is entitled to modify that easement as it sees fit, so long as it stays within the geographic bounds of that easement. There are literally thousands of non-exclusive easements within Old Town alone. The continued grant and use of those non-exclusive easements depends upon cooperative use of non-exclusive easements, with proper deference to the rights of the property those easements burden.

Finally, it bears repeating that the Applicant is seeking its approval without meeting the Very Steep Slope requirements of the Sensitive Land Overlay (“SLO”). Park City’s Land Management Code is very clear about the requirements for developing in the SLO. An applicant is required to provide a “Sensitive Lands Analysis” that is then reviewed by Staff who is to issue a “Sensitive Lands Determination.” See Park City Land Management Code § 15-2.21-2. Here, no analysis has been provided and no affirmative determination made.

Additionally, where steep slopes are involved, “The Applicant must prove that the Development will have no significant adverse impact on adjacent Properties.” LMC § 15-2.21-4 (H)(d). The Planning Commission can only determine that the steep slope requirements are met “if the Applicant proves: (1) [t]he Density is Compatible with that of adjacent Properties; (2) [t]he Architectural Detail, height, building materials, and other design features of the Development are Compatible with adjacent Properties; and (3) [t]he Applicant has adopted appropriate mitigation measures such as landscaping, Screening, illumination standards, and other design features to buffer the adjacent Properties from the Developable Land.” *Id.*

The Applicant has not and cannot prove any of these elements. To make matters worse, the Applicant is taking the position (and Staff appears to agree) that it does not need my clients' permission to construct retaining walls across much of their property—including an area of Very Steep Slopes.

CONCLUSION

The Planning Commission erred by failing to provide due consideration for the impacts this project will have on the Fredston-Hermanns' property, which will be substantially modified by the grant of the proposed CUP as conditioned—without their participation, review, or approval. For this reason, the Appeal Board should reverse the Planning Commission's grant of the CUP.

Very Truly Yours,
HOGGAN LEE HUTCHINSON



Justin J. Keys

Approved 06.03.2024



HOGGAN LEE HUTCHINSON

Justin Keys
Justin@hlhparkcity.com
Direct: 435.731.9195

March 1, 2024

VIA EMAIL & HAND DELIVERY

Park City Appeal Panel
Michelle Kellogg, City Recorder
michelle.kellogg@parkcity.org
PO Box 1480
Park City, Utah 84060

Re: Petition to Appeal the Conditional Use Applications and Plat Amendment Application for 220 King Road Approved at the February 21, 2024 Hearing

Dear Panelists,

The undersigned and those listed in the attached Exhibit A file this petition to appeal the approvals of Plat Amendment # PL-22-05319 as well as Conditional Use Permit # PL-23-05571 (the "Steep Slope CUP"), Conditional Use Permit # PL-22-05318 (the "Single-Family Dwelling CUP"), and Conditional Use Permit # PL-22-05523 the "Accessory Uses CUP") (collectively the "CUPs"). Each of the undersigned submitted written comment or testified in opposition to the CUPs and Plat Amendment, or own property within 300 feet of the boundary of the subject site. In addition, attached as Exhibit B is a list of Park City residents who may not have standing under a strict interpretation of Park City Land Management Code §15-1-18(D) but who support this appeal and have consented to expressing that support by allowing us to affix their name to the Exhibit B list.

We and many other residents in the Old Town and Rossi Hill subdivisions believe the approval of the above-mentioned CUPs and Plat Amendment should be reversed.

On February 21, 2024, a split Planning Commission Approved Findings of Fact and Conclusion of Law with limited conditions to (1) Amend the Plat Notes to the Treasure Hill Subdivision, Phase 1; (2) for Conditional Use Permits for Residential Design of the Proposed Structure and accompanying pool; and (3) for a Conditional Use Permit to Construct in the Very Steep Slope of the Sensitive Lands Overlay.

STANDARD OF REVIEW

Park City LMC § 15-1-18G instructs that the Appeal Panel "shall act in a quasi-judicial manner." "The appeal authority shall review factual matters de novo, without deference to the land use authority's determination of factual matters." And "[t]he 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



APPROVED 03-2024

unless the land use regulation plainly restricts the land use application.” Finally, the Appeal Panel’s review is not limited to the record below: rather, “[n]ew evidence may be received so long as it relates to the scope of the appeal.”

ARGUMENT

The Appeal Panel should reverse the Planning Commission’s decision to Amend the Plat Notes to the Treasure Hill Subdivision and approve the CUPs because the Planning Commission (1) failed to properly apply the Park City Land Management Code, (2) the proposed structure does not meet the express requirements of the Park City Land Management Code, and (3) the Planning Commission does not have the authority to exempt the Applicant from the LMC provisions the proposed structure violates.

1. *The Planning Commission’s decision relied on the incorrect assertion by the Applicant that only the restrictions in the MPD and Subdivision Plat, rather than the Land Management Code, apply to this property.*

The Planning Commission erred in accepting the Applicant’s claim that rules from the Land Management Code (LMC) do not apply if they are different from the restrictions in the Sweeney MPD.¹ This assertion directly contradicts the conditions stipulated in the Sweeney MPD. Section III (1) of the Sweeney MPD states that “[a]t the time of conditional use or subdivision review, the staff and Planning Commission shall review projects for compliance with the adopted codes and ordinances in effect at the time, in addition to ensuring conformance with the approved Master Plan.” Although the Applicant acknowledges this provision in its January 24 letter to the Planning Commission, it argues that the Land Management Code should be ignored where the Plat or MPD have more permissive restrictions. The primary reasoning for this, given by the Applicant, is not based on any law, precedent, or a conflicting provision, but rather that “[o]therwise, the MPD would have no meaning.” This argument is groundless. The restrictions in the MPD remain meaningful even if the property is subject to stricter LMC rules. The logical reading of the above clause is that the MPD and LMC work together to set the limits for projects in the development.

The appropriate application of the LMC and MPD is that the stricter of the two restrictions apply. If the LMC is changed to be more permissive, than the restriction from the MPD would be the governing restriction. When the LMC is stricter, it governs. The LMC rules for the HR-1 district apply to every property in the HR-1 district. The rules in the Sweeney MPD apply to every property in the MPD. If the property is in both the Sweeney MPD and the HR-1 district, as 220 King is, then both sets of rules apply. When two equally applicable sets of rules govern an overlapping area, the stricter rule is the one that must be followed. For example, if Park City passed a law making it illegal to serve alcohol after 10 pm and Utah were to later pass a law making it illegal to serve alcohol after 9 pm, the 9 pm cutoff would govern. If the state were to, however, change its rule to 11 pm, the applicable cutoff in Park City would become 10 pm because it is the stricter of the two rules. It would be patently absurd to argue that the less strict rule covering the smaller overlapped area is the applicable cutoff simply because it would be meaningless otherwise. This same principle applies to the MDP and LMC in this case. Within the overlapping area, the stricter rule applies.

¹ Exhibit C. Letter from Wade R. Budge, Attorney for Applicant, to Planning Commission (January 24, 2024).

The second argument advanced by the applicant for why the LMC does not apply are statements made by City staff. The most notable is a quotation from a 1985 letter by City Attorney Tom Clyde to Ed Sweeney (the original applicant for the Sweeney MPD). He stated: "Having filed your development proposal and paid the fees with the Planning Department, your zoning rights with respect to this particular project and application are vested under the existing zoning and would not be affected by subsequent zone changes." While this appears to support the Applicant's argument, the timing of the statement makes it inapplicable here. The 1985 letter is dated as received June 26, 1985. The Sweeney MPD was approved on December 18, 1985. Thus, even if Tom Clyde's statement was correct at the time, the subsequent inclusion of the provision requiring compliance with the zoning code "at the time of" conditional use review rendered it irrelevant. While standard practice may be that land use applications are governed by the zoning code in place when the application is filed, the specific terms of this MPD dictate that the houses built in the Sweeney MPD are to comply with the LMC as it reads at the time of the conditional use review. There are other statements in the record supporting the idea that properties in the MPD are not subject to code changes, however, these statements have no authority in this case as statements made by staff in direct contradiction of written terms are not binding.

In addition to the Sweeney MPD, 220 King Rd. is bound by restrictive covenants which state that the "zoning ordinances of Park City . . . are in full force and effect" and that "no Lot shall be occupied or used in a manner that is in violation of any such ordinance or code."² The argument by the Applicant that the LMC does not apply to this property or only applies when the MPD and Plat are silent is impossible to reconcile with the restrictive covenants stating that the zoning ordinances of Park City (i.e. the LMC) are in "full force." If the LMC does not apply or only applies in a limited manner it is not in "full force and effect." Likewise, because the restrictive covenants were put in place in 1996 (ten years after the Sweeney MPD) it would not make sense for the restrictive covenants to state that the LMC is in "full force and effect" if only the ordinances in place prior to the creation of the Sweeney MPD applied to this property. The restrictive covenants also specifically require that "[a]ll improvements and construction on the Covered Property is subject to the applicable existing architectural and other design and building restrictions in effect now and from time to time in the future." This further reinforces that any structure built on 220 King must comply with all current design rules (i.e., historic design regulations, roof size and shape restrictions, height restrictions, etc.)

2. *The proposed structure does not meet the express requirements of the Park City Land Management Code as expressly required by the Sweeney MPD and the Restrictive Covenants.*

The Applicant's proposed structure on 220 King Rd. violates numerous provisions of the LMC. These include limitation requirements for height, roof shape, building footprint, design, and the Sensitive Land Overlay.

First, the proposed structure exceeds the LMC's height requirements. The LMC limits exterior height for buildings with pitched roofs in the HR-1 district to 27 feet from existing grade.³ Here,

² Exhibit D. Declaration of Restrictive Covenants (King Road Lots)(2)(a).

³ LMC § 15-2.2-5.

the plans approved by the Planning Commission (and required to remain the same as a condition of approval) not only exceed the 27 feet required by the LMC but also the 30 foot limit stated in the plat (even after this amendment) and the 25 feet required by the Sweeney MPD. The MPD specifically states in its height restrictions that parcels in the HR-1 district "shall abide by the Land Management Code and no height exceptions will be considered."⁴ The external building height here, therefore, violates the MPD, Plat, and LMC.

Additionally, the Applicant has insisted that where LMC § 15-2.2-5(A) says "lowest finish floor plane" what it really means is "lowest finished floor." This interpretation, however, does not comport with the intention of the Planning Commission and Council when reviewing the staff report and minutes when the ordinance creating this phrasing, Ord. No. 13-48, was approved.⁵ The discussion shows that what this change was trying to achieve was to maintain roughly the same height requirements for HR-1 and HR-2 that were previously in place while granting the flexibility to property owners to have split level floor plans that would have conflicted with the previous restrictions—reversing the trend of people going deeper with their bottom floor. The Staff Report when this change was made establishes that the change was intended to maintain a similar restriction of three standard stories, including the basement level, while allowing for split level plans of a similar height to a standard three-story home.

Planning Commission minutes from January 9, 2013 discussing this change show that one of the problems they were concerned about was the depth of basements. With this concern in mind, it does not make sense that they would have intended this provision to mean you can build down as far as you want and have an unlimited internal height if there is only thirty-five feet from the lowest "finished" floor to the point of the highest wall top plate. It appears from the wording⁶ that the planning commission forwarded a positive recommendation on that the word "finish" was never intended to be put into the code here but rather was accidentally left in Exhibit A of Ordinance No. 13-48 from a previous draft. The word "finish" must be read within the context of what the Planning Commission and Council were trying to achieve. If a floor can be easily converted into livable space (i.e., partially or fully above grade and not exclusively mechanical space or a crawl space) it should be considered for the internal height restrictions. It was clearly not intended that someone would be allowed to build two floors to a depth of twenty-four feet below the point at which the internal height is measured from.

Staff found the internal height of the building to be 53.5 feet, but the Applicant convinced the Planning Commission of the incorrect notion that the internal height requirements did not apply and argued that even if they did apply, they could comply by simply not finishing a massive portion of the house. As the internal height requirements do apply, the house does not comply with the internal height restriction as Council intended it to function when approving it. The Applicant should not be allowed to get around this rule simply by having the plans show the space as "unfinished" (especially considering the Applicant's representative refused to agree to a condition requiring that the Applicant not go in later and finish these floors).

⁴ Exhibit E, Sweeney MPD (III)(5)(a).

⁵ Exhibit F, Staff Report for PL-13-01889.

⁶ "A Structure shall have a maximum height of thirty five feet (35') measured from the lowest floor plane to the point of the highest wall top plate that supports the ceiling joists or roof rafters."

Within the height restrictions of LMC § 15-2.2-5 are also restrictions on roof pitch that the Applicant's proposed structure violates. LMC § 15-2.2-5(C) requires that homes in the HR-1 district have a roof pitch for the Contributing Roof Form⁷ of between seven: twelve and twelve: twelve. Here the proposed building's Contributing Roof Form has a roof pitch of three: twelve. Even under the Applicant's theory of Section III(1) of the Sweeney MPD (that the LMC applies only when the Plat and MPD are silent) this is a violation as neither the MPD or Plat mention roof pitch.

Beyond the proposed structure's height violations, it violates the building footprint requirements. The LMC limits the building footprint to 4,500 square feet and MPD and Plat set the building footprint limit at 3,500 square feet. As the MPD is more restrictive, it governs. The MPD does not have a method of calculating building footprint. As it was written to incorporate the LMC, the LMC definition should be used to determine whether the proposed structure complies with the MPD.

The Plat has its own method of measuring the building footprint which has been modified to try to maneuver around its own rules since the proposed structure does not comply with the Plat limits. Even with the Plat Amendment, however, the proposed structure should not be viewed as in compliance with the Plat's building footprint limit. Under the LMC method, the Planning Department calculated the building footprint to be approximately 11,300 square feet, well beyond both the MPD limit and the LMC limit on building footprint.

The calculation would be the roughly the same (still well above the limit) under the Plat's rules both before and after amendment depending on whether or not the space where they intend to park their cars is a garage or not. Plat Note 2 (both before and after amendment) says that footprint "shall be calculated from the outside face of walls on any single level, and a maximum of three thousand five hundred (3,500) square feet footprint including garages." In an attempt to avoid this restriction, the Applicant has chosen to refer to the area where cars will be parked as a "parking area" rather than a "garage" and amend Plat Note 2 by adding to the exceptions from footprint calculation "that portion of any carport, mechanical space, parking area, or living space that is located below existing grade and which has landscaping or deck (as provided in 1(a)) located above it." The Applicant argued to the Planning Commission that the difference between a "garage" and "parking area" is determined by whether the space has a door, but the Applicant's assertion that the subject space is a parking area and not a garage simply because it does not have a door is baseless. "Garage" and "parking area" are not defined by the MPD or the Plat, but they are defined by the LMC. Those definitions support that the relevant space is a garage. The LMC definitions are:

Garage, Private. An Accessory Building, or a portion of the Main Building, used for the storage of motor vehicles for the tenants or occupants of the Main Building and not by the general public.⁸

⁷ As defined in LMC § 15-15-1: "The most visually prominent roof form viewed from the primary public right-of-way.

⁸ LMC § 15-15-1. There are four definitions for Garage in the LMC Defined Terms (Commercial Garage, Front Facing Garage, Private Garage, and Public Garage).

PARKING AREA. An unenclosed Area or Lot other than a Street used or designed for parking.⁹

The space cannot be a parking area because it is enclosed. The plans for the proposed structure show that at the level where cars will be parked is underground, surrounded by walls on all four sides, and has a ceiling and floor. That is the very definition of enclosed.¹⁰ The argument that a space is not enclosed just because there is an entryway twelve feet above the space at the end of a long tunnel despite the space being surrounded by walls is frivolous. The space does, however, fit the definition of Private Garage. It is a portion of the main building that is intended to be used for the storage of motor vehicles by the occupants. The Applicant's requested edits to Plat Note 2 suggest that even the Applicant knows that this space is a garage and not a parking area. Although Plat Note 2 was amended, the Planning Commission did not acquiesce to all the Applicant's requested changes. The Applicant sought to have "including garages" deleted from the section of Plat Note 2 discussing what is included in the footprint calculation and adding "garages" to the list of new exceptions in the note. If this space is not going to be a garage, there would be no reason for the Applicant to try excluding garages. Since the space is a garage, the proposed structure violates the building footprint requirement, regardless of whether the Plat method or the LMC method is used to calculate the footprint.

Further, the proposed structure violates the design requirements of LMC (beyond the roof design issue discussed above). LMC § 15-13-8(A)(4) requires that "new infill residential buildings shall differentiate from historic structures but be compatible with historic structures in materials, features, size, scale and proportion, and massing to protect the integrity of the Historic District as a whole. The massing of the new infill residential buildings shall be further broken up into volumes that reflect the original massing of historic buildings: larger masses shall be located at the rear of the lot." As stated in the report from the from the only Qualified Historic Preservation Profession in the record, the design fails to meet any of the requirements in this LMC section.¹¹ The report emphasizes that the project is not compatible in size, scale, and proportion and states that the materials and features are compatible with industrial design in the area but not with residential design as required for the HR-1 zone. Likewise, the massing requirements of LMC § 15-13-8(B)(2)(a)(9) were not met since the modules on the primary facades exceed 25 feet in width.

Finally, the approval of the Steep Slope CUP violates the Sensitive Land Overlay Zone (SLO) Regulations.¹² The Applicant is shifting the building envelope into the Very Steep Slope of the Sensitive Land Overlay ("SLO"). Park City's Land Management Code has strict requirements for developing in the SLO. An applicant is required to provide a "Sensitive Lands Analysis" that is then reviewed by Staff who is to issue a "Sensitive Lands Determination."¹³ Here, no analysis has been provided and no affirmative determination made. Where steep slopes are involved, an applicant must also "prove that the Development will have no significant adverse impact on adjacent Properties."¹⁴ The Planning Commission can only determine that the steep slope requirements are met "if the Applicant proves: (1) [t]he Density is Compatible with that of adjacent

⁹ LMC § 15-15-1.

¹⁰ See *Enclose*, MERRIAM WEBSTER COLLEGIATE DICTIONARY (11th ed. 2003).

¹¹ See Exhibit G, SWCA Memo.

¹² LMC § 15-2-21.

¹³ LMC § 15-2-21-2.

¹⁴ LMC § 15-2-21-4 (H)(d).

Properties; (2) [t]he Architectural Detail, height, building materials, and other design features of the Development are Compatible with adjacent Properties; and (3) [t]he Applicant has adopted appropriate mitigation measures such as landscaping, screening, illumination standards, and other design features to buffer the adjacent Properties from the Developable Land.”¹⁵

The Applicant has not and cannot prove any of these elements. The proposed density of more than 20,000 square feet is not compatible with adjacent properties. The industrial architectural design details with its massing, scale, and height are not compatible with the adjoining residential properties. Nor has the Applicant demonstrated how it is taking any mitigation measures to buffer adjoining properties.

3. *The Planning Commission does not have the authority to exempt the Applicant from the LMC provisions the proposed structure violates.*

While it is possible to attain exceptions from the requirements of the LMC, CUPs and Plat Amendments are not the legally authorized tool for granting these exceptions. Nor is the Planning Commission the body empowered to make such exceptions. LMC § 15-1-11 requires that any such variance (i.e., exception) must be reviewed and approved by the Board of Adjustment, not the Planning Commission. If the Applicant wants to build this non-conforming structure in the HR-1 district, it must use the same process as anyone else seeking to avoid one of the LMC’s requirements. Whether or not the Applicant should be allowed to proceed with the proposed structure, with its many LMC violations, should be determined by the Board of Adjustment under the strict standards of LMC § 15-10-8(C)—not the Planning Commission based on subjective personal preferences.

CONCLUSION

Based on the foregoing, we respectfully request that you reverse the Planning Commission’s decision on applications # PL-22-05318, # PL-22-05319, # PL-22-05523, and # PL-23-05571 to ensure that the LMC is properly enforced and the appropriate review process is followed. Thank you for your consideration in this matter. Please feel free to contact us if you have any questions.

Very Truly Yours,
HOGGAN LEE HUTCHINSON



Justin J. Keys

Encl.

¹⁵ *Id.*

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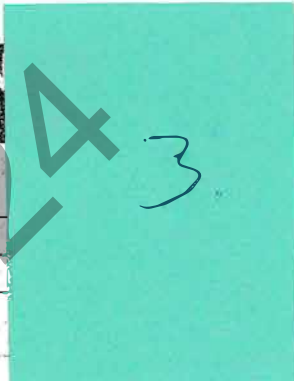


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PROJECT BEING APPEALED

PROJECT NAME: 220 King Road Plat Amendment and Conditional Use Permits
ADDRESS: 220 King Rd., Park City, UT 84060
LAND USE AUTHORITY BEING APPEALED: Planning Commission
DATE OF FORMAL ACTION: 2/21/24

APPELLANT INFORMATION

NAME: DAVID BENNETT
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EMAIL: DAVIDBENNETT@MAC.COM

APPELLANT REPRESENTATIVE

NAME: Justin Keys
MAILING ADDRESS: 1225 Deer Valley Drive, Suite 201
Park City, UT 84060
PHONE #: (435) 714-7676
EMAIL: Justin@hlhparkcity.com

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Signature of Applicant: *David Bennett*
Name of Applicant: DAVID BENNETT
Mailing Address: 2140 AMERICAN STAIR PRINTED
PC 84060
Phone: (435) 731-7000 Fax: _____
Email: DAVIDBENNETT@MAC.COM
Type of Application: Appeal to Appeal Panel of CUPs and Plat Amendment granted by Planning Commission

Approved 06-03-2024

PARK CITY MUNICIPAL CORPORATION
PLANNING DEPARTMENT
445 MARSAC AVE ° PO BOX 1480
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ADDRESS: 220 King Rd., Park City, UT 84060
LAND USE AUTHORITY
BEING APPEALED: Planning Commission
DATE OF FORMAL
ACTION: 2/21/24

Co- APPELLANT INFORMATION

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PHONE #: (435) 714-7676

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DC

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Signature of Applicant: David Constable

Name of Applicant: DAVID CONSTABLE
PRINTED

Mailing Address: Box 86A 60
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Phone: 435-640-0597 Fax: _____

Email: DELRJC49@MSN.COM

Type of Application: Appeal to Appeal Panel of CUPs and Plat Amendment granted by Planning Commission

Approved 06.03.2024

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BEING APPEALED: Planning Commission

DATE OF FORMAL
ACTION: 2/21/24

APPELLANT INFORMATION

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Signature of Applicant: 
Name of Applicant: Ed DeSisto
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Park City, UT 84060
Phone: 435-649-0453 Fax: _____
Email: eddesisto - 7 @ hot mail . com
Type of Application: Appeal to Appeal Panel of CUPs and Plat Amendment granted by Planning Commission

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LAND USE AUTHORITY
BEING APPEALED: Planning Commission

DATE OF FORMAL
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APPELLANT INFORMATION

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MAILING
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PHONE #: 435-640-7046

EMAIL: gingertolman@gmail.com

APPELLANT REPRESENTATIVE

NAME: Justin Keys

MAILING
ADDRESS: 1225 Deer Valley Drive, Suite 201
Park City, UT 84060

PHONE #: (435) 714-7676

EMAIL: Justin@hlhparkcity.com

If you have questions regarding the requirements on this application or process please contact a member of the Park City Planning Staff at (435) 615-5060 or visit us online at www.parkcity.org.

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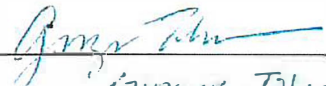
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Signature of Applicant: 
Name of Applicant: Emma Tolman
Mailing Address: P.O. Box 427, Park City, UT 84002
Phone: 435-640-7046 Fax: _____
Email: emma.tolman@gmail.com
Type of Application: Appeal to Appeal Panel of CUPs and Plat Amendment granted by Planning Commission

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CO-APPELLANT INFORMATION

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435-901-8660
PHONE #: 435-901-8660
EMAIL: jdoilney@gmail.com

APPELLANT REPRESENTATIVE

NAME: Justin Keys
MAILING
ADDRESS: 1225 Deer Valley Drive, Suite 201
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Signature of Applicant: ^{CO-} *J. Doilney*
Name of Applicant: JAMES A. DOILNEY PRINTED
Mailing Address: Box 4557 ⁶⁰
PARK CITY UT 84060
Phone: 435-901-8660 Fax: _____
Email: jdoilney@parkcity.org
Type of Application: Appeal to Appeal Panel of CUPs and Plat Amendment granted by Planning Commission

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PARK CITY, UT 84060
(435) 615-5060



APPEAL OF A LAND USE DETERMINATION

For Office Use Only

BOARD REVIEW

APPROVED _____

DENIED _____

PROJECT PLANNER _____

APPLICATION# _____

DATE RECEIVED _____

EXPIRATION _____

PROJECT BEING APPEALED

PROJECT NAME: 220 King Road Plat Amendment and Conditional Use Permits

ADDRESS: 220 King Rd., Park City, UT 84060

LAND USE AUTHORITY
BEING APPEALED: Planning Commission

DATE OF FORMAL
ACTION: 2/21/24

APPELLANT INFORMATION

APPELLANT REPRESENTATIVE

NAME: John Vrabel

MAILING
ADDRESS: Box 876

Park City, UT

PHONE #: 435 640 5588

EMAIL: _____

NAME: Justin Keys

MAILING
ADDRESS: 1225 Deer Valley Drive, Suite 20

Park City, UT 84060

PHONE #: (435) 714-7676

EMAIL: Justin@hlhparkcity.com

SUBMITTAL REQUIREMENTS – All of the following items must be included in order for the Planning Department to take the application.

1. Completed and signed application form.
2. Application Fee: \$500 (already paid)
3. Appeals must (a) be by letter or petition, and contain the name, address, and telephone number of the petitioner, their relationship to the project or subject Property, and (b) must contain a comprehensive statement of all the reasons for the appeal, including specific provisions of the law, if known, that are alleged to be violated by the action taken
4. Any additional information that will assist in clearly understanding the nature of the appeal.
5. An electronic Excel spreadsheet with property owner, Summit County Assessor Parcel Number, and mailing address for all parties who received mailed notice for the action being appealed. Template is available through <https://www.parkcity.org/departments/planning>.
6. One (1) electronic copy of the required materials in PDF format.

PLEASE NOTE:

STANDING TO APPEAL: The following has standing to appeal a Final Action:

1. Any Person who submitted written comment or testified on a proposal before the Planning Department, Historic Preservation Board, or Planning Commission
2. The Owner of any Property within three hundred feet (300') of the boundary of the subject site;
3. Any City official, Board, or Commission having jurisdiction over the matter; and
4. The Owner of the subject Property

TIMING: All appeals must be made within ten (10) calendar days of the Final Action except for an appeal from a decision by the historic preservation authority which is Staff regarding the Design Guidelines for Historic Districts and Historic Sites or a decision by the Historic Preservation Board regarding a land use application, the applicant may appeal the decision within thirty (30) days after the day on which the historic preservation authority issues a written decision. The reviewing body, with the consultation of the appellant, shall set a date for the appeal. All appeals shall be heard by the reviewing body within forty-five (45) days of the date that the appellant files an appeal unless all parties, including the City, stipulate otherwise.

FORM OF APPEALS: Appeals to the Planning Commission, Board of Adjustment, or Historic Preservation Board must be filed with the Planning Department. Appeals to the City Council must be filed with the City Recorder. Appeals must be by letter or petition, and must contain the name, address, and telephone number of the petitioner; his or her relationship to the project or subject Property; and must have a comprehensive statement of all the reasons for the appeal, including specific provisions of the law, if known, that are alleged to be violated by the action taken. The Appellant shall pay the applicable fee established by resolution when filing the appeal. The Appellant shall present to the appeal authority every theory of relief that it can raise in district court. The Appellant shall provide required envelopes within fourteen (14) days of filing the appeal.

ACKNOWLEDGEMENT OF RESPONSIBILITY

This is to certify that I am making an application for the described action by the City and that I am responsible for complying with all City requirements with regard to this request. This application should be processed in my name and I am a party whom the City should contact regarding any matter pertaining to this application.

I have read and understood the instructions supplied by Park City for processing this application. The documents and/or information I have submitted are true and correct to the best of my knowledge. I understand that my application is not deemed complete until a Project Planner has reviewed the application and has notified me that it has been deemed complete.

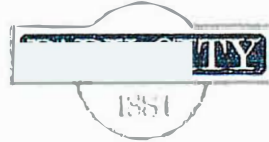
I will keep myself informed of the deadlines for submission of material and the progress of this application. I understand that a staff report will be made available for my review three days prior to any public hearings or public meetings. This report will be on file and available at the Planning Department in the Marsac Building.

I further understand that additional fees may be charged for the City's review of the proposal. Any additional analysis required would be processed through the City's consultants with an estimate of time/expense provided prior to an authorization with the study.

Signature of Applicant: *John Vrabel*
Name of Applicant: John Vrabel PRINTED
Mailing Address: Box 876
Park City, Utah 84060
Phone: 435 640 5588 Fax: _____
Email: jvdesign@comcast.com
Type of Application: Appeal to Appeal Panel of CUPs and Plat Amendment granted by Planning Commission

Approved 06.03.2024

PARK CITY MUNICIPAL CORPORATION
PLANNING DEPARTMENT
445 MARSAC AVE ° PO BOX 1480
PARK CITY, UT 84060
(435) 615-5060



APPEAL OF A LAND USE DETERMINATION

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PROJECT BEING APPEALED

PROJECT NAME: 220 King Road Plat Amendment and Conditional Use Permits
ADDRESS: 220 King Rd., Park City, UT 84060
LAND USE AUTHORITY
BEING APPEALED: Planning Commission
DATE OF FORMAL
ACTION: 2/21/24

APPELLANT INFORMATION

NAME: MARTIENA STAHLKE LEWIS

MAILING
ADDRESS: P.O. BOX 808
Park City, UT 84060

PHONE #: 801-550-9985

EMAIL: tinastlewis@aol.com

APPELLANT REPRESENTATIVE

NAME: Justin Keys

MAILING
ADDRESS: 1225 Deer Valley Drive, Suite 201
Park City, UT 84060

PHONE #: (435) 714-7676

EMAIL: Justin@hlhparkcity.com

ACKNOWLEDGEMENT OF RESPONSIBILITY

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Signature of Applicant: Martiena Stahlke Lewis
Name of Applicant: MARTIENA STAHLKE LEWIS PRINTED
Mailing Address: P.O. BOX 808 60
PARK CITY, UT 84060
Phone: 801-550-9985 Fax: _____
Email: tinaslewis@aol.com
Type of Application: Appeal to Appeal Panel of CUPs and Plat Amendment granted by Planning Commission

Approved 06.03.2024

PARK CITY MUNICIPAL CORPORATION
PLANNING DEPARTMENT
445 MARSAC AVE ° PO BOX 1480
PARK CITY, UT 84060
(435) 615-5060

PARK CITY

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PROJECT NAME 220 King Road Plat Amendment and Conditional Use Permits
ADDRESS 220 King Rd , Park City, UT 84060
LAND USE AUTHORITY
BEING APPEALED Planning Commission
DATE OF FORMAL
ACTION 2/21/24

APPELLANT INFORMATION

NAME Nicholas J Schappert
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84060
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EMAIL norskic@gmail.com

APPELLANT REPRESENTATIVE

NAME Justin Keys
MAILING ADDRESS 1225 Deer Valley Drive, Suite 20
Park City, UT 84060
PHONE # (435) 714-7676
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ACKNOWLEDGEMENT OF RESPONSIBILITY

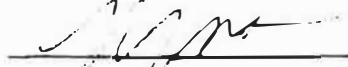
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Signature of Applicant



Name of Applicant

Nicholas Schapper

PRINTED

Mailing Address

PO 2757 Park City UT 84060

Phone

435-659-4496

Fax

Email

norsknic@gmail.com

Type of Application

Appeal to Appeal Panel of CUPs and Plat Amendment granted by Planning Commission

Approved 06/03/2024

EXHIBIT A

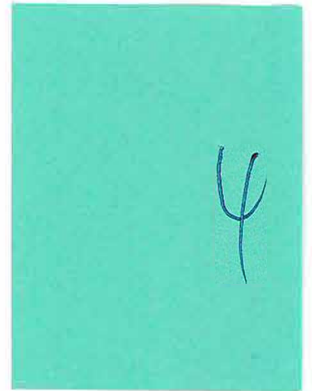


EXHIBIT B

Approved 06/03/2024

EXHIBIT C

Approved 06/03/2024

Snell & Wilmer

15 WEST SOUTH TEMPLE
SUITE 1200
GATEWAY TOWER WEST
SALT LAKE CITY, UT 84101
801.257.1900 P
801.257.1800 F

Wade R. Budge
wbudge@swlaw.com

January 24, 2023

Park City Planning Commission
Park City Municipal Corporation
445 Marsac Avenue
Park City, UT 84060

Re: 220 King Road items in advance of 1/24/2024 work session. PL-22-05319; PL-22-05318; PL-23-05571

Dear Commission,

This firm represents Pesky Porcupine, LLC (“**Pesky Porcupine**”), the owner of the real property located at 220 King Road, Park City, Utah, known as Lot 2 in the Treasure Hill Subdivision (“**Lot 2**”). As you know from our October 11th work meeting, our client has two pending applications—a plat amendment and another for conditional use permit¹ for a home² (“**Applications**”). These Applications, once approved, will improve the neighborhood. This is because the Applications propose one architecturally significant residence to replace two architecturally insignificant homes built in 1997 and 2000, that had previously been used as nightly rentals.

This letter has two main parts. First, the letter offers a brief preview of important items for our upcoming January 24th work session and second, the letter sets forth a summary of corrections to some of misstatements in the January 19th staff report. We will follow up directly with the planning staff and the legal department regarding the misstatements after today’s work session and in advance of the February 14th public hearing. As such, we would like to focus our discussion this evening on understanding the site that is Lot 2 and the details related to the new home itself.

¹ According to the Lot 2, Phase I, Treasure Hill Subdivision plat note #9, “[f]inal house design shall be reviewed under the Small Scale Master Plan Process in accordance with the Sweeney Master Plan.” Because the city no longer has a Small Scale Master Plan process, we understand we are required to have the house approved through this conditional use permit.

² A third application is also pending for a steep slope conditional use permit, which we would anticipate would be rolled into the conditions for approval for the home. The steep slope conditional use permit is numbered PL-23-05571.

A. The Neighborhood.

Lot 2 is one of the seven residential lots in the Treasure Hill subdivision which subdivision was approved by and is included within the Sweeney Large Scale Master Plan Development approved in December 1985. Six lots have residences and one remains vacant. Below is a comparative table that helps orient the Commission to the neighborhood. Of note, the blue field is for the subject Lot 2. The green blocks are the proposed changes to Lot 2 according to the Applications. The Commission will note that our proposal is to reduce the size of the building area by nearly 500 square feet. We also are proposing to reduce the footprint size of the existing structures from 3,936 square feet to the 3,500 square feet. This size of 3,500 square feet meets the requirement in Plat Note 1 of the Lot 2 plat, which notes are attached to this letter as Exhibit A.

Plat	Lot #	Building Area Limits (sq ft)	Lot Area (acres)	Building Footprint (approx. sq ft)	Building size (sq ft)
Treasure Hill Subdivision Phase 1 - 1996	Lot 1 (200 KING RD)	12,700	0.86	NA	NA
	Lot - 2 (220 King Rd)	Existing Total - 14,716 Proposed Total - 14,226	1.23	Existing - 3,936 sq ft (survey) Proposed - 3,500 sq ft	Existing Total - 6,965 sq ft (Summit County Tax Info - both homes) Proposed - 7,531 sf (finished) 5,901 sf (unfinished)
	Lot - 3 (425 NORFOLK AVE)	17,000	1.31	2,620 sq ft	Total - 3,881 sq ft (Summit County Tax Info)
	Lot - 4 (375 NORFOLK AVE)	7,500	1.1	5,178 sq ft	Total - 10,813 sq ft (Summit County Tax Info)
	Lot - 6 (503 1/2 WOODSIDE AVE)	7,650	0.79	4,268 sq ft	Total - 9,161 sq ft (Summit County Tax Info)
Treasure Hill Subdivision Phase II - 2003	Lot - 7 (503 WOODSIDE AVE)	7,500	0.92	4,182 sq ft	Total 9,214 sq ft (Summit County Tax Info)
	Lot - 8 (445 KING RD)	29,083.90	11.9	4,280 sq ft	Total - 8,738 sq ft (Summit County Tax Info)

The proposed footprint for the new Lot 2 home is smaller than all but one lot, Lot 3, in the Sweeney MPD. The proposed finished space is smaller than all homes except for one lot, Lot 3. The unfinished space is larger than the other homes, but there is no restriction (as described below) on unfinished space. As for height, the issue of what standard applies is stated in the plat, which clearly states in plat Note 4 that a home on this lot may have a total height, measured from existing grade, of "thirty (30) feet." Finally, with respect to plat Note 6, which requires massing to be broken up into areas no larger than 1,500 square feet, the proposed home for Lot 2 achieves this

by including (5) five massing units, the largest one of which is 1,110 square feet and the smallest of which is 345 square feet.

We will present at the work session additional data on the neighborhood so as to assist the Commission's review.

B. Issues Raised by Staff Report

The January 19th staff report attempts to identify issues with the Applications. But, what the report fails to account for is that this home is located in an approved Master Plan Development. This is not a home on a historic, HR-1 lot. Critically, the report does not take into account that the Applications seek, at their essence, to allow a remarkable home, the design of which has garnered written support from significant stakeholders and neighbors, to be built to replace potentially non-conforming homes that all would agree are not architecturally significant. The report also fails to take into account that the new home eliminates existing issues associated with the existing nightly rental of homes on Lot 2. In short, the Applications seek to mitigate the negative impacts associated with bad architecture, bad siting, and bad use and replace it with a conforming, single home with an impeccable design.

Missing from the staff report is the acknowledgment that any item raised as a concern can be fully addressed by this body, the Commission, sitting as the land use authority for these Applications. In both the Sweeney MPD itself, and in plat Note 9 of the Lot 2 plat, it clearly contemplates that each home would be processed using a small scale MPD. But, because small scale MPDs no longer exist in the code, the interpretation, consistent with what was approved first in 1985, is that individual homes would be approved as conditional uses. This is why the Applications here include a conditional use application. Further, with the plat application, we are requesting to modify, and in fact shrink, the buildable area, the Commission is able to make the adjustments to accommodate the design proposed in the Applications.

Another overarching point is that the Sweeney MPD must mean something. It is true that Section III (1) of the MPD states in part that "[a]t the time of conditional use or subdivision review, the staff and Planning Commission shall review projects for compliance with the adopted codes and ordinance in effect at the time, in addition to ensure conformance with the approved Master Plan." The misunderstanding that is arising, as is reflected in some of the staff report's comments, is that if the Land Management Code has changed, which it has since 1986, the most restrictive interpretation must apply. This reasoning is circular. The rule of interpretation is that the specific controls. Otherwise, the MPD would have no meaning. Further, as the city has acknowledged with the Treasure settlement, and other actions, the Sweeney MPD includes vested rights on which a party may rely. The language in the actual Sweeney MPDs clearly address height, address footprint, address massing, and address the area appropriate for development. Later adopted rules can apply. But later adopted rules do not apply if they conflict with express approvals in the Sweeney MPD and the plat. Here's a brief summary of the items we intend to address with planning staff and the legal department.

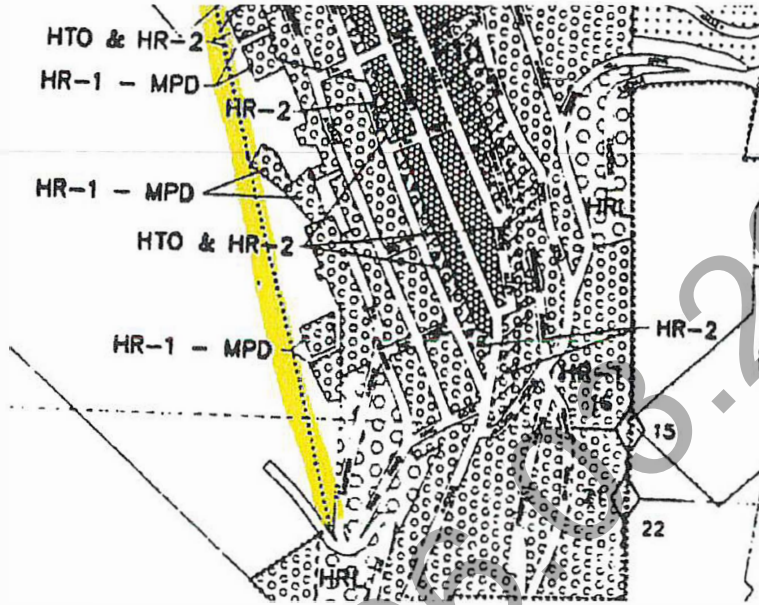
I. Sensitive Land Overlay (SLO).

For the very first time, the January 19th staff report raised the supposed issue that some of Lot 2 may be subject to restrictions found in the sensitive lands overlay zone. Specifically, the report states that “a portion of the west side of the Lot is within the Sensitive Land Overlay (SLO).” This statement is incorrect for two reasons. First, nearly two years ago, when the Applications were being prepared, the applicant’s team consulted with planning staff on this issue. In February of 2022, Gretchen Milliken (former Planning Director) provided the following in an email to a representative of the applicant regarding the SLO:

Additionally, because the MPD (and subsequent amendments) considered the Sensitive Lands Overlay, I don't think we need to request additional SLO materials at the time of application. There does not appear to have been this requirement for other Treasure Hill properties with small portions of the lots within the SLO.

This analysis was discussed with current planning staff over the last two years. At no point did staff change its previously announced view that the SLO is not implicated here. And even if it does touch a small portion of the site, the SLO does not apply because of the approvals granted in the Sweeney MPD and the associated plat approval govern.

Second, the SLO Boundary did not include the single family lots of the Sweeney MPD when adopted. Specifically, by Ordinance 92-17 the City Council adopted the SLO, without a legal description or a map. The map produced two years later, and depicted below, confirms it does not apply to these lots. See below, yellow line purports to be the SLO boundary, and Lots 1 and 2 are labeled “HR-1 MPD”:



Source: 1994 Park City Zoning Map.

No one has produced a zoning map showing that the SLO applies to Lot 2. What has been attached to the staff report are two depictions, Figure 7 and Figure 8, both of which attempt to project an SLO line on the property, but outside of the building area limits. Moreover, even if the SLO were to apply it at most would apply to a small corner where an accessory structure is contemplated, not the area of the main residence. There are two other things to keep in mind. The SLO does not prohibit development. It merely requires additional consideration. Further, the code plainly states that the SLO boundary should not bisect properties. See LMC Section 15-1-6. The boundaries should follow property lines unless there is an express reason for the SLO to bisect a property. There is no such intent or purpose identified here. In other words, the SLO has never applied to the property and even if it does, it would not impact the main residence or frankly the ultimate inclusion of an accessory structure. Finally, the LMC does not support the SLO applying to just a portion of this lot.

2. **Plat Building Footprint Requirements:**

a. *The current LMC definition for Building Footprint uses the furthest exterior wall of the Structure projected to Natural Grade. The Planning Department calculates the Applicant's actual building footprint at approximately 11,300 square feet, using the LMC.*

We believe the above analysis is incorrect. The Treasure Hill Subdivision, Phase I plat includes "Special Restriction for Single Family Homes to be Constructed on Lots 1 Through 4", or "**Plat Notes**". Plat Note 1, attached as Exhibit A-1, states that: "FOOTPRINT. the maximum

Snell & Wilmer

Planning Commission

January 24, 2024

Page 6

footprint, calculated from the outside face of walls and subject to the massing requirements of Note 7, shall be three thousand five hundred (3,500) square feet including garages....". Based on this language, which provides specific instruction on how the footprint is measured, the Project meets the square foot limitation placed on it by the plat. A later adopted rule does not change this right and obligation set forth in the plat. The area of the lowest floor is below 3,500 sq ft. See Exhibit A-2. Additionally, the area of the cantilevered floor is below 3,500 sq ft. See Exhibit A-2. In other words, the Applications carry forward this same 3,500 sq ft maximum to all levels.

The staff report seems to make a claim that the parking area needs to be included within the buildable area. This is not accurate. And this interpretation is contrary to the MPD and its associated plat notes. For example, the area for subgrade access and parking has not been included in the footprint calculation of any other lots in the Sweeney MPD. For instance, the development of the Upper Norfolk lots (Lots 3 and 4) included an area of disturbance over 45,000 sq ft to accommodate the underground access tunnel and subgrade parking. The development of Woodside Ave lots (Lots 6 and 7) included an area of disturbance on 55,250 sq. ft. for the underground access tunnel. The staff report does not account for this fact in its calculations. And as such, the parking area, because it is underground, should not count towards the 3,500 square foot footprint restriction.

b. The primary Structure has been modulated into 4 segments, each under 1,500 square feet, however, 2 of the 4 segments exceed 25 feet in width.

The Project is broken up into multiple massing elements, all of which are under 1,500 square feet, as required by Plat note #6 of the Treasure Hill Subdivision, Phase 1. The footprint includes Level 2 of the portion of the building that runs mainly north/south and Level 1 of the massing element that runs more east/west. The total footprint is measured at 3,370 square feet, as shown in Exhibit A-2. That footprint is broken up into five (5) different massing elements. These massing elements are separated using vertical façade breaks as required by the plat Note 6. There is not a requirement that the massing elements be limited to twenty-five feet. The staff report references an additional restriction applicable in the zone but outside of the Sweeney MPD. That additional restriction is found in LMC Subsection 15-13-8(B)(2)(a)(9) and is intended to apply to the historic twenty-five foot (25') lots in the city. Again, this requirement does not apply to the Sweeney MPD. And if they were to apply, the code permits greater width, in certain circumstances. As such, even if the width criteria were to apply (which it does not), the LMC in Subsection 15-13-8(B)(2)(a)(9) states – "Modules on a primary façade **should generally** not exceed eleven (11) feet to twenty-five (25) feet in width." (emphasis added). This generally comment recognizes that in some instances the width restriction may not apply. The Sweeney MPD certainly would be one of those instances.

3. LMC Building Height Requirements:

Exterior Building Height Complies however the interior Building Height measures 53.5 ft and does not comply.

The topic of height is clearly addressed in plat Note 4. Notably, that note does not give an internal height restriction. Rather, it says height is measured from “existing grade”. The staff has chosen to read the plat note narrowly to argue that existing grade is only for exterior height. This is not a fair reading. Had the city wanted to limit interior height it could have done so in approving the Sweeney MPD and its plat. It did not.

Nevertheless, if one were to assume that the interior height restriction were to apply, the applicant here has modified its Applications to have the bottom level unfinished. This is because the interior height limit, which only came into existence in November 21, 2013, specifically states that interior height is measured from the “lowest finish floor plane.” The phrase “lowest first floor plane” is not a defined term. This means that if two meanings are available, the one that supports the land owner’s request must be followed. U.C.A. 10-9a-306(2). Here, the Applications have been updated to leave the below ground level unfinished. We think this is a non sensical result given the plat note is specific on items of height and does not require an interior limit. But if the city believes it can apply this later adopted interior restriction on the same topic covered by the Sweeney MPD and the plat to this site, then leaving the bottom level unfinished means the planning staff is measuring the interior height from the wrong beginning point. The applicant’s interpretation is bolstered in that the phrase “lowest finish floor plane” must mean the floor of the “First Story”, which is a defined term³. To achieve another result means one must ignore the words “finish floor” and also ignore the relevant definition of “First Story.”

In short, the interior height restriction does not apply to this MPD or plat. If it were to apply, leaving the bottom floor unfinished addresses any issue. The planning staff interpretation is not supportable. And this issue can be addressed in the approval of the Applications.

4. Sub-Grade Development:

“The Planning Department is concerned that the proposed amendments promote sub-grade development inconsistent with the MPD’s intent . . .”

This comment in the report is problematic for a number of reasons as well. First, sub-grade development is allowed in the Sweeney MPD. Lots, 3, 4, 6 and 8 all have subgrade development, including a tunnels, parking areas, and basements, to name a few. Second, the planning department is aware that a land use regulation must plainly restrict a use to be enforceable. Even if there were an intent to prevent sub-grade development, which there is not, an intent is not controlling unless a land use regulation or control is created that specifically restricts a use. Here, there is no such control.

³ Park City LMC 15-15: FIRST STORY. The lowest Story in a Building provided the floor level is not more than four feet (4') below Final Grade for more than fifty percent (50%) of the perimeter. Can include habitable or uninhabitable Floor Area.

Snell & Wilmer

Planning Commission
January 24, 2024
Page 8

Finally for your consideration, we have attached a table as Exhibit B showing the Applications meet all of the requirements in the code. We ask that you review these before the February 14th hearing.

We are happy to schedule a time to sit down and meet to walk through the plans for the Project to ensure all of the concerns that have been identified are resolved. We would like to involve the architect and other representatives as needed. Please coordinate such a meeting with Jason Boal.

As always, thank you for your professionalism and attention to this matter.

Very truly yours,

SNELL & WILMER



Wade R. Budge, P.C.

WRB:jcb

Cc: Rebecca Ward
Mark Harrington
Client
Jason Boal
Bruce Baird

Exhibit A-1

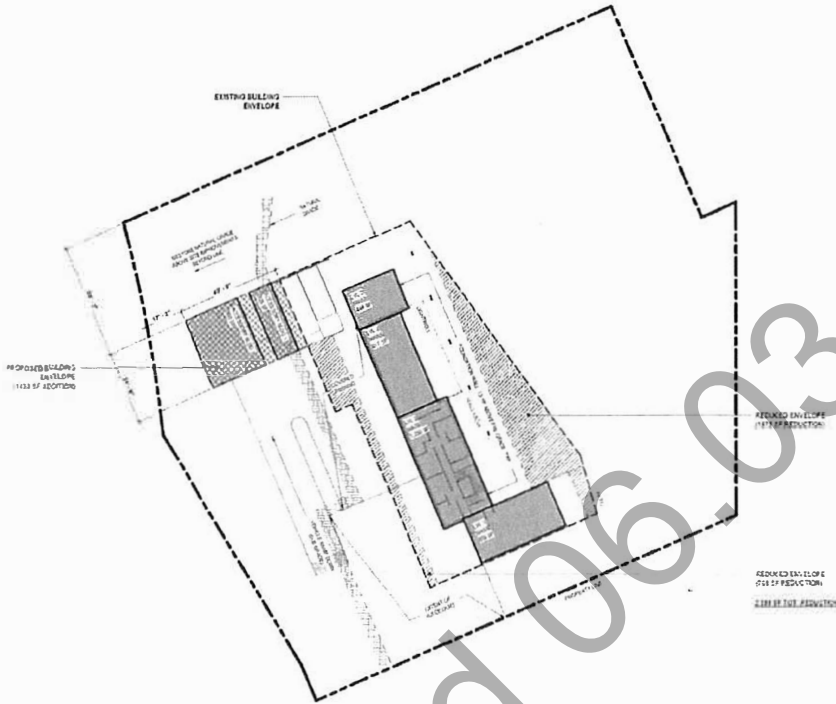
FIRST AMENDED RECORD OF SURVEY MAP
LOT 2, PHASE 1,
TREASURE HILL SUBDIVISION

A SUBDIVISION LOCATED IN SECTION 16, TOWNSHIP 2 SOUTH,
RANGE 4 EAST, SALT LAKE BASE AND MERIDIAN

SPECIAL RESTRICTIONS FOR SINGLE FAMILY HOMES TO BE
CONSTRUCTED ON LOTS 1 THROUGH 4 SHOWN HEREON

1. **FOOTPRINT** The maximum footprint, calculated from the outside face of walls and subject to the massing requirements of Note 7, shall be three thousand five hundred (3500) square feet including garages. The following shall not count towards the foot print calculations:
 - (a) Decks which are open on at least two sides (but which may have railings as required), covered or uncovered, and which do not have above grade living space below or above them.
 - (b) Exterior walkways.
 - (c) Exterior stairs.
 - (d) Driveways.
2. **BUILDING AREA LIMITS** Improvements, including fences and formal landscaping (unless otherwise permitted under easements or agreements of record or as shown on the Plat or as consistent with the approved construction drawings of the driveways, Upper Norfolk turnaround, King Road turnaround, ski bridge and utility plans) shall be limited to the Building Area Limits noted on the Plat. Notwithstanding the foregoing, flat areas located on the Ski Trail Easements where they cross Lots 3 and 4 and are directly adjacent to the Building Area Limits of Lots 3 and 4 may be landscaped with irrigated groomed grass.
3. **CONSTRUCTION DISTURBANCE** Unless otherwise provided in agreements with Park City Municipal Corporation which are of record, temporary construction disturbance shall be limited to twenty (20) feet beyond the Building Area Limits or to adjoining lot property lines which ever is closer. Such disturbed area shall be revegetated with native landscaping.
4. **HEIGHT** The building height shall be measured from existing grade to the top of flat roofs and to the ridge of pitched roofs. The maximum height, in general, shall be twenty five (25) feet for flat roofs and thirty (30) feet for pitched roofs. A maximum height of twenty eight (28) feet for flat roofs and thirty three (33) feet for pitched roofs shall be permitted for the expressed purpose of accommodating access, i.e. stairwells and/or elevators between floor levels.
5. **FACADE HEIGHT, EASTERN FACING** The maximum facade height for the Eastern facing facades without a step back of at least five (5) feet shall be twenty five (25) feet from existing or reestablished grade whichever is greater.
6. **MASSING** House designs may be comprised of one or more connected or unconnected building masses. No one building mass within the 3500 square foot footprint referenced in Note 1 above, shall have a footprint that exceeds 1,500 square feet. Massing elements shall be separated by horizontal and/or vertical facade breaks.
7. **SEWER LATERALS** Maintenance and replacement of sewer laterals shall be the responsibility of their respective owners and not that of the Snyderville Basin Sewer Improvement District.
8. **FIRE SPRINKLING** Internal and external modified 1 1/2" fire sprinklers shall be provided for the homes. Wood roofing material shall be prohibited.
9. **PRECEDENCE** The above special restrictions are consistent with the Sweeney Master Plan approved by the Park City Municipal Corporation on October 16, 1908 and as subsequently amended on October 14, 1987 and December 30, 1992. Final house design shall be reviewed under the Small Scale Master Plan Process in accordance with the Sweeney Master Plan.

Exhibit A-2



KEY LEGEND		FOOTPRINT AREAS	
[Solid Grey Box]	PROPOSED BUILDING FOOTPRINT	BUILDING FOOTPRINT	853 SF
[Dashed Box]	EXISTING BUILDING ENVELOPE	LVZ 2 MASS	468 SF
[Hatched Box]	PROPOSED ENVELOPE REDUCTION	LVZ 2 MASS	810 SF
[Dotted Box]	PROPOSED ENVELOPE REDUCTION	LVZ 3 LIGHT	1,200 SF
[Diagonal Lines]	PROPOSED ENVELOPE REDUCTION	MAX. FLOOR AREA	1,275 SF
[Thin Dashed Line]	BUILDING MASS (ARCH)	ACCESSORY 1	124 SF
		ACCESSORY 2	552 SF
		TOT. ACCESSORY	676 SF
		BUILDING ENVELOPE	
		PROJ. REDUCTION	-1,432 SF
		PROJ. REDUCTION	2,282 SF
		NET	468 SF

1 SITE PLAN (BUILDING FOOTPRINT) SCALE: 1" = 20'

Olson Kundig

ARCHITECTS

PARK CITY RESIDENCE - PRINCE

PARK CITY, UT

NOT FOR CONSTRUCTION

PCCOR PLBERS/SLW

5/17/23

SITE PLAN - BUILDING FOOTPRINT

A1.01

EXHIBIT B

Single Family CUP Compliance		
Code Section	Review Item	Owner's Explanation of Compliance
15-1-10.E.1	size and location of the Site:	<p>Complies Existing on the site today are two Single-Family Dwellings, one of which was permitted as a guesthouse. The application is for one Single-Family Dwelling on a 1.24-acre Lot (Lot 2 of the treasure Hill Subdivision, Phase 1). It has already been determined that this location is appropriate for this use, through the MPD, plat review and previous CUP approval. It should be noted that the Lot on which the development is proposed, is much larger than the other lots/parcels in the vicinity. Due to the size of the lot, the structure will be more than adequately setback and buffered from the surrounding properties. The nearest adjacent residence is approximately 120 feet away, on Norfolk Avenue.</p> <p>The size and location of the Site is consistent with other Single-Family Lots in the Sweeney MPD which generally range from 0.79- 1.31 acres and are also located towards the top of the Historic District.</p>
15-1-10.E.2	traffic considerations including capacity of the existing Streets in the Area	<p>Complies The new home will utilize the same access point, 220 King Road. There will be no additional traffic or traffic impacts from what is being proposed. The capacity of existing streets in the area is sufficient to accommodate the proposed development and the new development does not meet the Engineering Department's threshold to warrant a Traffic Impact Study.</p>
15-1-10.E.3	utility capacity, including Storm Water run-off:	<p>Complies All utilities to the Site were installed during construction of the existing Dwellings. It is anticipated that utility usage will be decreased with- i) the construction of a newer home, ii) the removal of a dwelling on the property, and iii) the removal of the use of the property as a short-term rental.</p> <p>Proposed Condition- All Storm Water runoff from new impervious surfaces must be contained</p>

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		on-site and the Applicant must submit a Soil Investigation Report and a Geotechnical Report prior to the Application being considered complete.
15-1-10.E.4	emergency vehicle Access	Complies The proposed development meets fire turnaround and driveway slope requirements.
15-1-10.E.5	location and amount of off-Street parking;	Complies The site will meet the requirements of LMC § 15-3-6(A) Off-Street Parking Requirements for Residential Uses (2 parking stalls).
15-1-10.E.6	internal vehicular and pedestrian circulation system;	Complies Vehicle Circulation: Vehicles accessing the site will utilize the exiting access point on King Road. The Site is designed to allow vehicles to turn around and park via the private driveway, as it has been done in the past. Pedestrian Circulation: King Road does not have sidewalks and is not ideal road for pedestrians. There is a ten foot (10') public non-motorized bike and pedestrian trail and a ski and pedestrian easement exist on this Property for the benefit of a neighboring lot, per the Amended Treasure Hill Subdivision, Phase 1 Plat. That trail will continue to be on the property; no change to the easements are proposed with this Application.
15-1-10.E.7	Fencing, Screening, and landscaping to separate the Use from adjoining Uses;	Complies No additional Fencing is being proposed on the site at this time. The landscaping and revegetation is proposed to be native grasses to blend in with existing vegetation, foliage and trees. The existing vegetation on and around the perimeter of the lot will be maintained and managed with Firewise principles. The perimeter vegetation provides and will continue to provide a visual barrier of the Site and/or structure and assists in mitigating the visual impact.
15-1-10.E.8	Building mass, bulk, and orientation, and the location of Buildings on the Site; including orientation to Buildings on adjoining Lots;	Complies 1. The structure has been broken up into separate massing elements to break up the perceived mass, as required by the plat notes. The most visible side of the house is the rear of the house, not the front facade of the home. The footprint of the home meets the requirement found on the plat. 2. Building and site design shall respect the existing topography, the

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		<p>character-defining site features, including existing trees and vegetation, and shall minimize cut, fill, and the use of retaining walls, by locating the retaining wall and hillside cut behind the house, so that it is not visible.</p> <p>3. Building Height of structure meets the limitation placed on the plat; 30 feet measured from Existing Grade. Additionally, the roof has been reduced and secondary roof form has been incorporated in the design.</p> <p>4. The proposed Structure is consistent with other Single-Family Lots in the Sweeney MPD. The MPD, plat and previous CUP approvals never considered this lot as a "historic lot".</p>
15-1-10.E.9	usable Open Space;	<p>Complies The proposed Single-Family Dwelling does not substantially change the Site's Open Space. The area proposed to be added to the "Buildable Area" is on the up-hill side of the Dwelling and not visible from King Rd, or across the valley. The lot will be restored after construction to existing grade and is proposing native grass, shrubs, Pine, and Aspen trees. There are existing trail easements on the Lot and proposed development does not disturb any of these trail easements. There are also several landscape easements on the east side of the property which will be maintained.</p>
15-1-10.E.10	signs and lighting;	<p>Complies No signs are proposed for the Single Family Lot. The site will be required to comply with LMC § 15-5-5(J), Outdoor lighting.</p>
15-1-10.E.11	physical design and Compatibility with surrounding Structures in mass, scale, style, design, and architectural detailing;	<p>Complies The proposed Structure is consistent with other Single-Family Lots in the Sweeney MPD.</p>
15-1-10.E.12	noise, vibration, odors, steam, or other mechanical factors that might affect people and Property Off-Site;	<p>CompliesThe proposed Single-Family Dwelling is not expected to generate noise or other factors that will affect people and Property Off-Site.</p>
15-1-10.E.13	control of delivery and service vehicles, loading and unloading zones, and Screening of trash and recycling pickup Areas;	<p>Complies The Vehicle Control Gate will control delivery and service vehicles. The Applicant will provide plans where trash and recycling bins will be stored.</p>
15-1-10.E.14	expected Ownership and management of the project as primary residences, Condominiums,	<p>Complies The Lot will continue to be owned as a Single Family Lot.</p>

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	time interval Ownership, Nightly Rental, or commercial tenancies, how the form of Ownership affects taxing entities;	
15-1-10.E.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	<p>Complies</p> <p>The site has already been graded for the existing Dwellings. The intent is to utilize the existing site, so that grading will be minimized. Steep Slope CUP information, including a grading plan has been submitted. This Site is not within the Soil Ordinance boundary or within the Sensitive Lands Overlay (SLO). The location and construction of the existing structures was previously approved. It is anticipated this location provides minimal impact on the Slope and Ridge Line of the Site, overall hillside, and adjacent properties and neighborhoods. The height and building size limitations placed on the Plat, along with the existing screening preserve the view from surrounding Sites. There are no wetlands or streams on the Site. This Site includes a trail and/or ski connection for human activity all year long, so impact on wildlife would not be greatly varied by the construction of a new Single-Family Dwelling. The Site is already utilized by the Property owner and the "Building Zone" does not have environmentally sensitive lands.</p> <p>Visibility of the site was contemplated at the time of the MPD and the Plat approval.</p>
15-1-10.E.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	<p>Complies</p> <p>The site and structure are not historically significant. The proposed design complies with design criteria as contemplated during the MPD approval.</p>

Steep Slope CUP Compliance		
Code Section	Review Item	Owner's Explanation of Compliance
15-2.2-6.B.1	LOCATION OF DEVELOPMENT. Development is located and designed to reduce visual and environmental impacts of the Structure.	<p>Complies</p> <p>The lot does contain Very Steep Slopes, which the CUP was submitted for. The location of the Lot is visible, however the cuts to the hillside and impact to the very steep slopes will be located behind the house and not visible from downtown. The SLO is not applicable to this lot. The lots in the Sweeney MPD have not been limited to site improvements only in the "Building Area Limits".</p>
15-2.2-6.B.2	VISUAL ANALYSIS. The Applicant must provide the Planning Department	<p>Complies</p> <p>A visual analysis was submitted. The site is visible with the current development. A</p>

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	<p>with a visual analysis of the project from key Vantage Points:</p> <p>a) To determine potential impacts of the proposed Access, and Building mass and design; and</p> <p>b) To identify the potential for Screening, Slope stabilization, erosion mitigation, vegetation protection, and other design opportunities</p>	<p>landscaping plan that identifies additional plantings has been submitted. The impacts to the hillside will be behind the home and not visible from downtown.</p>
15-2.2-6.B.3	<p>ACCESS. Access points and driveways must be designed to minimize Grading of the natural topography and to reduce overall Building scale. Shared Driveways and Parking Areas, and side Access to garages are strongly encouraged, where feasible.</p>	<p>Complies</p> <p>Access to the Site is not changing and the existing driveway will be used and improved. Improvements include widening the driveway to approximately 27 feet and retaining walls not to exceed eight feet (8'). Submitted plans indicate the grade of the driveway will not exceed 14%, in compliance with LMC § 15-3-3(A)(4).</p>
15-2.2-6.B.4	<p>TERRACING. The project may include terraced retaining Structures if necessary to regain Natural Grade.</p>	<p>Complies</p> <p>The proposed residence is going through Historic District Design Review. Conceptual grading and drainage plans from Alliance Engineering have been submitted.</p>
15-2.2-6.B.5	<p>BUILDING LOCATION. Buildings, Access, and infrastructure must be located to minimize cut and fill that would alter the perceived natural topography of the Site. The Site design and Building Footprint must coordinate with adjacent properties to maximize opportunities for open Areas and preservation of natural vegetation, to minimize driveway and Parking Areas, and to provide variation of the Front Yard.</p>	<p>Complies</p> <p>The "perceived natural topography" of the site will remain as it is today. The cuts to the hillside will be located behind the home and will not be visible. The design, including the footprint, meet the criteria identified on the plat and in the Sweeney MPD.</p>
15-2.2-6.B.6	<p>BUILDING FORM AND SCALE. Where Building masses orient against the Lot's existing contours, the</p>	<p>Complies</p> <p>Proposed home is divided into several massing elements. Portions of the home are located below grade in order to reduce visibility and reduce the perceived bulk.</p>

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	Structures must be stepped with the Grade and broken into a series of individual smaller components that are Compatible with the District. Low profile Buildings that orient with existing contours are strongly encouraged. The garage must be subordinate in design to the main Building. In order to decrease the perceived bulk of the Main Building, the Planning Commission may require a garage separate from the main Structure or no garage.	
15-2.2-6.B.7	SETBACKS. The Planning Commission may require an increase in one or more Setbacks to minimize the creation of a "wall effect" along the Street front and/or the Rear Lot Line. The Setback variation will be a function of the Site constraints, proposed Building scale, and Setbacks on adjacent Structures.	Complies There will not be any development along a road frontage.
15-2.2-6.B.8	DWELLING VOLUME. The maximum volume of any Structure is a function of the Lot size, Building Height, Setbacks, and provisions set forth in this Chapter. The Planning Commission may further limit the volume of a proposed Structure to minimize its visual mass and/or to mitigate differences in scale between a proposed Structure and existing Structures.	Complies The volume and/or massing requirements for home in the Sweeney MPD were established when the MPD and Plat were approved. These requirements included footprint, façade height, and massing. The proposed design meets each of the requirements.
15-2.2-6.B.9	BUILDING HEIGHT (STEEP SLOPE). The Zone Height in the HR-1 District is twenty-seven feet (27')	Complies The proposed design meets the height requirements identified in the Sweeney MPD and Treasure Hill Subdivision plat approvals.

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	<p>and is restricted as stated above in Section 15-2.2-5. The Planning Commission may require a reduction in Building Height for all, or portions, of a proposed Structure to minimize its visual mass and/or to mitigate differences in scale between a proposed Structure and the Historic character of the neighborhood's existing residential Structures.</p>	
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Approved 06.03.2024

EXHIBIT D

Approved 06.03.2024

When Recorded, Mail To:
Geoffrey W. Mangum
Prince, Yeates & Geldzahler
175 East 400 South
Suite 900
Salt Lake City, Utah 84111

00452297 0x00958 P600261-00277

ALAN SPRIGGS, SUMMIT COUNTY RECORDER
1996 APR 15 17:00 PM FEE \$45.00 BY DMG
REQUEST: COALITION TITLE

DECLARATION OF RESTRICTIVE COVENANTS (KING ROAD LOTS)

THIS DECLARATION OF RESTRICTIVE COVENANTS is made on the 15th day of April, 1996, by EDMUND J. BEAULIEU, CLYDE CARLIG and SWEENEY LAND COMPANY, a Utah general partnership (collectively, the "Declarant").

RECITALS:

A. Declarant is the Owner of certain real property comprised of two (2) lots located in Summit County, Utah, more particularly described and depicted on Exhibit "A" to this Declaration, which is incorporated herein and which real property shall be covered by this Declaration (the "Covered Property"). Simultaneously herewith, Declarant is recording a subdivision plat ("Plat") of the real property described in Exhibit "A," which plat subdivides the Covered Property as indicated thereon and is entitled "Treasure Hill Subdivision, Phase I". The plat is being recorded as Entry No. 452295 ~~at Book~~ ~~Page~~ (to be filed in by Coalition Title Agency) in the office of the Summit County Recorder.

B. Declarant intends to sell or deed the two (2) lots (collectively, the "Lots"), shown on the Plat as Lots 1 and 2, comprising the Covered Property for the construction of single-family residential homes. Declarant will develop and/or convey all of the lots within the Covered Property subject to the protective covenants, conditions, and restrictions set forth in this Declaration, and which are deemed to be covenants running with the land mutually burdening and benefiting each of such lots.

NOW THEREFORE, Declarant declares as follows:

1. **Scope and Existence of Declaration.** Declarant hereby declares that all of lots within the Covered Property shall be held, sold, conveyed, encumbered, used, occupied, and improved subject to the protective covenants, conditions, restrictions set forth in this Declaration. It is the intention of the Declarant in imposing these covenants,

conditions, and restrictions to create a general plan of development, to protect and enhance the property values and aesthetic values of the Covered Property, all for the mutual protection and benefit of owners of the Lots. The covenants, conditions, and restrictions contained herein are intended to, and shall in all cases run with the title of the land, be binding upon the successors, assigns, heirs, and any other person holding any ownership or possessory interest in the Covered Property, and shall inure to the benefit of all of the Lots in the Covered Property.

The covenants, conditions, and restrictions shall be binding upon each and all of the Owners, as well as their successors in interest, and may be enforced by the Declarant or by any Owner, as hereinafter defined. Notwithstanding the foregoing, no provision of this Declaration shall prevent the Declarant (for so long as the Declarant or any of the Declarant is the Owner of any Lot) or any Owner from adding adjacent real property as Covered Property under this Declaration.

For purposes of this Declaration, the term "Owner" or "Owners" shall mean the person(s) or entity holding fee simple title to any Lot, including buyers under any contract for deed, but excluding any person or entity holding title for purposes of securing performance of an obligation, such as a trustee and/or beneficiary under a deed of trust or lender under a mortgage.

2. Restrictions On All Lots. The following restrictions on use shall apply to all Lots within the Covered Property:

(a) Zoning Regulations. The lawfully enacted zoning ordinances of Park City and Summit County and any building, fire, and health codes are in full force and effect in the Covered Property, and no Lot shall be occupied or used in a manner that is in violation of any such ordinance or code.

(b) Limited Business and Commercial Uses. No portion of the Covered Property shall be used for any mining or business use other than home occupations or nightly rentals. Either one guest house or one lockout room or one accessory apartment (with only one of such three possibilities being allowed), in addition to the main residence, shall be permitted per lot.

(c) Underground Utilities. All gas, electrical, telephone, television, and any other utility lines in the Covered Property shall be underground, including lines within any Lot which service installations entirely within that Lot.

(d) Maintenance of Property. All lots, and the improvements on them, shall be maintained in a clean, sanitary, attractive, and marketable condition at all times. No Owner shall permit his Lot or the improvements on it to fall into disrepair.

(e) **No Noxious or Offensive Activity.** No noxious or offensive activity shall be carried out on any Lot, including the creation of loud or offensive noises or odors that detract from the reasonable enjoyment of nearby Lots.

(f) **No Hazardous Activity.** No activity shall be conducted on any Lot that is, or would be considered by a reasonable person to be unreasonably dangerous or hazardous, which would cause the cancellation of conventional homeowners insurance policy. This includes, without limitation, the setting of open fires (other than properly supervised and contained barbecues) and the storage of caustic, toxic, flammable, explosive or hazardous materials in excess of those reasonable and customary for home hobbies, maintenance and household uses.

(g) **No Unsightliness.** No unsightliness shall be permitted on any Lot. This shall include, without limitation, accumulations of construction debris or waste, household refuse or garbage except as stored in tight containers; and the storage or accumulation of any other material, vehicle, or equipment on the Lot in a manner that is visible from any other Lot or any public street.

(h) **No Annoying Lights.** No outdoor lighting shall be permitted, except for lighting that is designed to aim downward and limit the field of light to the confines of the Lot on which it is installed. Notwithstanding the above, Christmas lights shall be permitted in season and on special occasions.

(i) **No Annoying Sounds.** No speakers, wind-bells, wind chimes, or other noise making devices shall be used or maintained on any Lot which create noise that might reasonably be expected to be unreasonably or annoyingly loud to adjoining Lots, except for security or fire alarms.

(j) **Transient Lodging Uses.** The Lots may be rented in whole or in part for nightly rentals, a boarding house or "bed and breakfast," or other uses for providing accommodations to travelers.

(k) **No Re-Subdivision.** No lot shall be re-subdivided, and no re-subdivision of any Lot shall result in the construction of any additional Dwelling units within the Covered Property.

(l) **Drainage.** No Owner shall alter the direction of natural drainage from his Lot, nor shall any Owner permit accelerated storm run-off to leave his Lot without first using

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reasonable means to dissipate the flow energy. In no case shall water be allowed to be dumped or drained on adjoining lots, other than natural drainage.

(m) **Garbage and Refuse Disposal.** No lot shall be used or maintained as a dumping ground for rubbish, trash, garbage or other waste. Such trash, rubbish, garbage or other waste shall not be kept except in sanitary containers. No rubbish, trash, papers, junk or debris shall be burned upon any lot except that trash may be burned inside homes that are properly equipped with inside incinerator units. Garbage and trash receptacles shall be permitted when kept in an enclosure or are visually screened.

(n) **Vehicles Restricted to Roadways, Driveways and Designated Parking Areas.** No motor vehicle shall be operated on the Covered Property, except on improved roads and driveways and as provided to the contrary below. No motorcycles shall be operated on any Lot except for ingress and egress or while loading the equipment for lawful transport on public streets. No vehicle parking shall be permitted except on that portion of designated driveways which will not block ingress and egress to and from such driveways by other vehicles, and in designated parking areas and in NO CASE SHALL PARKED VEHICLES AT ANY TIME BLOCK ACCESS TO ANY LOT. The Owner of Lot 2 shall in no event park vehicles, campers, boats or store materials in the non-exclusive driveway access and underground utilities easement ("Lot 2 Driveway Easement") provided for the benefit of Lot 2, as shown on page 1 of the Plat. Notwithstanding the foregoing, temporary parking shall be allowed for visitors and party guests on the Lot 2 Driveway Easement. No automobiles, trucks, motorcycles, trail bikes, snowmobiles, four-wheel drive vehicles or vehicles of any kind shall be operated on any of the Declarant's property wherever the same may be situated or any place in the subdivision other than the public roadways and private driveways unless for the express purpose of maintenance or construction.

3. Architectural Restrictions. All improvements and construction on the Covered Property is subject to the applicable existing architectural and other design and building restrictions in effect now and from time to time in the future.

4. King Road Improvements.

(a) Each Lot Owner shall share equally in the cost of construction and maintenance (including snow removal) for the common King Road improvements ("Improvements") shown on Alliance Engineering Drawings, 1 thru 8, entitled King Road Subdivision Improvements ("Construction Drawings"), attached hereto as Exhibit "B." All of said Improvements are not located on the Covered Property. All decisions regarding the timing, financing, construction management for the improvements shall be made jointly by the Owners. The Owners, acting in good faith and according to the intentions of this agreement, shall devise a joint plan to accomplish the above and shall move expeditiously to pursue said plan. Each Owner shall promptly pay his equal share of costs.

(b) In the event the Lot Owners cannot agree with respect to the decisions to be made as referenced in subsection (a) above, any dispute shall be submitted to binding arbitration before an arbitrator selected by the American Arbitration Association ("AAA"). The arbitration shall be conducted under the rules of the AAA. Said arbitration shall take place in Park City, Utah and the cost of arbitration shall be shared equally by the Lot Owners. Notwithstanding Section 6(b) below, each party shall bear the cost of its own attorney's fees with respect to the arbitration. The arbitrator's decision shall be final and binding upon the Lot Owners and suit may be filed in any court of appropriate jurisdiction to enforce the arbitrator's decision. In any action brought to enforce the arbitrator's decision, the prevailing party shall be entitled to recover its costs of enforcement including attorney's fees and costs of court from the other party.

5. Access Control Gate. An access control gate currently exists as shown on the Construction Drawings, providing access to Lots. Said access control gate is not located on the Covered Property. It is anticipated that such access control gate will ultimately be removed with a new control gate being built, albeit at a different location. The Owners shall share equally in the cost of removing such gate and in the erection of a new control gate. All decisions regarding the timing of the removal of the access control gate, the location, design, cost and erection of a new access control gate shall be made jointly by the Owners. The Owners, acting in good faith and according to the intentions of this agreement, shall devise a joint plan to accomplish the above and shall move expeditiously to pursue said plan. Each Owner shall promptly pay his equal share of costs.

6. General Provisions. The provisions contained in this Declaration may be enforced as follows:

(a) **Violation Deemed a Nuisance.** Any violation of this Declaration which is permitted to remain on all or any portion of the Covered Property is deemed a nuisance and is subject to abatement by any Owner.

(b) **Remedies.**

(i) Without limitation as to any other remedy, any single or continuing violation of the provisions contained in this Declaration may be enjoined in an action brought by the Declarant or any of Declarant (for so long as the Declarant or any of Declarant is the Owner of any Lot) or by any other Owner in its own name. In any action brought to enforce this Declaration, the prevailing party shall be entitled to recover as part of its judgment the reasonable costs of enforcement, including attorneys fees and costs of court. Furthermore, Declarant or any of the persons or entities comprising Declarant (for so long as Declarant or any of the persons or entities comprising Declarant is the Owner of any Lot) or any other Owner of any Lot shall be entitled to lien the Lot of any Owner for any amounts owed by an

Owner (including damages caused by such Owner) as a consequence of said Owner's failure to observe the terms herein.

(ii) Nothing in this Declaration shall be construed as limiting the rights and remedies that may exist at common law or under applicable federal, state or local laws and ordinances for the abatement of nuisances, health and safety, or other matters. This Declaration is to be construed as being in addition to those remedies available at law.

(iii) The remedies available under this Declaration and at law or equity generally are not to be considered as exclusive, but rather as cumulative.

(iv) The failure to take enforcement action shall not be construed as a waiver of the Covenants contained in this Declaration in the future or against other similar violations.

(c) **Severability.** Each of the covenants contained in this Declaration shall be independent of the others, and in the event that any one is found to be invalid, unenforceable, or illegal by a court of competent jurisdiction, the remaining covenants shall remain in full force and effect.

(d) **Amendment.** At any time while this Declaration is in effect, the Owners of the Lots may amend the provisions of this Declaration. Any amendment must be in writing and be approved by the Owners at the time of the amendment. No such amendment will be binding upon the holder of any mortgage or trust deed unless, the holder joins in the amendment.

(e) **Constructive Notice.** Every person who owns, occupies, or acquires any right, title or interest in any Lot in the Covered Property is conclusively deemed to have notice of this Declaration and its contents and to have consented to the application and enforcement of each of the covenants, conditions, and restrictions against this Lot, whether or not there is any reference to this Declaration in the instrument by which he acquires his interest in any Lot.

(f) **Notices.** All notices under this Declaration are deemed effective 72 hours after mailing, whether delivery is proved or not, provided that any mailed notice must have postage prepaid and be sent to the last known address of the party to receive notice. Notices delivered by hand or by a nationally recognized courier service are effective upon delivery.

(g) **Liberal Interpretation.** The provisions of this Declaration shall be interpreted liberally to further the goal of creating a uniform plan for the development of the Covered Property. Paragraph headings are inserted for convenience only and shall not be

considered an interpretation of the provisions. The singular will include plural, and gender is intended to include masculine, feminine and neuter as well.

(h) **Mortgage Protection Provision.** The breach of any of the foregoing covenants shall not defeat or render invalid the lien of any mortgage or deed of trust lien on the Covered Property that is made in good faith and for value; provided, however, that all of the covenants contained herein shall be binding upon and effective against any owner of a Lot whose title thereto is acquired by foreclosure, trustee's sale or other foreclosure proceeding, from and after the date of such foreclosure, trustee's sale or other foreclosure proceeding.

(i) **Other Limitations.** This Declaration of Restrictive Covenants does not purport to define all restrictions against the Covered Property. The Covered Property is also subject to such restrictions as are disclosed on the Plat or which are of record.

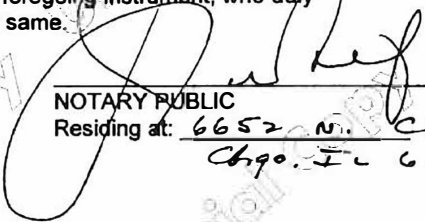
(j) **Benefits and Burdens.** This Agreement and the benefits and burdens of the restrictions and covenants contained herein shall run with and bind the Covered Property and shall be binding upon and inure to the benefit of and shall be enforceable by any current and future owners or lessees of the Covered Property, the holders of any deeds to secure debt on such Covered Property, any purchaser at foreclosure on any such deed to secure debt, and their respective heirs, successors, successors in title, assigns and personal representatives.

Executed on the date stated above.


EDMUND J. BEAULIEU

STATE OF ILLINOIS)
COUNTY OF Cook)

On the 16th day of April, 1996, personally appeared before me EDMUND J. BEAULIEU, the signer of the foregoing instrument, who duly acknowledged to me that he executed the same.


NOTARY PUBLIC
Residing at: 6652 N. Chicora
Chgo. IL 60646

My Commission Expires:

OFFICIAL SEAL
JAMES H. WOLF
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 4-13-00

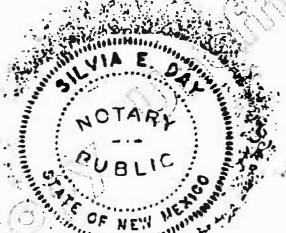
Clyde Carlig
CLYDE CARLIG

STATE OF NEW MEXICO)
COUNTY OF SAN JUAN)

On the 11th day of April, 1996, personally appeared before me
CLYDE CARLIG, the signer of the foregoing instrument, who duly acknowledged to me
that he executed the same.

Silvia E. Day
NOTARY PUBLIC
Residing at: 220 N. AUBURN
FARMINGTON, N.M. 87401

My Commission Expires:
Nov. 15th 1993



SWEENEY LAND COMPANY,
a Utah general partnership
By Patrick J. Sweeney
Patrick J. Sweeney
Its Managing General Partner

STATE OF UTAH)
COUNTY OF SALT LAKE)

On the 15 day of April, 1996, personally appeared before me
Patrick J. Sweeney, who being by me duly sworn, did say that he is the Managing
General Partner of SWEENEY LAND COMPANY, a Utah general partnership, and that
the foregoing instrument was signed on behalf of said partnership, and said Patrick J.
Sweeney acknowledged to me that said partnership executed the same.

NOTARY PUBLIC
ROBERT C. RODMAN
1700 PARK AVE. P.O. BOX 2033
PARK CITY, UT 84060
My Commission Expires NOV 27 1997
State of Utah
My Commission Expires:
Nov 27, 1997

Robert C. Rodman
NOTARY PUBLIC
Residing at: Sunnyvale, Utah

CV-11207-1-17-92-ET-REPROD.DOC

00452297 Bk00958 Pg00268

Exhibit "A"

Lot 1, (King Road South Lot), Treasure Hill Plat Phase I

Beginning at a point on the North-South 40 Acre Line of Section 16, Township 2 South, Range 4 East, Salt Lake Base and Meridian which is South 66°22' West, 21.67 feet and South 0°08'50" East, 218.03 feet along said 40 Acre Line, more or less from the Northeast Corner of Lot 32, Block 78, Millsite Reservation to Park City, Utah said point also being South 66°40' West, 240.50 feet and South 0°08'50" East, 735.34 feet from a Park City Monument at the Intersection of Park Avenue and 4th Street;

and running thence South 0°08'50" East, 442.70 feet along said 40 Acre Line to a point on a 515.00 foot radius curve to left (Long chord bears North 23°17'42" West, 211.60 feet); thence running Northwesterly along the arc of said curve 213.12 feet (Delta=23°42'38"); thence North 35°09'01" West, 117.10 feet to point of curvature of a 135.00 foot radius curve to the right (Long chord bears North 29°20'18" West, 27.34 feet); thence running Northwesterly along the arc of said curve 27.39 feet (Delta=11°37'27"); thence North 23°31'34" West, 52.48 feet; thence North 66°22' East, 201.18 feet to the point of beginning.

Containing 0.86 Acres, more or less.

(Basis of bearing for the above description is the Park City Monuments at the Intersections of Park Avenue and 4th Street and Park Avenue and 6th Street whose bearing is South 23°38' East.)

Lot 2, (King Road North Lot), Treasure Hill Plat Phase I

Beginning at a point which is South 66°22' West, 21.67 feet and South 0°08'50" East, 81.95 feet, more or less, from the Northeast Corner of Lot 32, Block 78, Millsite Reservation to Park City, Utah said point also being South 66°40' West, 240.50 feet and South 0°08'50" East, 599.26 feet from a Park City Monument at the Intersection of Park Avenue and 4th Street;

and running thence South 0°08'50" East, 136.08 feet; thence South 66°22' West, 201.18 feet; thence North 23°31'34" West, 17.11 feet; thence North 31°26'11" West, 116.94 feet to a point on a 605 foot radius curve to the left (Long chord bears North 11°00' West, 94.07 feet); thence running northwesterly along the arc of said curve 94.16 feet (Delta=8°55'04"); thence North 66°22' East, 234.29 feet; thence South 23°38' East, 100.00 feet; thence North 66°12' East, 16.39 feet to the point of beginning.

Containing 1.24 Acres, more or less.

(Basis of bearing for the above description is the Park City Monuments at the Intersections of Park Avenue and 4th Street and Park Avenue and 6th Street whose bearing is South 23°38' East.)

00452297 8k00958 Pg00269

**KING ROAD LOTS
TREASURE HILL SUBDIVISION
PHASE 1
MARCH 1996**

DEVELOPER

MPE, INC
P.O. BOX 2429
PARK CITY, UTAH 84060
FAX 649-6215
(801) 649-7077

CIVIL ENGINEER

ALLIANCE ENGINEERING INC.
325 MAIN STREET
PARK CITY, UTAH 84060
FAX 649-9475
(801) 649-9467

PAGE INDEX

- 1. TITLE SHEET
- 2. GRADING/UTILITY DISTURBANCE/UTILITY/PROG
- 3. ACCESS AND WATER
- 4. DETAILS
- 5. DETAILS
- 6. PLAN
- 7. PLAN
- 8. PLAN

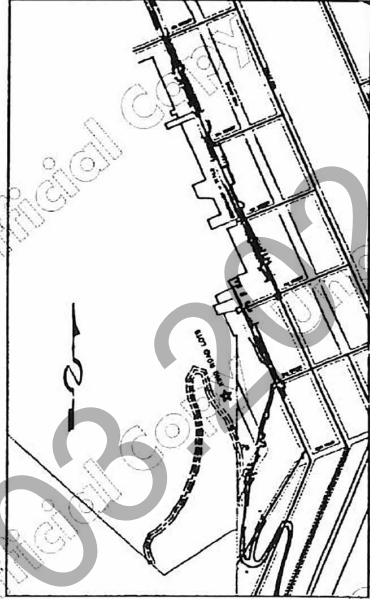
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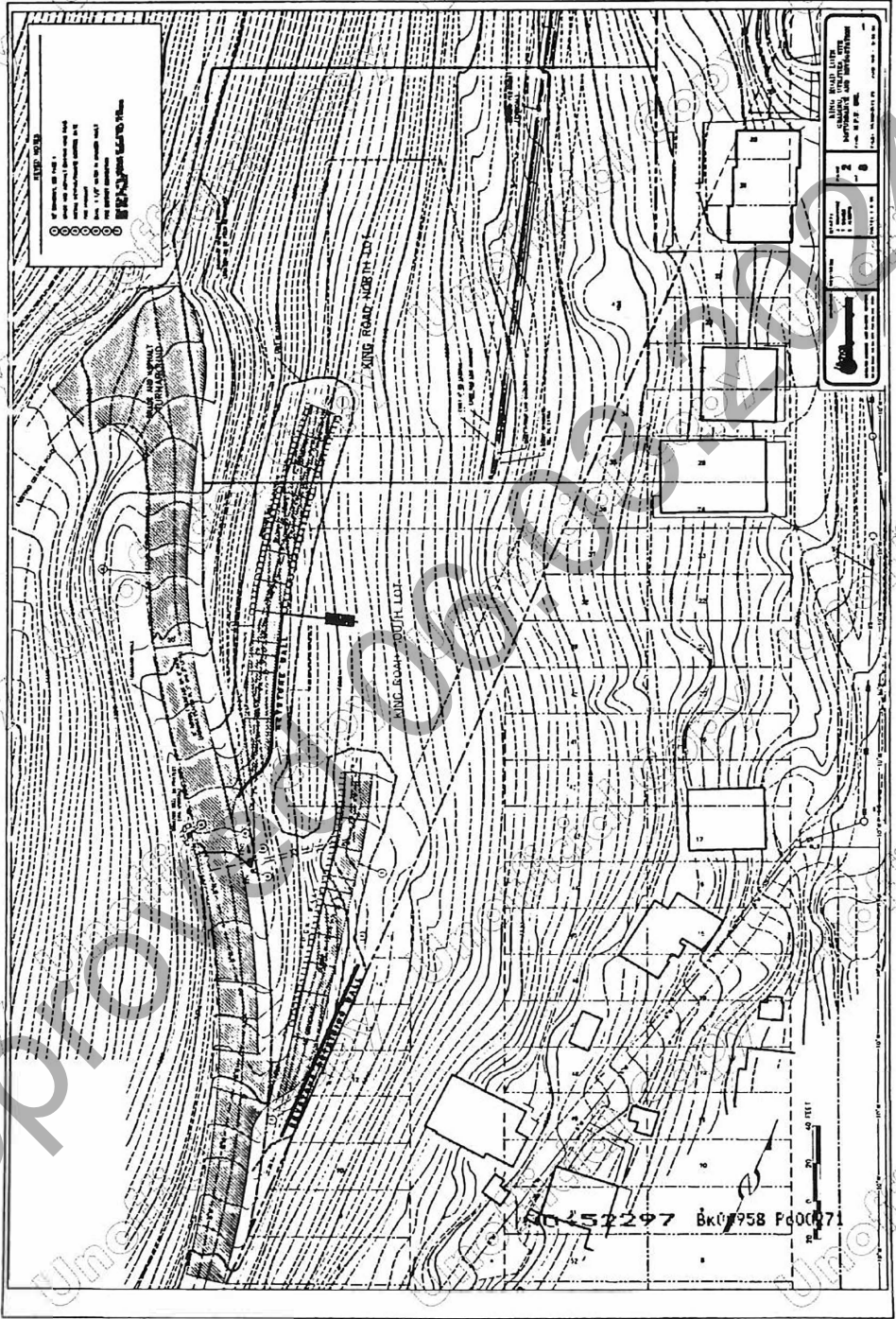
Exhibit "B"

GENERAL SPECIFICATIONS

- 1. All work shall be in accordance with the Utah State Specifications for Highway Construction, 1995 Edition, and the Utah State Specifications for Highway Construction, 1995 Edition, and the Utah State Specifications for Highway Construction, 1995 Edition.
- 2. All work shall be in accordance with the Utah State Specifications for Highway Construction, 1995 Edition, and the Utah State Specifications for Highway Construction, 1995 Edition, and the Utah State Specifications for Highway Construction, 1995 Edition.
- 3. All work shall be in accordance with the Utah State Specifications for Highway Construction, 1995 Edition, and the Utah State Specifications for Highway Construction, 1995 Edition, and the Utah State Specifications for Highway Construction, 1995 Edition.
- 4. All work shall be in accordance with the Utah State Specifications for Highway Construction, 1995 Edition, and the Utah State Specifications for Highway Construction, 1995 Edition, and the Utah State Specifications for Highway Construction, 1995 Edition.
- 5. All work shall be in accordance with the Utah State Specifications for Highway Construction, 1995 Edition, and the Utah State Specifications for Highway Construction, 1995 Edition, and the Utah State Specifications for Highway Construction, 1995 Edition.
- 6. All work shall be in accordance with the Utah State Specifications for Highway Construction, 1995 Edition, and the Utah State Specifications for Highway Construction, 1995 Edition, and the Utah State Specifications for Highway Construction, 1995 Edition.
- 7. All work shall be in accordance with the Utah State Specifications for Highway Construction, 1995 Edition, and the Utah State Specifications for Highway Construction, 1995 Edition, and the Utah State Specifications for Highway Construction, 1995 Edition.
- 8. All work shall be in accordance with the Utah State Specifications for Highway Construction, 1995 Edition, and the Utah State Specifications for Highway Construction, 1995 Edition, and the Utah State Specifications for Highway Construction, 1995 Edition.
- 9. All work shall be in accordance with the Utah State Specifications for Highway Construction, 1995 Edition, and the Utah State Specifications for Highway Construction, 1995 Edition, and the Utah State Specifications for Highway Construction, 1995 Edition.
- 10. All work shall be in accordance with the Utah State Specifications for Highway Construction, 1995 Edition, and the Utah State Specifications for Highway Construction, 1995 Edition, and the Utah State Specifications for Highway Construction, 1995 Edition.

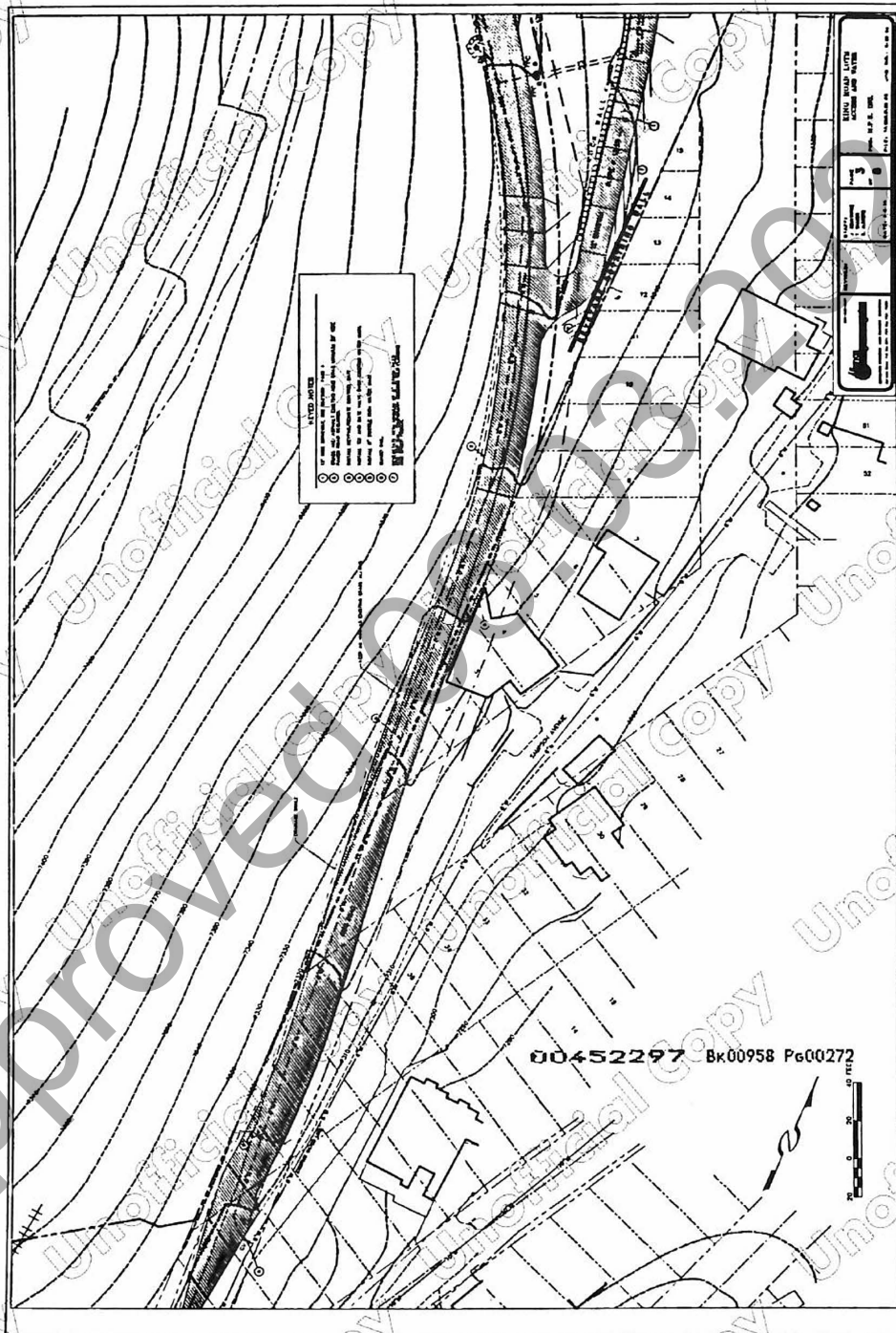
LOCATION

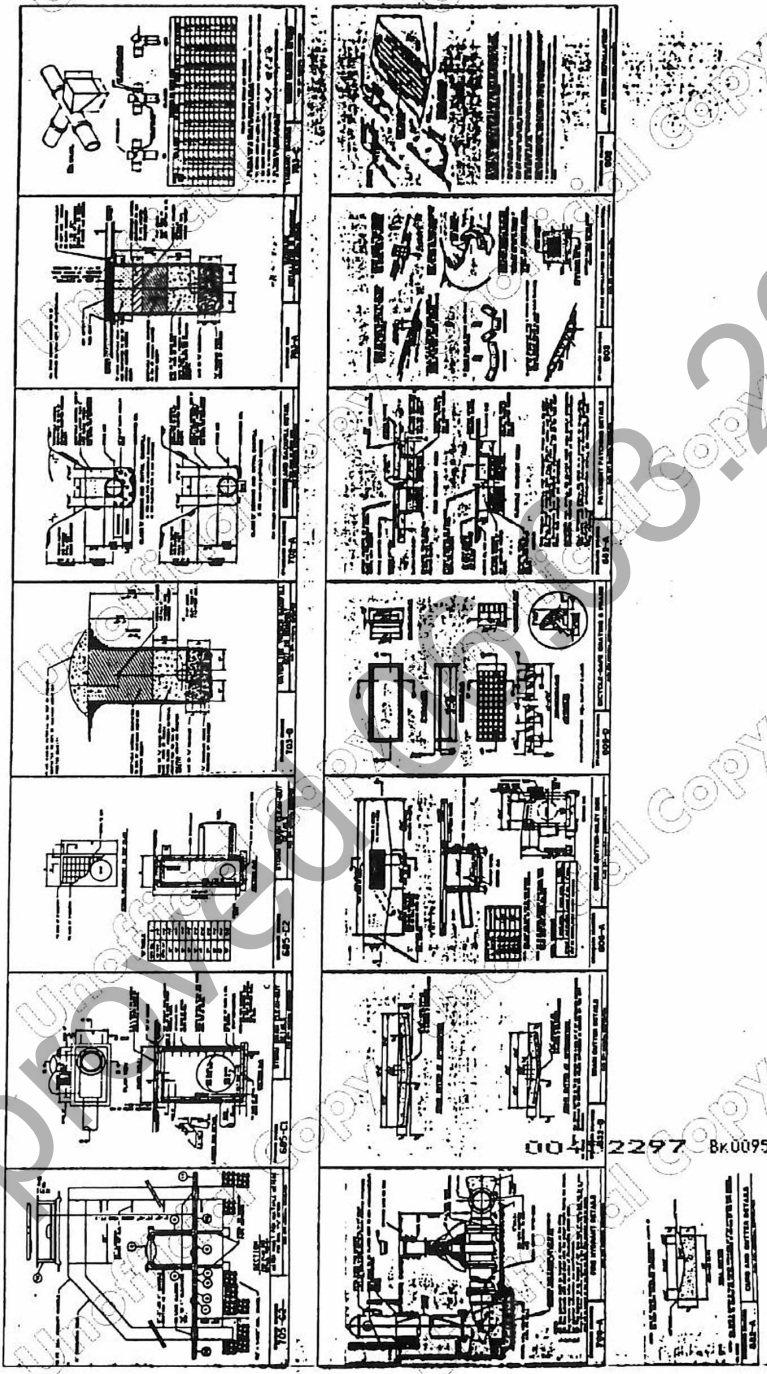




1. 1/4" = 100' (Vertical Scale)
 2. 1/4" = 100' (Horizontal Scale)
 3. 1/4" = 100' (Horizontal Scale)
 4. 1/4" = 100' (Horizontal Scale)

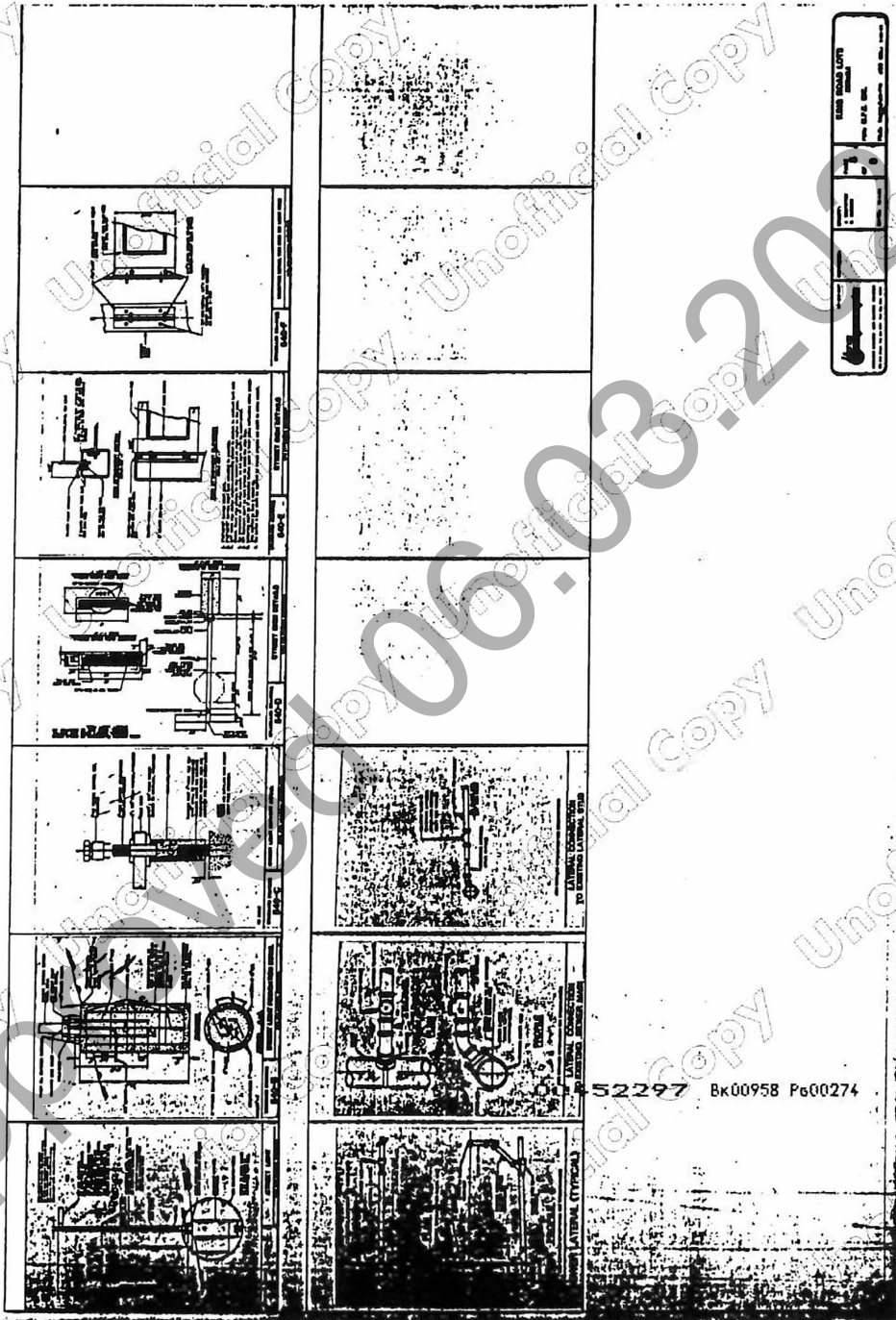
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 2. 1/4" = 100' (Horizontal Scale)
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 4. 1/4" = 100' (Horizontal Scale)





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DATE	TIME	BY

52297 Bk00958 P600274

BACKSLOPE CRITICAL

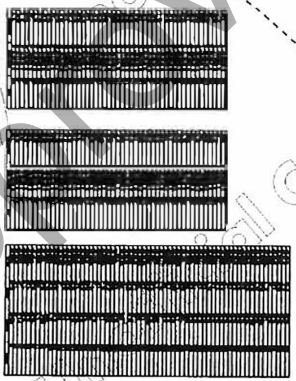
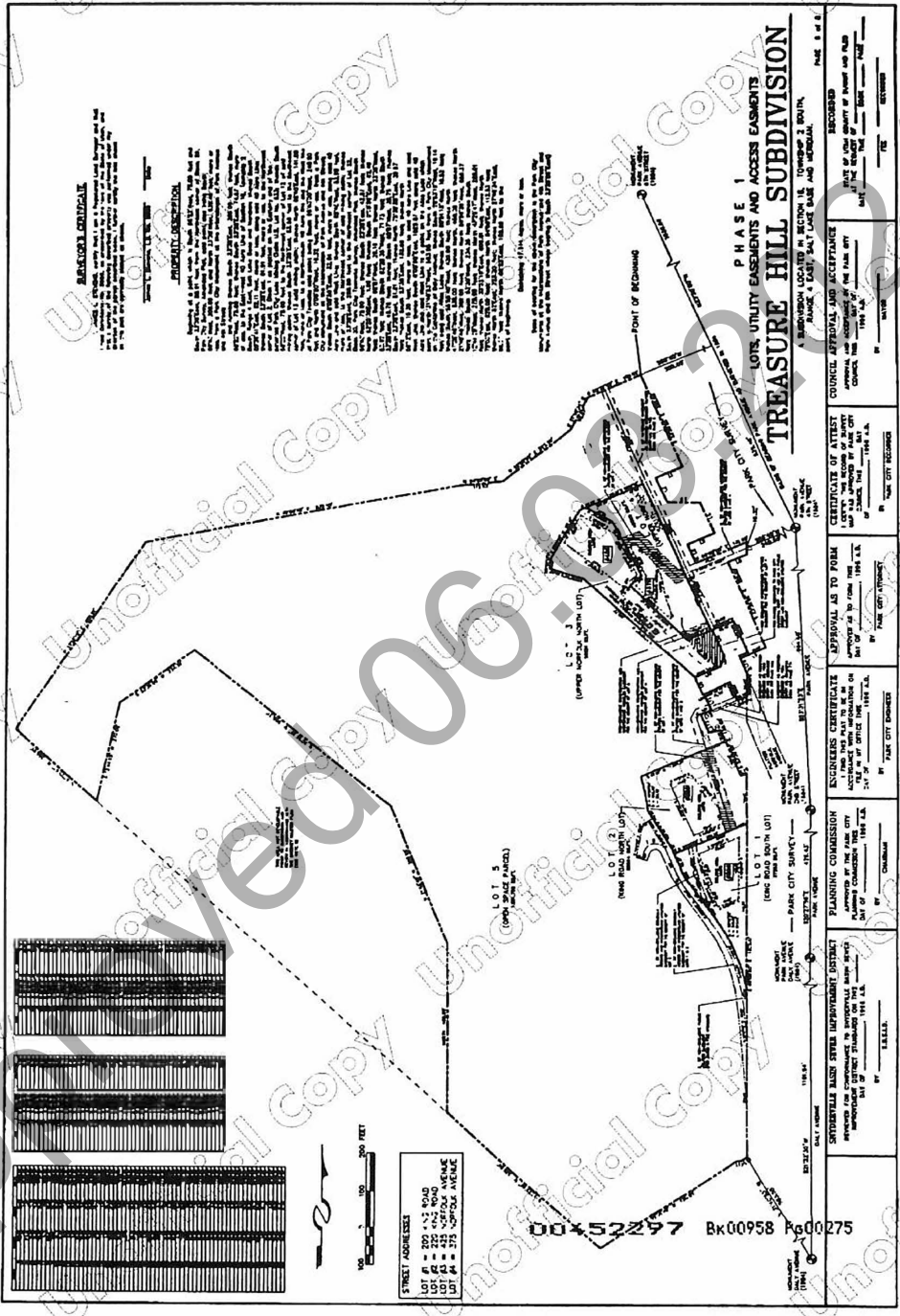
Backslope critical areas are those areas which are subject to erosion and which are adjacent to a water body. The purpose of this map is to identify these areas and to show the location of the backslope critical areas. The backslope critical areas are shown on this map as hatched areas. The backslope critical areas are located on the east side of the property. The backslope critical areas are located on the east side of the property. The backslope critical areas are located on the east side of the property.

PROPERTY DESCRIPTION

Property Description: This property is located in the Township 2 North, Range 4 East, Salt Lake Base and Meridian. The property is bounded by the following: North by the Salt Lake Base and Meridian, East by the Salt Lake Base and Meridian, South by the Salt Lake Base and Meridian, and West by the Salt Lake Base and Meridian. The property is bounded by the following: North by the Salt Lake Base and Meridian, East by the Salt Lake Base and Meridian, South by the Salt Lake Base and Meridian, and West by the Salt Lake Base and Meridian. The property is bounded by the following: North by the Salt Lake Base and Meridian, East by the Salt Lake Base and Meridian, South by the Salt Lake Base and Meridian, and West by the Salt Lake Base and Meridian.

**PHASE 1
LOTS, UTILITY EASEMENTS AND ACCESS EASEMENTS
TREASURE HILL SUBDIVISION**

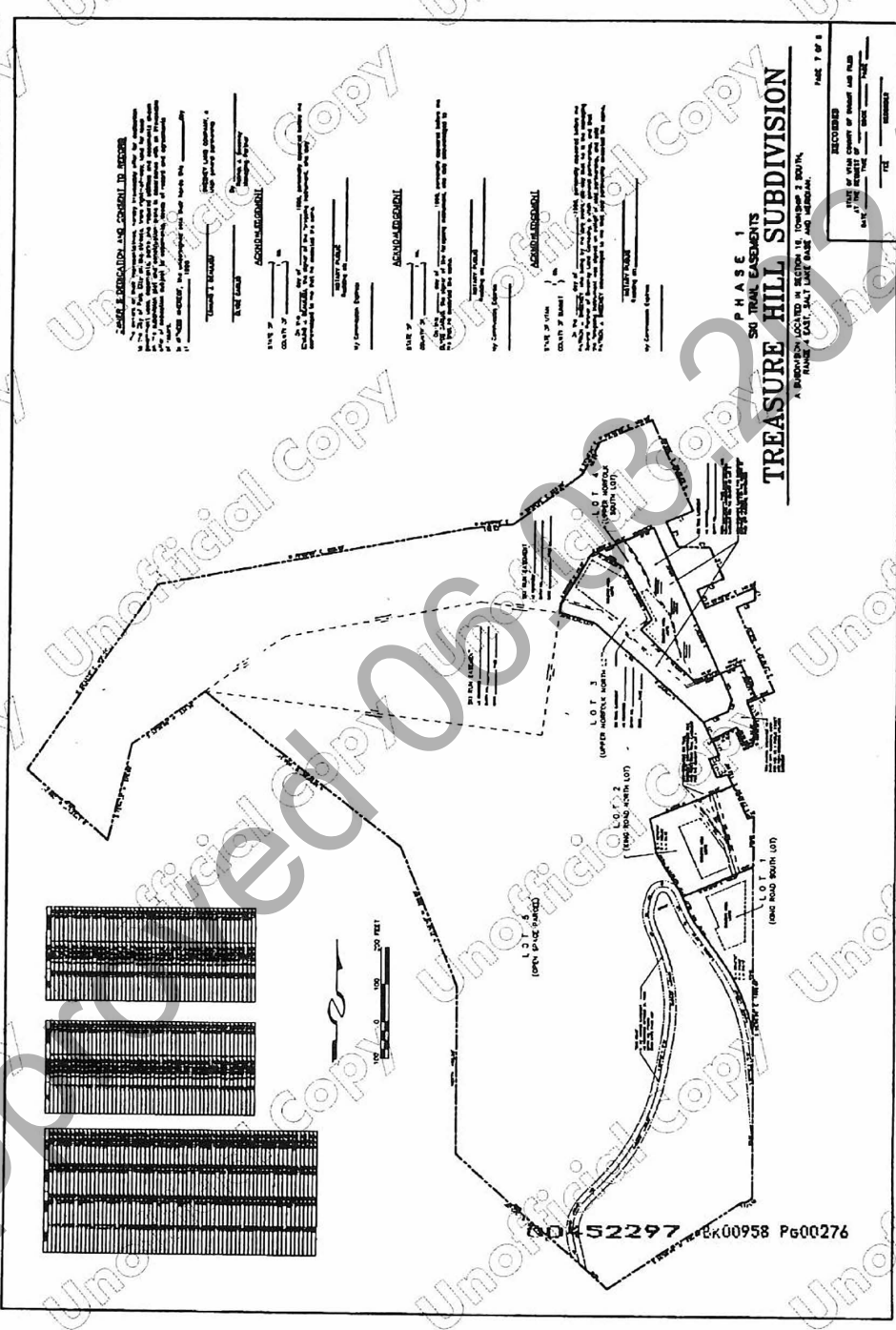
A SUBDIVISION LOCATED IN SECTION 18, TOWNSHIP 2 NORTH, RANGE 4 EAST, SALT LAKE BASE AND MERIDIAN.



STREET ADDRESSES
LOT 1 = 300 4000 WEST
LOT 2 = 300 4500 WEST
LOT 3 = 300 5000 WEST
LOT 4 = 300 5500 WEST
LOT 5 = 300 6000 WEST

00452297 Bk00958 Pg00275

ENGINEERS CERTIFICATE I, ENGINEER, HEREBY CERTIFY THAT THE INFORMATION CONTAINED IN THIS MAP IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.	APPROVAL AS TO FORM I, CLERK OF DISTRICT COURT, HEREBY CERTIFY THAT THE INFORMATION CONTAINED IN THIS MAP IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.	CERTIFICATE OF ATTEST I, CLERK OF DISTRICT COURT, HEREBY CERTIFY THAT THE INFORMATION CONTAINED IN THIS MAP IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.	RECORDED STATE OF UTAH DEPARTMENT OF HERITAGE AND ARTS OFFICE OF THE CLERK OF DISTRICT COURT SALT LAKE COUNTY, UTAH DATE RECORDED: _____ BY: _____
PLANNING COMMISSION I, PLANNING COMMISSION, HEREBY CERTIFY THAT THE INFORMATION CONTAINED IN THIS MAP IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.	APPROVAL AS TO FORM I, CLERK OF DISTRICT COURT, HEREBY CERTIFY THAT THE INFORMATION CONTAINED IN THIS MAP IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.	CERTIFICATE OF ATTEST I, CLERK OF DISTRICT COURT, HEREBY CERTIFY THAT THE INFORMATION CONTAINED IN THIS MAP IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.	RECORDED STATE OF UTAH DEPARTMENT OF HERITAGE AND ARTS OFFICE OF THE CLERK OF DISTRICT COURT SALT LAKE COUNTY, UTAH DATE RECORDED: _____ BY: _____
ENGINEERS CERTIFICATE I, ENGINEER, HEREBY CERTIFY THAT THE INFORMATION CONTAINED IN THIS MAP IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.	APPROVAL AS TO FORM I, CLERK OF DISTRICT COURT, HEREBY CERTIFY THAT THE INFORMATION CONTAINED IN THIS MAP IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.	CERTIFICATE OF ATTEST I, CLERK OF DISTRICT COURT, HEREBY CERTIFY THAT THE INFORMATION CONTAINED IN THIS MAP IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.	RECORDED STATE OF UTAH DEPARTMENT OF HERITAGE AND ARTS OFFICE OF THE CLERK OF DISTRICT COURT SALT LAKE COUNTY, UTAH DATE RECORDED: _____ BY: _____



00452297 EK00958 P600276

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES
 I, the undersigned, being a duly qualified and licensed Surveyor in and for the State of California, do hereby certify that the foregoing is a true and correct copy of the original record of the same as the same appears in the office of the County Clerk of said County, and that the same is a true and correct copy of the original record of the same as the same appears in the office of the County Clerk of said County.

WITNESSED my hand and the seal of said County at Los Angeles, California, this _____ day of _____, 19____.

 County Clerk

 Surveyor

 Surveyor

 Surveyor

 Surveyor

 Surveyor

 Surveyor

PHASE 1
50 TRACT EASEMENTS
TREASURE HILL SUBDIVISION
 A SUBDIVISION LOCATED IN SECTION 18, TOWNSHIP 3 NORTH,
 RANGE 4 EAST, SAN JUAN BAY AND VICINITY.

RECORDED
 THIS MAP WAS RECORDED IN THE
 OFFICE OF THE COUNTY CLERK OF
 LOS ANGELES COUNTY, CALIFORNIA,
 ON _____ DAY OF _____, 19____.

THIS PLAN FOR THE PHASE I NON-MOTORIZED BIKE AND PEDESTRIAN TRAILS RIGHT-OF-WAY, TREASURE HILL SUBDIVISION, A SUBDIVISION LOCATED IN SECTION 18, TOWNSHIP 2 SOUTH, RANGE 2 EAST, 34TH MERIDIAN, IS HEREBY RECORDED.

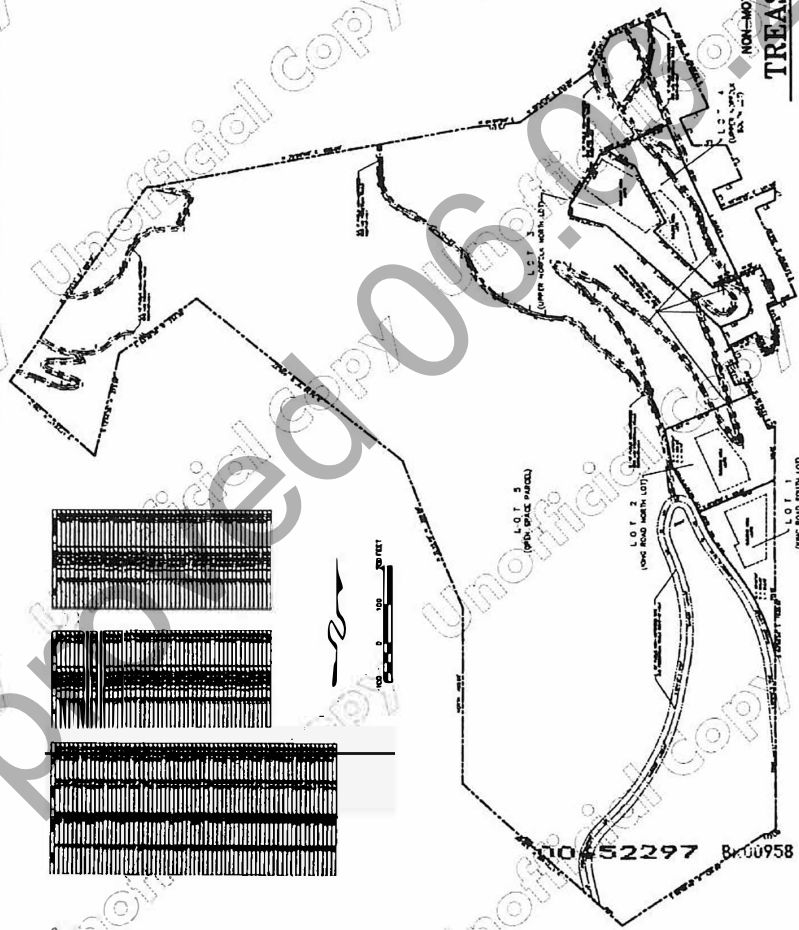
DATE OF SALE OF LAND AND DATE OF RECORDING: _____

BY: _____

FOR: _____

PHASE I
NON-MOTORIZED BIKE AND PEDESTRIAN TRAILS RIGHT-OF-WAY
TREASURE HILL SUBDIVISION
A SUBDIVISION LOCATED IN SECTION 18, TOWNSHIP 2 SOUTH,
RANGE 2 EAST, 34TH MERIDIAN.

RECORDED
DATE OF SALE OF LAND AND DATE OF RECORDING: _____
BY: _____
FOR: _____



10452297 B:00958 P:00277

EXHIBIT E

Approved 06.03.2024

PARK CITY PLANNING DEPARTMENT
REVISED Staff Report

TO: Planning Commission
FROM: Planning Staff
DATE: December 18, 1985
RE: SWEENEY PROPERTIES MASTER PLAN

I. PROJECT STATISTICS:

Applicant: MPE, Inc.
Sweeney Land Company, owner
Proposal: Large Scale Master Planned Development
Location: Various parcels throughout Historic District
Parcel Size: 125.6 acres
Existing Zoning: Historic Residential (HR-1); Estate (E); and, Historic Recreation Commercial (HRC) currently, although Historic Commercial Business (HCB) at the time of formal application
Comprehensive Plan: Historic Residential and Estate
Surrounding Uses: Ski area, residential, vacant
Application Date: May 21, 1985

II. STAFF'S RECOMMENDATION and FINDINGS

The Planning Department Staff recommends that the Planning Commission APPROVE, and forward a positive recommendation to the City Council on the proposed height variation required and rezoning of the hillside (approximately 110 acres) to Recreation Open Space, the proposed Sweeney Properties Large Scale Master Planned Development. The project has been considered in accordance with the review procedures and criteria outlined in Sections 1 and 10 of the Park City Land Management Code, effective January 1, 1984, as amended. The following plans and exhibits, in addition to this report and the project file, constitute the complete development permit.

1. Sweeney Properties Master Plan, sheets 1-16, 19-26, and 38-43 prepared by DelaMare, Woodruff, Stepan Associates, Inc.
2. Sweeney Properties Master Plan document and Fact Sheet, dated May 15, 1985, and subsequent amendments.
3. Sweeney Properties Master Plan Application.
4. Sweeney Properties Master Plan Phasing Exhibit.
5. Sweeney Properties Master Plan Density Exhibit.
6. Sweeney Properties Master Plan Development Restrictions and Requirements Exhibit.

In support of our recommendation to the Planning Commission to approve the proposed Large Scale Master Planned Development, the staff has made the

following Findings based upon the information submitted in conjunction with this application.

1. The proposed clustered development concept and associated projects are consistent with both the Park City Comprehensive Master Plan and the underlying zoning.
2. The uses proposed and general design of the project is or will be compatible with the character of development in the surrounding area.
3. The open space preserved and conceptual site planning attributes resulting from the cluster approach to the development of the hillside is sufficient justification for the requested height variation necessary, and that the review criteria outlined in Section 10.9 (e) have been duly considered.
4. The commercial uses proposed will be oriented and provide convenient service to those residing within the project.
5. The required parking can readily be provided on-site and in enclosed structures.
6. The proposed phasing plan and conditions outlined will result in the logical and economic development of the project including the extension of requisite utility services.
7. The proposed setbacks will provide adequate separation and buffering.
8. The anticipated nightly/rental and/or transient use is appropriate and compatible with the surrounding area.
9. The provision of easements and rights-of-way for existing utility lines and streets is a benefit that would only be obtained without cost to the residents of Park City through such a master planning effort.
10. The site planning standards as set forth in Section 10.9(g) of the Land Management Code have either been satisfied at this stage of review or practical solutions can be reasonably achieved at the time of conditional use review/approval.

III. DEVELOPMENT PARAMETERS and CONDITIONS

The staff's recommendation that the Sweeney Properties Large Scale Master Planned Development be approved by the Planning Commission, and subsequently by the City Council, is predicated upon the following terms and conditions. Upon approval, MPE Inc./Sweeney Land Company, its successors or assignees, shall become bound by and obligated for the performance of the following:

1. The Sweeney Properties Master Plan is approved based upon the information and analysis prepared and made a part hereof. While most of the requirements imposed will not be imposed until individual parcels are created or submitted for conditional use approval, certain specific obligations are also identified on the approved phasing plan. At the time of conditional use or subdivision review, the staff and Planning Commission shall review projects for compliance with the adopted codes and ordinances in effect at the time, in addition to ensuring conformance with the approved Master Plan.
2. Upon final approval of the proposed Master Plan, a recordable document (in accordance with the Land Management Code) shall be prepared and submitted. The Official Zone Map will be amended to clearly identify those properties included within the Master Plan, and the hillside property not included within either the Town Life Mid-Station or Creole Gulch sites (approximately 110 acres) shall be rezoned to Recreation Open Space. At the time of conditional use review, final building configurations and heights will be reviewed in accordance with the approved Master Plan, applicable zoning codes and related ordinances. A minimum of 70% open space shall be provided within each of the development parcels created except for the Coalition properties.
3. The approved densities are those attached as an Exhibit, and shall be limited to the maximums identified thereon. Parking shall be provided on-site in enclosed structures and reviewed in accordance with either the table on the approved Restrictions and Requirements Exhibit or the adopted ordinances at the time of project approval. All support commercial uses shall be oriented and provide convenient service to those residing within the project and not designed to serve off-site or attract customers from other areas.
4. Access to the Town Lift and Creole sites shall be provided by a private roadway with acceptable emergency access and utility easements provided. No city maintenance of these streets is expected. All utility lines shall be provided underground with private maintenance required wherever located in inaccessible locations or outside approved easements.
5. Building heights shall be limited to the maximum envelope described on the Restrictions and Requirements Exhibit. At the time of conditional use approval, projects shall be reviewed for conformance with the heights prescribed thereon, and the following:
 - (a) The various parcels located within the Historic Residential (HR-1) zone district shall abide by the Land Management Code and no height exceptions will be considered. Maximum building height on the single

family lots shall be limited to 25' in order to reduce potential visibility.

- * Re Elects City Council 10.16.86 modifications **
- (b) The Coalition East sites are limited to a maximum building height of 55', subject to compliance with the stepped facade (as shown on the applicable plans) concept submitted and the setbacks provided.
 - (c) The Coalition West properties are limited to a 35' maximum building height adjacent to Park Avenue and a 28' height along Woodside Avenue; subject to the footprints defined, common underground parking and access, and no commercial uses allowed.
 - (d) The Town Lift Mid-Station development is restricted to a maximum height of 35' for at least 90% of the total unit equivalent volume of all above-grade buildings (exclusive of elevator shafts, mechanical equipment, and non-habitable areas) and an overall average height of less than 25' measured from natural, undisturbed grade. Additionally, no portion of any building shall exceed the elevation of 7240' above mean sea level.
 - (e) The Creole Gulch site shall be limited to a maximum building height of 75' for at least 83% of the total unit equivalent volume of all above-grade buildings combined. An average overall height of less than 45' shall be provided and no portion of any building shall exceed either elevation 7250' for the eastern-most building or the elevation of 7275' for the balance of the project (above mean sea level).

The above building height restrictions are in accordance with the approved Restrictions and Requirements Exhibits submitted, and are in addition to all other codes, ordinances, and standards.

- 6. At the time of project review and approval, all buildings shall be reviewed for conformance with the Historic District Design Guidelines and related architectural requirements. No mechanical equipment or similar protuberances (i.e: antennae, flags, etc.) shall be permitted to be visible on any building roof-tops or shall any bright or flashing lights be allowed.
- 7. All easements, deeds, and/or rights-of-way shall be provided without cost to the city and in accordance with the master plan documents and phasing plan approved. Likewise, it shall be the developer's sole responsibility to secure all easements necessary for the provision of utility services to the project.
- 8. Master Planned Development approval only conceptually established the ability of local utility service providers to supply service to the projects. It does not constitute any formal approval per se. The applicant has been notified that substantial off-site improvements will be necessary and that the burden is on the future developer(s) to secure various easements and upsize whatever utility lines may be necessary in order to serve this project. Prior to resale of this property in which this MPD approval is carried forward, or prior to any conditional use application for any portion of the MPD, a utility plan addressing water, fire flows, and sanitary sewer, storm drainage, cable utilities, and natural gas shall be prepared for review and approval by City Staff and the

Snyderville Basin Sewer Improvement District. Part of the plan shall be cost estimates for each item of utility construction as it is anticipated that major costs for these utilities will be necessary. All such costs shall be paid by the developer unless otherwise provided. If further subdivision of the MPD property occurs, the necessary utility and access improvements (see below) will need to be guaranteed in accordance with city subdivision ordinances. Public utilities, roads, and access questions which will need to be resolved or upgraded by the developers at their cost (in addition to impact fees, water development and connection fees, and all other fees required by city ordinances) are as follows:

- (a) Empire Avenue and Lowell Avenue will be the main access routes to the Creole Gulch site. As such, during construction these roads will need to carry heavy traffic, probably in the vicinity of up to 300 heavy trucks per day. At the present time and until the Creole Gulch site develops, Empire and Lowell south of Manor Way are and will be low-volume residential streets, with a pavement quality, width, and thickness that won't support that type of truck traffic. The City will continue to maintain the streets as low-volume residential streets, including pavement overlays and/or reconstruction. None of that work will be designed for the heavy truck traffic, but in order to save money for the developer of the Creole Gulch site, he or she is encouraged to keep the City Public Works Director notified as to the timetable of construction at Creole Gulch. If the City is notified that the construction is pending such that an improved pavement section can be incorporated into normal City maintenance projects, then it is anticipated that the incremental additional cost of the additional pavement thickness (which is likely to be in the vicinity of 3 additional inches of asphalt over the entire 4,6000 linear feet [25-foot asphalt width] of Lowell/Empire south of Manor Way, or approximately \$80,000 additional cost in 1986 dollars) could be paid by the developer with said amount deducted from future impact fees paid to the City as long as it did not exceed the total future impact fees. However, if the increased pavement section is not coordinated with the City by the developer such that the pavement of Lowell and Empire south of Manor Way remains inadequate at the time the Creole Gulch site is developed, then the developer shall essentially reconstruct the entire 4,600-foot length of Lowell and Empire south of Manor Way at his or her cost, which with excavation and reconstruction of an anticipated 6-inch asphalt thickness on top of 10 inches of roadbase, plus all other normal construction items and costs, would be in the approximate cost range of \$300,000 to \$400,000 in 1986 dollars. Further, because that reconstruction would be inconvenient to residents and the City, and because delays, impacts, and potential safety hazards would be created over and above normal City maintenance of existing streets, that action by the developer would be a new impact on City residents and the cost therefore would not be deductible from any developer impact fees.
- (b) Contribute to the Park City Village, or other water tanks, determined to be necessary by the City Engineer in order to serve the project with culinary and fire storage. Based on a Type 1 fire resistive construction, it is assumed that the contribution would be on the order of 500,000 gallons at a cost of approximately \$300,000.00,

although the exact figures would need to be determined in a detailed study using adopted City standards.

- (c) Construct pumped pressure system(s) with backup emergency power to provide a means of delivery of fire flows to the project. Construct a meter vault at the edge of the road adjacent to the project, beyond which all water facilities would be privately maintained. It is anticipated that in the vicinity of 2,500 feet of 12-inch water line with appurtenances may be required. Such pipe would cost about \$70,000 in 1986 dollars exclusive of the pumps and backup power, which are even more expensive.
 - (d) Provide an easement, or pay all costs related to condemnation by Park City of an easement, suitable for construction and maintenance of a storm drain from the project site to Silver Creek or McLeod Creek. All City streets and any public utility drainage easements normally provided in the course of other private development shall be available for utility construction related to this MPD subject to reasonable construction techniques and City standards.
 - (e) Pay for downstream detention basin construction costs in accordance with the ratio of increased runoff from the project during the 50-year flood event to the total design volume of the basin.
 - (f) Construct a storm drain line to Silver Creek or McLeod Creek adequate to contain the runoff running through and off the site during the 50-year flood event. It is assumed that a minimum of 36-inch concrete storm drain line will need to be installed solely for Creole Gulch drainage. It is further assumed that special cleanout boxes and inlet boxes will need to be designed to address difficult hydraulic problems. Such boxes are expensive.
 - (g) Provide revegetation over all on-site and off-site areas disturbed for project-related utilities.
 - (h) Sanitary sewer improvements are assumed to involve replacing in the vicinity of 3,000 feet of sewer line, with new manholes included. Such construction will cost in the vicinity of \$100,000, is subject to the approval of SBSID, and is further subject to all District fees and agreements necessary for extension of lines.
9. To minimize additional construction traffic impacts, on-site material stockpiling/staging and parking shall be provided during the course of construction. Similarly, cut and fill shall be balanced and distributed on-site whenever practicable, with any waste material to be hauled over City specified routes. Also at the time of conditional use review/approval, individual projects or phases shall provide detailed landscaping, vegetation protection, and construction staging plans.
- 10 As projects are submitted for conditional use approval, the city shall review them for required employee housing in accordance with adopted ordinances in effect at the time of application.

IV. BACKGROUND

An application for Large Scale Master Planned Development was submitted on May 21, 1985, in accordance with Sections 1 and 10 of the Park City Land Management Code. The applicant requested that only general development concept and density be approved at this juncture. Final unit configuration and mix may be adjusted by future developers at the time of conditional use review. A legal description of the total property involved in the area being master planned shall be recorded with Summit County. The general nature of the development and pertinent details of the transferring of densities from one area to another shall be adequately described and of sufficient depth to apprise potential land purchasers or developers that the property has been included within a Master Plan.

A variety of development concepts were submitted during the course of reviewing the proposed Master Plan. A total of eight distinct approaches to the development of the Hillside Properties were evaluated. The alternative concepts ranged from a "conventional" subdivision approach involving the extension of Norfolk Avenue, to a modern high-rise concept. The staff, Planning Commission and general public have all favored the clustering of development as opposed to spreading it out. Several of the alternatives prepared were in response to specific concerns expressed relative to the scale and mass of buildings necessary to accommodate the density proposed. The latest concept developed represents a refined version of the cluster approach originally submitted.

V. NARRATIVE

The Sweeney Properties Master Plan involves a number of individual development parcels. Combined, a total of 277 unit equivalents are proposed; including, 258 residential and 19 unit equivalents worth of support commercial space. Based upon the zoning in effect at this time, in excess of 450 units could be requested. While this may be somewhat misleading due to certain physical and technical constraints (i.e: access, slope, utilities), it does reveal that a significant reduction in total density proposed has been incorporated into the project. Each area proposed for development has been evaluated on its own merits. During the course of review, numerous concepts were considered with densities shifted around.

The various parcels of land included within the Sweeney Properties Master Plan are scattered about the Historic District and are detailed on the attached Exhibit. For additional clarity a brief narrative description of each development area follows:

Coalition Properties

The three sites comprising the Coalition Properties are located adjacent to the new Town Lift base station on Park Avenue at 8th Street, and contain a total of 1.73 acres (1.46 acres HRC, .27 acres HR-1).

The Coalition East North and South parcels are separated by an easement granted for the ski liftway. Although this property was included within the recent rezoning of the Depot Area from Historic Commercial Business (HCB) to Historic Recreation Commercial (HRC), the application was submitted prior to this action and the former zoning is thereby "grandfathered" (if, in fact, the

application is approved). The development concept proposed entails a predominantly residential project with some ground level commercial uses anticipated. In an effort to reduce densities elsewhere within the Master Plan, the originally proposed density has been increased from 37 to 40 unit equivalents. Preliminary building footprints and massing drawings show structures with a stepped facade reaching a maximum height of fifty-five feet. Parking will be provided within an enclosed structure beneath the buildings and in accordance with the Table on the Restrictions and Requirements Exhibit or the Land Management Code (to be determined at the time of conditional use approval).

The Coalition West property is located south of and adjacent to 8th Street in the Historic Recreation Commercial (HRC) zone recently created. The concept for this particular site is in keeping with the previous zoning (Historic Residential, HR-1) and provides a buffer for properties located to its west. Also in response to preferred reductions in density elsewhere in the Master Plan, the originally proposed ten unit equivalents have been increased to thirteen total. In order to accommodate this additional density, a floor was added to several of the buildings. Building heights adjacent to Park Avenue have been shown at 35', while those abutting Woodside Avenue will be restricted to a 28' height. Individual structures have been conceptually designed in keeping with the scale of the Historic District will all code required parking to be provided below the buildings and accessed from a single common driveway.

HR-1 Properties

These project parcels consist of the MPE and Carr-Sheen properties and total less than $\frac{1}{2}$ acre (.45) in size. Zoned HR-1 at present, the Master Plan proposes to limit densities on these sites to 2 and 3 unit equivalents accordingly, or a reduction of 44% (i.e: 4 units total). In addition, easements shall be provided for a stairway connecting the Empire-Lowell switchback to the Crescent walkway. The Fletcher parcel included within the Master Plan will be preserved as open space in addition to several quit claim deeds provided to the city for existing streets located outside platted rights-of-way.

Hillside Properties

By far the largest area included within the proposed Master Plan, the Hillside Properties involve over 123 acres currently zoned HR-1 (approximately 15 acres) and Estate (108 acres). The development concept proposed would cluster the bulk of the density derived into two locations; the Town Lift Mid-Station site and the Creole Gulch area. A total of 197 residential and an additional 19 commercial unit equivalents are proposed between the two developments with over 90% of the hillside (locally referred to as Treasure Mountain) preserved as open space. As part of the Master Plan, the land not included within the development area boundary will be rezoned to Recreation Open Space (ROS).

The Town Lift Mid-Station site contains roughly 3.75 acres and is located west of Woodside Avenue at approximately 6th Street. The majority of the developable area is situated southeast of the mid-station loading area. A total of 35.5 residential unit equivalents are proposed with 3.5 equivalents worth of support commercial space as well. The concept plan shows a number of low profile buildings located on the downhill side of the access road containing 9 unit equivalents. Two larger buildings are shown above the road with 9.5 and 17

units envisioned. The average building height for the Town Lift site is less than 25' with over 85% of the building volume fitting within a 35' height envelope. Parking will be provided within enclosed structures, accessed via a private road originating from the Empire-Lowell switchback. The closest neighboring residence is currently located in excess of 200 feet away.

The Creole Gulch site is comprised of 7.75 acres and situated basically south of the Empire-Lowell switchback at approximately 8th Street. The majority of the property is currently zoned Estate (E). A total of 161.5 residential unit equivalents are proposed. In addition, 15.5 unit equivalents of support commercial space is included as part of the Master Plan. Average building heights are proposed to be less than 45' with a maximum of 95' for the highest point. As conceptually proposed, in excess of 80% of the building volume is within a 75' height envelope measured from existing grade. It is expected that the Creole Gulch site will be subdivided into specific development parcels at some future date. Parking is accessed directly from the Empire-Lowell switchback and will be provided within multi-level enclosed structures. Depending upon the character of development and unit configuration/mix proposed at conditional use approval, the actual numbers of parking spaces necessary could vary substantially. Buildings have been set back from the adjacent road approximately 100' and a comparable distance to the nearest adjoining residence.

Miscellaneous Properties

In addition to the development areas described above, the proposed Master Plan identifies three distinct single-family lots; one of which is located above Woodside Avenue adjacent to and north of platted 5th Street, a second to be accessed from Upper Norfolk, and a third lot to be situated up on top of Treasure Mountain (possible future access predicated on United Park City Mines Company's plans for development off of King Road). Development would be restricted to single-family homes with no greater than 3500 square foot footprints and maximum building heights of 25 feet.

VI. MAJOR ISSUES

Many concerns were raised and issues identified through the review process. A project of this scale and complexity would pose similar and considerable consternation no matter where it was proposed to be built. Because this particular site is located both within and adjacent to the Historic District, many of the concerns expressed related to the more subjective kinds of considerations. The Master Planned Development procedure attempts to deal with the general concept of the proposed development and defer or relegate the very detailed project review elements to the conditional use stage of review. At conditional use review, the following issues will be examined in considerable detail with technical solutions sought.

Comprehensive Plan - The city's Comprehensive Master Plan identifies the Hillside property as a key scenic area and recommends that development be limited to the lower portions of the mountain. The existing HR-1 ground included in the Sweeney Master Plan is shown as being retained for residential use similar to the existing pattern of development. The Coalition West site is also recommended for Historic Residential use with the East parcels included within a Historic Commercial area. The proposed Sweeney

Properties MPD is in conformance with the land use designations outlined in the Park City Comprehensive Master Plan.

Scale - The overall scale and massiveness of the project has been of primary concern. Located within the Historic District, it is important for project designed to be compatible with the scale already established. The cluster concept for development of the hillside area, while minimizing the impacts in other areas, does result in additional scale considerations. The focus or thrust of the review process has been to examine different ways of accommodating the development of the property while being mindful of and sensitive to the surrounding neighborhood. The relocation of density from the Town Lift site was partly in response to this issue. The concentration of density into the Creole Gulch area, which because of its topography and the substantial mountain backdrop which helps alleviate some of the concern, and the requested height variation necessary in order to reduce the mass perceived (higher versus lower and wider), have greatly improved the overall scale of the cluster approach. The sites along Park Avenue have been conceptually planned to minimize scale and have provided stepped facades and smaller-scale buildings to serve as a transition.

Zoning - Currently, the land involved in the proposed MPD is comprised of three (actually four) distinct zoning designations. The Coalition East parcel is currently zoned Historic Recreation Commercial (HRC) although it was zoned (and is therefore, technically "grandfathered" or vested) Historic Commercial Business at the time the application was submitted. The West site is also now zoned HRC. The Hillside Properties (i.e: Town Lift Mid-Station and Creole Gulch sites) are zoned Historic Residential (HR-1) and Estate (E). The Carr-Sheen, MPE, and two of the three single-family lots are all zoned HR-1 as well. The single-family lot adjacent to property owned by United Park City Mines is zoned Estate.

The current zoning will basically remain unaltered as a result of the proposed Master Plan except that over 110 acres of the mountain will be rezoned to Recreation Open Space (ROS), and the hillside properties will be designated as being subject to a Master Planned Development document/approval (i.e: E/HR1-MPD).

Neighborhood Compatibility - In reviewing the general compatibility of a project of this scale, an evaluation of possible alternative approaches was undertaken. In light of those other development concepts and associated impacts, the proposed clustering approach was deemed the most compatible. Rather than spread the density out and thereby impact the entire old town area, the cluster concept afforded the ability to limit the impacts to smaller areas. Efforts to minimize scale have been directed toward this issue as have the solutions to other problems related to traffic, site disturbance, and the preservation of open space. The non-hillside project sites have also been planned in accordance with both the Historic District guidelines and in keeping with the scale of existing residences. The long build-out period envisioned will also enable a more detailed review at the time when specific project proposals are developed. A number of the staff's recommended conditions are directed toward minimizing the potential conflicts related to neighborhood compatibility considerations.

Open Space - A key element of the proposed cluster approach is to preserve usable open space in perpetuity. A total of 97% (120 acres) of the hillside will be maintained as open space as a part of the proposed Master Plan. In excess of 110 acres will actually be rezoned to Recreation Open Space (ROS) in addition to 70% open space provided within each of the development parcels. Alternative concepts reviewed involving the extension of Norfolk Avenue would significantly have reduced the amount of open space retained. The potential for the subdivision and scattered development of the hillside would also have drastically affected the goal of preserving the mountain substantially intact and pristine.

Access - All of the different concepts reviewed would result in similar access concerns. The Coalition properties along Park Avenue have excellent access as a result and efforts were, therefore, limited to combining driveways to minimize the number of curb cuts (i.e: ingress/egress points). The development of the Hillside Properties will undoubtedly impact not only Empire and Lowell Avenues but other local streets as well. While certain assumptions could be made as to the type or character of development proposed and possible corresponding differences in traffic patterns, many of the questions raised would remain unanswered. While it is true that the Norfolk Avenue extended alternative would best deal with the current problem of poor access to that area, it would not have solved all of the access issues. The proposed Master Plan will provide sufficient ground, to be dedicated to the city, for purposes of developing a reasonable turnaround for Upper Norfolk.

Visibility - The issue of visibility is one which varies with the different concepts proposed and vantage or view points selected. The very detailed visual analyses prepared graphically demonstrated how the various proposals might look from key points around town. The cluster approach, although highly visible from certain areas, does not impose massive structures in the most prominent areas. Instead, the tallest buildings have been tucked into Creole Gulch where topography combines with the densely vegetated mountainside to effectively reduce the buildings' visibility. The height and reduction in density at the Mid-Station site has been partly in response to this concern. The staff has included a condition that an exhibit be attached to the Master Plan approval that further defines building envelope limitations and architectural considerations.

Building Height - In order to minimize site disturbance and coverage, the clustering of density necessitated consideration of building heights in excess of that which is permitted in the underlying zoning (28' to the mid-point of a pitched roof with a maximum ridge height of 33'). The various iterations submitted for review demonstrated the trade-offs between height and site coverage. The proposed concept for the Mid-Station area results in buildings that would average only 18' above grade with portions (primarily the elevator access shafts likely to be required) approaching 75' in the worst-case situation. The concept reviewed for the Creole Gulch area entails portions of buildings as high as 100', but with an overall average of less than 40'. The Coalition East property, as a result of transferring additional density to it, is proposed to go as high as 55'; whereas, the Coalition West site approaches 35' along the Park Avenue frontage and 28' adjacent Woodside Avenue. As a part of the Master Planned Development process, height variations can be approved in light of other

planning considerations (see Section 10.9(e) of the Land Management Code). Throughout the review, considerable effort has been directed at minimizing overall building height and related impacts while still accommodating the proposed density in a cluster type of development.

The staff has developed a number of recommended conditions in response to the concerns expressed over building heights. An exhibit defining building "envelopes" has been developed to define areas where increased building heights can be accommodated with the least amount of impact. It is our recommendation that maximum building heights be restricted to 35' and 75' at the Town Lift Mid-Station and Creole Gulch sites, respectively, for the bulk of (at least 83%) the building volumes. Similarly, we recommend that the building envelope proposed for the Coalition properties be limited in accordance with the exhibits prepared and made a part of the approval documents.

Overall Concept - The concept of clustering densities on the lower portion of the hillside with some transferring to the Coalition properties has evolved from both previous proposals submitted and this most recent review process. The Park City Comprehensive Master Plan update that was recently enacted encourages the clustering of permitted density to those areas of the property better able to accommodate development. In order to preserve scenic areas in town and mitigate potentially adverse impacts on the environment, the Master Planned Development concept was devised. The Sweeney Properties MPD was submitted after a number of different development concepts had been reviewed; including, several versions of the Silver Mountain proposal and various designs that were predicated on the extension of Norfolk Avenue through to the Empire-Lowell Avenues area. After considerable staff discussion and input, the cluster concept was developed. Because of the underlying zoning and resultant density currently in place, the cluster approach to developing on the hillside has been favored throughout the formal review and Hearing process.

Land Uses - The predominant land uses envisioned at this time are transient-oriented residential development(s) with some limited support commercial. The building forms and massing as well as location lend themselves to hotel-type development. Although future developers of projects within the Master Plan have the flexibility to build a variety of unit types in different combinations or configurations, the likelihood is that these projects will likely be geared toward the visitor looking for more of a destination-type of accommodation. The property involved in the Master Plan is directly connected to the Park City Ski Area and as such can provide ski-to and ski-from access. A number of smaller projects in the area are similarly oriented to the transient lodger. Although certainly a different kind of residential use than that which historically has developed in the old town area, it is still primarily residential in nature. The inclusion of attached townhomes serving to buffer between the existing residences and the denser areas of development will also help provide a transition of sorts. The amount of commercial space included within the Master Plan will be of the size and type to provide convenient service to those residing within the project, rather than possibly be in competition with the city's existing commercial areas.

*These recommendations
were approved by
City Council **

Traffic - Any form of development proposed in this area of town would certainly impact existing streets. Although the majority of traffic generated will use Empire and Lowell Avenues, other roads will also be affected. The concept of extending Norfolk Avenue would have improved access to the south end of old town, but would also have added additional traffic to Empire and Lowell as a result. It is expected that both Empire and Lowell will be improved in several years in order to facilitate traffic movement in general. Even without this project, some upgrading has been planned as identified through the development of the Streets Master Plan.

In evaluating traffic impacts, both construction and future automobile demand are considered. Many related issues also come into play, such as efforts to minimize site grading and waste export. The Master Plan review process affords the opportunity to address these issues in considerable detail whereas other reviews would not. Several of the conditions proposed deal with the issue of traffic and efforts directed at mitigating the impacts created. Traffic within the project will be handled on private roadways with minimal impact.

Utilities - The various utility providers have all reviewed the proposed development concept and do not oppose granting Master Plan approval. Substantial improvements to existing infrastructure will be necessary, however, and the developer has been apprised of his responsibility. Considerable off-site work will be required, the details of which will be resolved at the time of conditional use approval. Depending upon the timing of actual development or the possible subdivision of the property, participation in upgrading existing utility lines and roadway improvements may be required ahead of schedule. A number of parameters/conditions recommended further detail these issues and serve to verify the nature of MPD concept approval.

Fiscal - The proposed dense clustering of development is by far the most economic to service. In contrast to other concepts proposed involving the extension of Norfolk Avenue and possible scattered development of the hillside, the cluster approach represents a positive impact on the city's and other public entities budgets. The nature of development anticipated and lack of additional roadway and utility line extensions requiring maintenance will not create significant additional demands for service.

Tenancy - The likely occupancy and tenancy of the projects comprising the Master Plan will be transient in nature. Rather than housing significant numbers of year-round permanent residents, it is expected that the orientation will instead be toward the short-term visitor.

Circulation - Circulation within the primary development sites will be on foot. Private roadways/drives access the project parking areas with vehicular circulation provided between projects and for service/delivery, construction, and emergency purposes. Pedestrian circulation within the projects will be provided via walkways and plazas with off-site improvements made to facilitate area-wide access. Several nearby stairways will be (re)constructed in accordance with the approved phasing and project plans.

Easements/Rights-of-Way - The Sweeneys have included the dedication and and/or deeding of several easements and sections of rights-of-way to improve the city's title. As a part of the Master Plan, several roadway sections and utility/access corridors will be deeded over. In addition, a right-of-way will be supplied for the construction of a hammerhead-type turnaround for Upper Norfolk Avenue.

Norfolk Avenue - Although several staff members supported the idea of extending Norfolk Avenue through to Empire-Lowell, the consensus was in support of the clustering approach to development. Technical as well as fiscal concerns were discussed relative to the access benefits that would result. Similarly, although the resultant scale of HR-1 development that would have been likely is closer to that prevalent in the Historic District today, the spreading-out of the impacts of road and development construction would have been exacerbated. In lieu of extending Norfolk Avenue, the Sweeney's have consented to deed to the city sufficient land for a turnaround and to participate in the formation of a special improvement district for roadway improvements (in addition to providing an easement for the existing water line).

Grading - The proposed cluster concept will result in less grading than the alternatives considered. The MPD review enabled the staff, Planning Commission, and developer the opportunity to consider this kind of concern early in the project design process. The concept plans developed have examined the level of site work required and how potential impacts can be mitigated. Various conditions supported by staff have been suggested in order to verify the efforts to be taken to minimize the amount of grading necessary and correlated issues identified.

Disturbance - The eight distinct development scenarios presented each had a varying degree of associated site disturbance. The current concept results in considerably less site clearing and grading than any of the others presented (except the total high-rise approach). A balance between site disturbance and scale/visibility has been attained through the course of reviewing alternate concepts. General development parameters have been proposed for Master Plan approval with the detailed definition of "limits of disturbance" deferred until conditional use review.

Density - The proposed densities are well within the maximum allowed and actually about one-half of that which the underlying zones would permit. While it would not be practical or feasible to develop to the full extent of the "paper density", the proposed Master Plan does represent a considerable reduction from that which could be proposed. During the course of review, numerous comparables were presented which demonstrated that the overall density proposed (1.77 unit equivalents per acre of the Hillside Properties and 2.20 for the entire MPD) is the lowest of any large scale project recently approved. The net densities proposed for the hillside properties, while seemingly quite high, are in actuality lower than the density of the surrounding area. Thus, even though a transferring and congregation of development density is occurring, the overall gross and net densities are well within ranges approved for other projects.

Phasing - The build-out of the entire Master Plan is expected to take somewhere between 15-20 years. The Coalition properties will likely be

developed within 5-10 years with development of the Hillside area not expected for at least 10 years. Because of the scope of the project and the various related improvements necessary to accommodate a project of this nature, a detailed time line has been developed as an attachment to the MPD approval documents. While some flexibility is built-into the approved Master Plan, any period of inactivity in excess of two years would be cause for Planning Commission to consider terminating the approval.

Setbacks - All of the development sites provide sufficient setbacks. The Coalition properties conceptually show a stepped building facade with a minimum 10' setback for the West site (in keeping with the HRC zoning) and a 20' average setback for the East sites. The Hillside properties provide substantial 100'+ setbacks from the road, with buildings sited considerably farther from the closest residence.

Fire Safety - The clustering of development proposed affords better overall fire protection capabilities than would a more scattered form. Buildings will be equipped with sprinkler systems and typical "high-rise" fire protection requirements will be implemented. The proposed development concept locates buildings in areas to avoid cutting and removing significant evergreens existing on the site. Specific parameters have been recommended by the staff with actual details proposed to be deferred until conditional use review.

Snow Removal/Storage - The cluster approach to development results in less roadway or associated hard-surfaced area and thereby reduces the amount of snow storage/removal necessary. Considerable effort has been devoted in looking at everything from snow melting systems to where pitched roofs will shed. No additional snow removal will be required of the city. At conditional use approval, additional consideration will be appropriate to ensure that snow storage can safely and reasonably be handled on-site.

Employee Housing - At the time of conditional use approval, individual projects shall be reviewed for impacts on and the possible provision of employee housing in accordance with applicable city ordinances in effect.

Landscaping/Erosion Control - Detailed landscaping plans and erosion control/revegetation methodologies for minimizing site impacts will be required at the time of conditional use review. Plantings shall be reviewed for their ability to provide visual interest and blend with existing native materials.

Trails - The proposed phasing plan identifies the timing of construction for summertime hiking trails and related pedestrian connections. Trails, stairways, and sidewalks accessing or traversing the various properties will be required in accordance with both the approved phasing plan and at the time of conditional use review/approval.

SWEENEY PROPERTIES MASTER PLAN DENSITY EXHIBIT

Parcel	Acreage	Residential Unit Equivalents	Commercial Unit Equivalents	Maximum Building Height ¹	Minimum Open Space (%)
Coalition Properties					
East	0.986	40	Maximum Commercial space not to exceed FAR of 1:1	55'	39.8 ¹
West	0.543	13	---	35'	54.9
Hillside Properties					
Creole Gulch	7.75	161.5	15.5	98'² * 75	70
Town Lift Mid-Station	3.75	35.5	3.5	55'² * 45	70
Three 1/4-acre Single Family Lots	1.5	3	---	25'	83.9
Develop IIR-1 Properties					
Carr-Sheen	0.288	3	---	28'	60
MPE	0.161	2	---		
		<u>258 U.E.</u>	<u>19 U.E.</u>		

¹ Does not include Town Lift base facility
² Maximum roof height, excludes elevator shaft

* Subject to revised conditions as stated in the motion by City Council 11/16/82

SWEENEY PROPERTIES MASTER PLAN PHASING EXHIBIT - REVISED

<u>Improvement/ Development</u>	Year 1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	
MPD Approval Recorded	—																					
Norfolk Waterline Easement	—																					
Norfolk ROW	—																					
Crescent Walkway	—																					
Empire-Lowell ROW	—																					
Norfolk Turnaround	—																					
Misc. Deed Restrictions	—																					
Hiking Trails/ Foot Paths	—																					
Tramway Towers Dedication	—																					
Empire Lowell to Crescent Walkway Connection/ Construction	—																					
6th Street Stairway ²																						
5th Street Stairway ²																						
4th Street Stairway ²																						

Approved 06.03.2024

Project Timeframe

Coalition Properties _____

MPE and Cart-Sheen _____

**Town Lift
Mid Station** _____

Creole Gulch _____

¹ For additional clarification, consult the Planning Department Staff Report and the Sweeney Properties Master Plan document and fact sheet dated May 15, 1985.

² Stairways to be constructed concurrently with development of Hillside Properties unless already improved by Park City Resort or adjacent projects.

Approved 06.03.2024

EXHIBIT F

Approved 06.03.2024

City Council Staff Report



Application No: PL-13-01889
Subject: LMC Amendments
Author: Francisco Astorga, Planner
Date: November 21, 2013
Type of Item: Legislative – LMC Amendments Height in the Historic Residential and the RC Districts.

Summary Recommendation

Staff recommends that the City Council review the proposed amendments to the Land Management Code (LMC) for Chapter 2 as described in this report, open the public hearing, and consider adopting the ordinance as presented in Exhibit A – Proposed Ordinance.

Description

Project Name: LMC Amendments – Regarding development in the HRL, HR-1, HR-2, and RC Districts
Applicant: Planning Department
Location: Old Town and Resort Center
Proposal: Revisions to the Land Management Code

Background

The Planning Commission originally discussed the definition of story during a work session discussion on August 22, 2012. Then during a Planning Commission work session discussion held on September 12, 2012 staff recommended reviewing the interpretation of a “story” as currently defined in the Land Management Code (LMC). During this meeting, the Commission showed concerns regarding the current Building Height parameters and how they applied to split-level concepts. It was interpreted that a three (3) story split-level per the current LMC definition of a story would qualify as multiple stories adding up to six (6). Staff introduced an additional regulation which was based on the internal height of a structure measured from the lowest floor level to the highest roof form. Planning Director Eddington indicated that the Planning Staff would work with different scenarios and come back with alternatives.

During a regular meeting dated September 26, 2012, Staff introduced amendments to the LMC to address planning and zoning issues that came up in the past year. The proposed amendments provided clarification and streamlining of processes, procedures, and definitions, etc. During this meeting the same maximum internal height measurement provision was drafted.

During the September 26, 2012 Planning Commission meeting, many items were forwarded to the City Council for review and possible adoption. Regarding Building Height measurement and story definition, the Commission continued the proposed

amendments to a later date. The Planning Commission found the exhibits in the Staff report to be helpful, but expected additional information based on the discussion at the last meeting. The Commission requested to see an exercise on a variety of un-built lots in Old Town, both downhill and uphill, that maximizes the heights using stories as an example to see what the mass and scale and height would do. The Commission requested to see an idea of "worst case" scenarios. The Planning Department committed to provide a variety of examples on un-built lots, however, it was recognized that many lots do not have historic structures on them which can be demolished through an administrative building permit. The Planning Department proposed to come back with the information requested as well as other scenarios they had created for massing and volume on various slopes. The Planning Commission would be able to see how different aspects of the LMC work in each scenario depending on the slope.

During the November 28, 2012 Planning Commission meeting many other items were forwarded to the City Council for review and possible adoption including the new Building Height parameter to limit the maximum internal height of a building. Because of the amount of LMC amendments, staff was unable to deliver the prepared presentation on stories as the Planning Commission requested to continue the presentation to December 12, 2012.

On December 12, 2012 the Planning Department prepared the different scenarios and requested to hear as much input as possible from the Planning Commission. Due to the late hour that evening, there was not enough time to sufficiently review the scenarios and give the Planning Commission the opportunity to brainstorm and provide comments. Staff briefly reviewed some of the visuals to give the Planning Commission and the public a preview of the massing scenarios.

On January 9, 2013 the Planning Department discussed with the Planning Commission specific scenarios regarding Building Height in the Historic Residential Districts (HRL, HR-1, & HR-2) through a hands-on exercise relating to **downhill** lots.

On February 13, 2013 the Planning Department discussed with the Planning Commission specific scenarios regarding Building Height in the Historic Residential Districts (HRL, HR-1, & HR-2) through a hands-on exercise relating to **uphill** lots.

These last two Planning Commission work session discussions were based on the current Building Height parameters which include the following:

- No structure shall be erected to a height greater than twenty-seven feet (27') from existing grade.
- Final grade must be within four (4) vertical feet of existing grade around the periphery of the Structure, except for the placement of approved window wells, emergency egress, and garage entrance.
- A structure may have a maximum of three (3) stories. A basement counts as a first story.

- A ten (10) foot minimum horizontal step in the downhill façade is required for a third (3rd) story of a structure unless the first story is located completely under the finish grade on all sides of the structure.
- Roof pitch must be between 7:12 and 12:12. A green roof or a roof which is not part of the primary roof design may be below the required 7:12 pitch.
- Garage on Downhill Lot building height exception: The Planning Director may allow additional height on a downhill Lot to accommodate a single car garage in a tandem configuration. The depth of the garage may not exceed the minimum depth for an internal Parking Space as dimensioned within this Code, Section 15-3. Additional width may be utilized only to accommodate circulation and an ADA elevator. The additional height may not exceed thirty-five feet (35') from Existing Grade.

The direction received from the Planning Commission, which resulted from the many different meetings shown herein, was to replace the current requirement of a maximum of three (3) stories with an internal maximum height provision. The Planning Commission did not feel inclined to amend the other Building Height parameters such as the maximum building height of twenty-seven feet (27') measured from existing grade, the required roof pitch, etc.

In response to that direction, on May 8, 2013 the Planning Department proposed adding a new parameter to the Building Height. This parameter was to replace the maximum number of stories by adding a provision which indicated a maximum height measured from the lowest floor level to the highest roof form. The actual maximum number proposed was based on a scale factor depending on the roof pitch of said structure. See attached Planning Commission minutes, Exhibit H – Planning Commission regular meeting minutes 05.08.2013. The Planning Commission expressed concerns with how the new provision would relate to the ten foot (10') horizontal step as it was discussed that it may need to have a numeric value other than saying that it would occur on the third floor. The Commission was not comfortable forwarding a recommendation to the City Council without seeing the drafted language regarding the roof pitch exception.

Public comment was also made during this time which focused on the 3-story versus internal height issue, structures with exposed foundations below the first floor, roof pitch options, different ways of controlling visual height and mass. The Planning Commission continued this item to May 22, 2013 to allow staff to address the comments from the Planning Commission and the public. On May 22, 2013 this item was continued to June 26, 2013. On June 26, 2013 this item was continued to July 10, 2013.

During the July 10, 2013 Planning Commission meeting Staff introduced proposed language clarified throughout the subsequent meetings. During this meeting the Planning Commission discussed various items such as the maximum slope for driveways (14%), excavation impacts, window wells, flat roofs, and the specific parameters introduced as recommended height amendments. The Planning Commission continued this item to a date uncertain to allow staff to tidy up the recommendation and to further analyze the proposed height amendments.

The Recreation Commercial District (RC) District has specific requirements for single family dwellings and duplexes under LMC § 15-2.16-5. Subsection L & M refers to Building Height which mirrors the same language for the HRL, HR-1, and HR-2. If the Building Height is amendment for these three (3) Historic Residential Districts, this same language should also be amended in the RC District to reflect the same standard for consistency.

On October 9, 2013 the Planning Commission reviewed the proposed LMC amendments and forwarded a positive recommendation outlined in Exhibit A.

Building Height Analysis

Existing height provisions:

- **No structure shall be erected to a height greater than twenty-seven feet (27') from existing grade.** *(Staff does not recommend amending this provision).*
- **Final grade must be within four (4) vertical feet of existing grade around the periphery of the Structure, except for the placement of approved window wells, emergency egress, and garage entrance.** *(Staff does not recommend amending this provision).*
- **A structure may have a maximum of three (3) stories. A basement counts as a first story.** *(Staff recommends amending this provision).*
- **A ten (10) foot minimum horizontal step in the downhill façade is required for a third (3rd) story of a structure unless the first story is located completely under the finish grade on all sides of the structure.** *(Staff recommends amending this provision).*
- **Roof pitch must be between 7:12 and 12:12. A green roof or a roof which is not part of the primary roof design may be below the required 7:12 pitch.** *(Staff recommends amending this provision).*
- **Garage on Downhill Lot building height exception: The Planning Director may allow additional height on a downhill Lot to accommodate a single car garage in a tandem configuration. The depth of the garage may not exceed the minimum depth for an internal Parking Space as dimensioned within this Code, Section 15-3. Additional width may be utilized only to accommodate circulation and an ADA elevator. The additional height may not exceed thirty-five feet (35') from Existing Grade.** *(Staff does not recommend amending this provision).*

Currently, the specific height of a story is not codified. The LMC defines a story as:

*The vertical measurement between floors taken from finish floor to finish floor.
For the top most Story, the vertical measurement is taken from the top finish floor to the top of the wall plate for the roof Structure.*

There is no maximum or minimum number of feet for a story or a wall plate. The height of a structure is simply measured from existing grade, not to exceed twenty-seven feet (27'), this is known as the *roof over topo* analysis. After analyzing the impacts of the

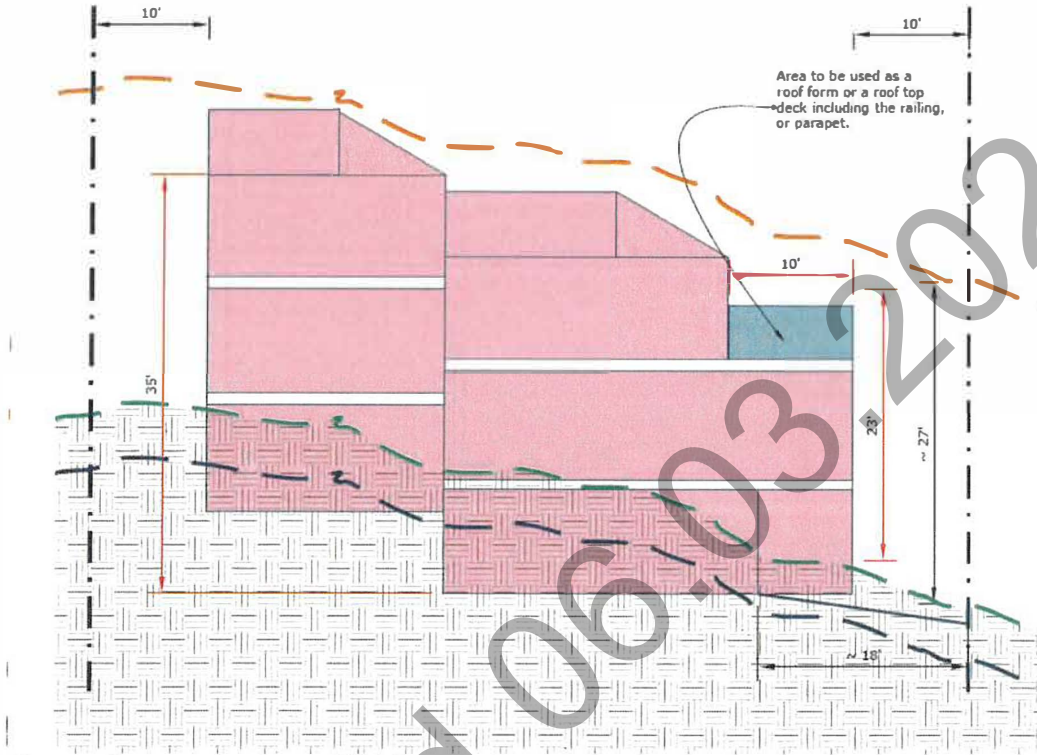
“split-levels” and more specifically “multiple split-levels” concept on a standard lot of record and possibly over longer lots, staff recommends adding provisions to the LMC related to Building Height. By regulating the maximum height measured from the first story floor plane to the point of the highest wall top plate that supports the ceiling joints/roof rafters, the mass, volume, and scale of the “split-level” concept can be limited so that the proposal does not contain multiple numbers of splits stepping up or down the hillside. Planning Staff recommend that the Commission forward a positive recommendation to the City Council by adding the following provisions to the Building Height regulation:

~~A Structure may have a maximum of three (3) stories. A basement counts as a First Story within this zone. A Structure shall have a maximum height of thirty five feet (35') measured from the lowest floor plane to the point of the highest wall top plate that supports the ceiling joists or roof rafters. Attics that are not Habitable do not count as a Story.~~

The Planning Commission’s recommendation included reducing the maximum height to thirty three feet (33’) as they felt that the recommended thirty five (35’) was too high. The 35’ recommendation is based on the having a three (3) story building at ten foot wall height including floor plate and accommodating a split. Please note that this amendment deals with the alternate language to replace the maximum three (3) stories and does not replace the maximum height of twenty-seven feet (27’) measured from existing grade, *roof over topo* height review.

The Planning Department and the Planning Commission also recommend adding clarifying language to the ten foot (10’) minimum horizontal step. The current Code does not indicate where the step back takes place on a vertical plane. Staff finds that the added language in red below clarifies where the horizontal step should occur. Staff has seen projects that have extended ceilings from the mid-level to the top level that technically removes the required horizontal step as this portion of the structure does not provide a third (3rd) story. The clarifying language requires that projects that have the same massing of a three (3) story building to have such horizontal step. See language to be added:

~~A ten foot (10') minimum horizontal step in the downhill façade is required for the third (3rd) Story of a Structure, unless the First Story is located completely under the finish Grade on all sides of the Structure. On a Structure in which the First Story is located completely under finish Grade, a side or rear entrance into a garage which is not visible from the front façade or Street Right-of-Way is allowed.~~ The horizontal step shall take place at a maximum height of twenty three feet (23') from where the Building Footprint meets the lowest point of existing grade. Architectural features, that provide articulation to the upper story façade setback, may encroach into the minimum ten foot (10') setback but shall be limited to no more than twenty five percent (25%) of the width of the building encroaching no more than four feet (4') into the setback, subject to compliance with the Design Guidelines for Historic Sites and Historic Districts.



Above: diagram showing uphill lot scenario

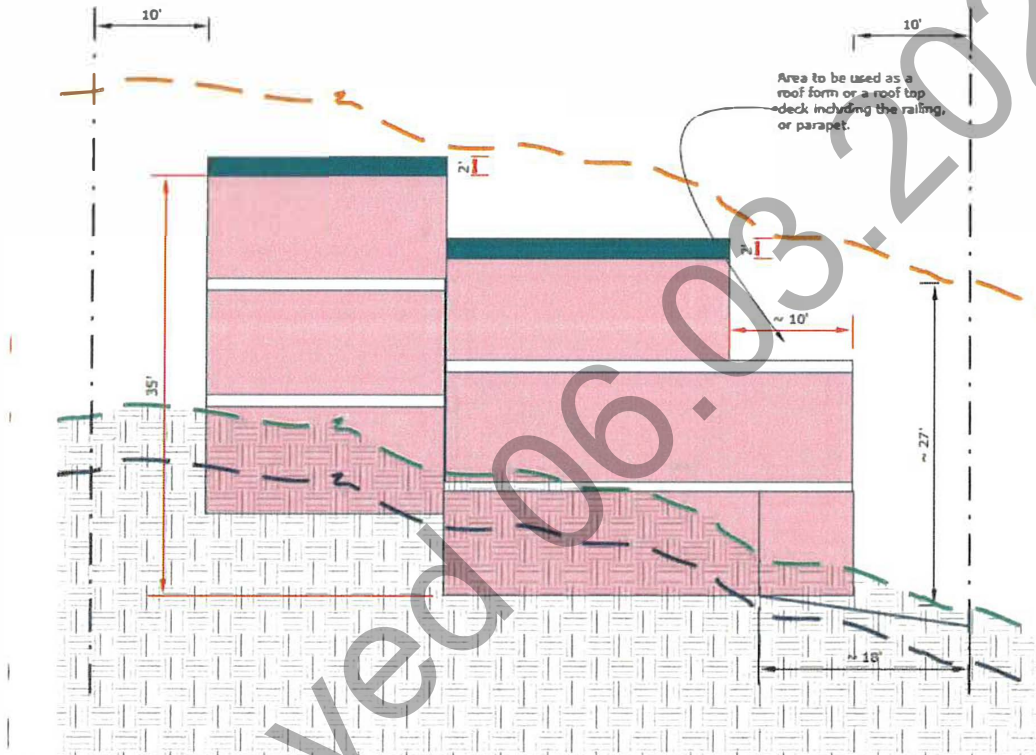
Staff also found that the roof pitch also needs to be clarified to reflect the following:

ROOF PITCH. Roof pitch must be between seven: twelve (7:12) and twelve: twelve (12:12). A Green Roof or a roof which is not part of the primary roof design may be below the required 7:12 pitch. A Green Roof may be below the required 7:12 roof pitch as part of the primary roof design. In addition, a roof that is not part of the primary roof design may be below the required 7:12 roof pitch.

- (1) A Structure containing a flat roof shall have a maximum height of thirty five feet (35') measured from the lowest floor plane to the highest wall top plate that supports the ceiling joists or roof rafters. The height of the parapets, railings, or similar features shall not exceed twenty-four inches (24") above the highest top plate mentioned above.

The Planning Commission accepted a former Staff recommendation with indicated the following: A Structure containing a flat roof shall have a maximum height of thirty feet (30') measured from the lowest floor plane to the highest point of the roof including

parapets, railings, or similar features. Staff requests Council consider a change to the recommendation of thirty feet (30') as it does not provide any room to allow for a split level as it would simply consist of three (3) floors. The proposed language simply provides consistent with the massing below a roof whether it is a flat green roof or a higher roof pitch while at the same time not overpower the height of a structure with a flat roof.



Above: Diagram showing a green flat roof scenario.

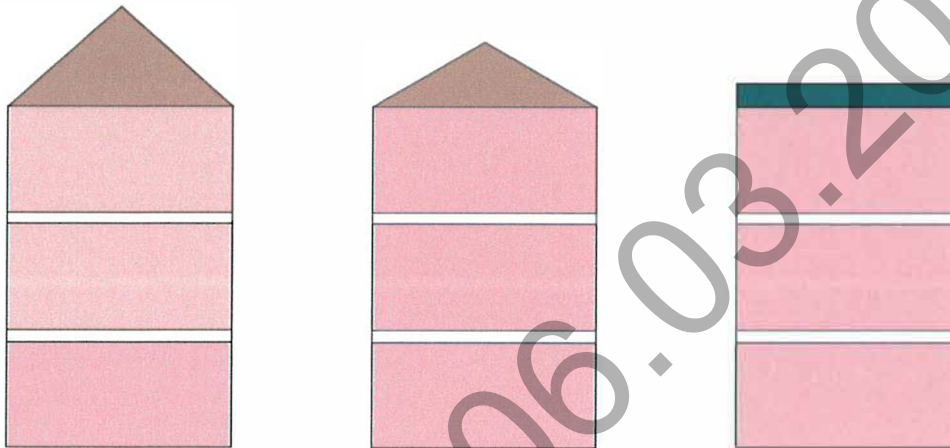
The above provision clarifies the required roof pitch for green roofs as well as it adds a specific parameter of measurement which is not any additional height that what would be required for a standard Old Town roof form. Again, please note that this amendment deals with the alternate language to replace the maximum three (3) stories and does not replace the maximum height of twenty-seven feet (27') measured from existing grade, *roof over topo* height review.

The LMC defines a Green Roof as:

A roof of a Building that is covered with vegetation and soil, or a growing medium, planted over a waterproofing membrane. It may also include additional

layers such as a root barrier and drainage and irrigation systems. This does not refer to roofs which are colored green, as with green roof shingles.

This regulation allows the “split-level” concept (internally) but regulates the vertical area that can be used to accommodate such concept. These figures were derived from having three (3) stories (or levels) measuring a maximum ten feet (10') wall height including one foot (1') floor joists. This diagram below shows that the flat green roofs would not be any higher in term of wall height.



Process

Amendments to the Land Management Code require Planning Commission recommendation and City Council adoption. City Council action may be appealed to a court of competent jurisdiction per LMC § 15-1-18.

Notice

Legal notice of a public hearing was posted in the required public spaces and published in the Park Record.

Public Input

Public hearings are required to be conducted by the Planning Commission and City Council prior to adoption of Land Management Code amendments. The public hearing for these amendments was properly and legally noticed as required by the Land Management Code. Ruth Meintsma shared public comment during the May 8, 2013 and the July 10, 2013 public hearings. Ms. Meintsma focused on several items found in Exhibit H & I.

Significant Impacts

The proposed amendments provide clarification of the Building Height and Existing Historic Structures as currently outlined in the LMC. The amendments address the

mass and scale of new construction as it relates to residential development in the Historic District. Existing structures which do not conform to these regulations will be treated as non-complying Structures and regulated under LMC § 15-9-6.

Recommendation

Staff recommends that the City Council review the proposed amendments to the Land Management Code (LMC) for Chapter 2 as described in this report, open the public hearing, and consider adopting the ordinance as presented in Exhibit A – Proposed Ordinance.

Exhibits

Exhibit A – Proposed Ordinance

Exhibit B – Planning Commission work session discussion minutes 8.22.2012

Exhibit C – Planning Commission work session discussion minutes 9.12.2012

Exhibit D – Planning Commission regular meeting minutes 9.26.2012

Exhibit E – Planning Commission regular meeting minutes 11.28.2012

Exhibit F – Planning Commission work session discussion minutes 1.09.2013

Exhibit G – Planning Commission work session discussion minutes 2.13.2013

Exhibit H – Planning Commission regular meeting minutes 05.08.2013

Exhibit I – Planning Commission regular meeting minutes 7.10.2013

Exhibit J – Planning Commission regular meeting minutes 10.09.2013

Draft Ordinance 13- __

AN ORDINANCE AMENDING THE LAND MANAGEMENT CODE OF PARK CITY, UTAH, REVISING SECTIONS 15-2.1-5, 15-2.2-5, 15-2.3-6, 15-2.16-5(L), & 15-2.16-5(M) REGARDING BUILDING HEIGHT IN THE HRL, HR-1, HR-2, & RC DISTRICTS.

WHEREAS, the Land Management Code was adopted by the City Council of Park City, Utah to promote the health, safety and welfare of the residents, visitors, and property owners of Park City; and

WHEREAS, the Land Management Code implements the goals, objectives and policies of the Park City General Plan to maintain the quality of life and experiences for its residents and visitors; and to preserve the community's unique character and values; and

WHEREAS, the City reviews the Land Management Code on an annual basis and identifies necessary amendments to address planning and zoning issues that have come up in the past year, and to address specific LMC issues raised by Staff and the Commission, to address applicable changes to the State Code, and to align the Code with the Council's goals; and

WHEREAS, the City's goals include preservation of Park City's character regarding Old Town improvements, historic preservation, sustainability, affordable housing, and protecting Park City's residential neighborhoods and commercial districts; and

WHEREAS, the City's goals include maintaining effective transportation and parking, maintaining the resort community regarding architectural consistency and excellent design and enhancing the economic viability of Park City's Main Street Business Districts; and

WHEREAS, Chapters 2.1, 2.2, and 2.3 Historic Residential Districts (HRL, HR-1, and HR-2) and Chapter 2.16 Recreation Commercial (RC) District, provide a description of requirements, provisions and procedures specific to these zoning districts that the City desires to clarify and revise. These revisions concern existing historic structures and building height; and

WHEREAS, the Planning Commission held work session discussions on August 22, 2012, September 12, 2012, January 9, 2013, and February 13, 2013 and provided input and direction during their regular meetings on September 26, 2012, November 28, 2012, May 8, 2013, and June 26, 2013 and discussed the proposed LMC amendments as outlined in this report; and

WHEREAS, the Planning Commission duly noticed and conducted public hearings at the regularly scheduled meeting on October 17, 2013, and forwarded a positive recommendation to City Council; and

WHEREAS, the City Council duly noticed and conducted a public hearing at its regularly scheduled meeting on _____, 2013; and

WHEREAS, it is in the best interest of the residents of Park City, Utah to amend the Land Management Code to be consistent with the Park City General Plan and to be consistent with the values and identified goals of the Park City community and City Council to protect health and safety, maintain the quality of life for its residents, preserve and protect the residential neighborhoods, preserve historic structures, promote economic development within the Park City Historic Main Street business area, and preserve the community's unique character.

NOW, THEREFORE, BE IT ORDAINED by the City Council of Park City, Utah as follows:

SECTION 1. AMENDMENTS TO TITLE 15 - Land Management Code Chapter 2- Sections 15-2.1, 15-2.2, 15-2.3, and 15-2.16. The recitals above are incorporated herein as findings of fact. Chapter 15-2.1, 15-2.2, 15-2.3, and 15-2.16 of the Land Management Code of Park City are hereby amended as redlined (see Attachment 1).

SECTION 2. EFFECTIVE DATE. This Ordinance shall be effective upon publication.

PASSED AND ADOPTED this ___ day of _____, 2013

PARK CITY MUNICIPAL CORPORATION

Dana Williams, Mayor

Attest:

Janet M. Scott, City Recorder

Approved as to form:

Mark Harrington, City Attorney

Attachment 1

Chapter 2.1 - Historic Residential-Low Density (HRL) District

15-2.1-5. BUILDING HEIGHT.

No Structure shall be erected to a height greater than twenty-seven feet (27') from Existing Grade. This is the Zone Height. Final Grade must be within four vertical feet (4') of Existing Grade around the periphery of the Structure, except for the placement of approved window wells, emergency egress, and a garage entrance. The following height requirement must be met:

- (A) ~~A Structure may have a maximum of three (3) stories. A basement counts as a Story within this zone. A Structure shall have a maximum height of thirty five feet (35') measured from the lowest floor plane to the point of the highest wall top plate that supports the ceiling joists or roof rafters. Attics that are not Habitable Space do not count as a Story.~~
- (B) ~~A ten foot (10') minimum horizontal step in the downhill façade is required for a third (3rd) Story of a Structure unless the First Story is located completely under the finish grade on all sides of the Structure. On a Structure in which the First Story is located completely under finish grade, a side or rear entrance into a garage which is not visible from the front façade or Street Right of Way is allowed. The horizontal step shall take place at a maximum height of twenty three feet (23') from where the Building Footprint meets the lowest point of existing Grade. Architectural features, that provide articulation to the upper story façade setback, may encroach into the minimum ten foot (10') setback but shall be limited to no more than twenty five percent (25%) of the width of the building encroaching no more than four feet (4') into the setback, subject to compliance with the Design Guidelines for Historic Sites and Historic Districts.~~
- (C) **ROOF PITCH.** ~~The primary Roof pitch must be between seven:twelve (7:12) and twelve:twelve (12:12). A Green Roof or a roof which is not part of the primary roof design may be below the required 7:12 pitch. A Green Roof may be below the required 7:12 roof pitch as part of the primary roof design. In addition, a roof that is not part of the primary roof design may be below the required 7:12 roof pitch.~~
- (1) ~~A Structure contain a flat roof shall have a maximum height of thirty five feet (35') measured from the lowest floor plane to the highest wall top plate that supports the ceiling joists or roof rafters. The height of the parapets, railings, or similar features shall not exceed twenty four inches (24") above the highest top plate mentioned above.~~
- (D) **BUILDING HEIGHT EXCEPTIONS.** The following height exceptions apply:
- (1) Antennas, chimneys, flues, vents, or similar Structures, may extend up to five feet (5') above the highest point of the Building to comply with International Building Code (IBC) requirements.
- (2) Water towers, mechanical equipment, and associated Screening, when Screened or enclosed, may extend up to five feet (5') above the height of the Building.

(3) **ELEVATOR ACCESS.** The Planning Director may allow additional height to allow for an elevator compliant with American Disability Act (ADA) standards. The Applicant must verify the following:

(a) The proposed height exception is only for the Area of the elevator. No increase in square footage of the Building is being achieved.

(b) The proposed option is the only feasible option for the elevator on the Site.

(c) The proposed elevator and floor plans comply with the American Disability Act (ADA) standards.

(4) **GARAGE ON DOWNHILL LOT.** The Planning Director may allow additional height on a downhill Lot to accommodate a single car garage in a tandem configuration. The depth of the garage may not exceed the minimum depth for an internal Parking Space as dimensioned within this Code, Section 15-3. Additional width may be utilized only to accommodate circulation and an ADA elevator. The additional height may not exceed thirty-five feet (35') from Existing Grade.

Approved 06.03.2024

Chapter 2.2 - Historic Residential (HR-1) District

15-2.2-5. BUILDING HEIGHT.

No Structure shall be erected to a height greater than twenty-seven feet (27') from Existing Grade. This is the Zone Height. Final Grade must be within four vertical feet (4') of Existing Grade around the periphery of the Structure, except for the placement of approved window wells, emergency egress, and a garage entrance. The following height requirement must be met:

~~(A) A structure may have a maximum of three (3) stories. A basement counts as a First Story within this zone. A Structure shall have a maximum height of thirty five feet (35') measured from the lowest finish floor plane to the point of the highest wall top plate that supports the ceiling joists or roof rafters. Atties that are not Habitable Space do not count as a Story.~~

~~(B) A ten foot (10') minimum horizontal step in the downhill façade is required for a third (3rd) Story of a Structure unless the First Story is located completely under the finish Grade on all sides of the Structure. On a Structure in which the First Story is located completely under finish Grade, a side or rear entrance into a garage which is not visible from the front façade or Street Right of Way is allowed. The horizontal step shall take place at a maximum height of twenty three feet (23') from where the Building Footprint meets the lowest point of existing Grade. Architectural features, that provide articulation to the upper story façade setback, may encroach into the minimum ten foot (10') setback but shall be limited to no more than twenty five percent (25%) of the width of the building encroaching no more than four feet (4') into the setback, subject to compliance with the Design Guidelines for Historic Sites and Historic Districts.~~

~~(C) ROOF PITCH. The primary Roof pitch must be between seven:twelve (7:12) and twelve:twelve (12:12). A Green Roof or a roof which is not part of the primary roof design may be below the required 7:12 pitch. A Green Roof may be below the required 7:12 roof pitch as part of the primary roof design. In addition, a roof that is not part of the primary roof design may be below the required 7:12 roof pitch.~~

~~(1) A Structure contain a flat roof shall have a maximum height of thirty five feet (35') measured from the lowest floor plane to the highest wall top plate that supports the ceiling joists or roof rafters. The height of the parapets, railings, or similar features shall not exceed twenty four inches (24") above the highest top plate mentioned above.~~

~~(AD) BUILDING HEIGHT EXCEPTIONS. The following height exceptions apply:~~

- ~~(1) Antennas, chimneys, flues, vents, or similar Structures, may extend up to five feet (5') above the highest point of the Building to comply with International Building Code (IBC) requirements.~~
- ~~(2) Water towers, mechanical equipment, and associated Screening, when enclosed or Screened, may extend up to five feet (5') above the height of the Building.~~

- (3) **ELEVATOR ACCESS.** The Planning Director may allow additional height to allow for an elevator compliant with American Disability Act (ADA) standards. The Applicant must verify the following:
- (a) The proposed height exception is only for the Area of the elevator. No increase in square footage is being achieved.
 - (b) The proposed option is the only feasible option for the elevator on the Site.
 - (c) The proposed elevator and floor plans comply with the American Disability Act (ADA) standards.
- (4) **GARAGE ON DOWNHILL LOT.** The Planning Director may allow additional height on a downhill Lot to accommodate a single car garage in a tandem configuration. The depth of the garage may not exceed the minimum depth for an internal Parking Space as dimensioned within this Code, Section 15-3. Additional width may be utilized only to accommodate circulation and an ADA elevator. The additional height may not exceed thirty-five feet (35') from Existing Grade.

Approved 06.03.2024

Chapter 2.3 - Historic Residential (HR-2) District

15-2.3-6 BUILDING HEIGHT.

No Structure shall be erected to a height greater than twenty-seven feet (27') from Existing Grade. This is the Zone Height.

Final Grade must be within four vertical feet (4') from Existing Grade around the periphery of the Structure, except for the placement of approved window wells, emergency egress, and a garage entrance. The Planning Commission may grant an exception to the Final Grade requirement as part of a Master Planned Development within Subzone A where Final Grade must accommodate zero lot line Setbacks. The following height requirements must be met:

(A) ~~A Structure may have a maximum of three (3) stories. A basement counts as a First Story within this zone. A Structure shall have a maximum height of thirty five feet (35') measured from the lowest finish floor plane to the point of the highest wall top plate that supports the ceiling joists or roof rafters. Attics that are not Habitable Space do not count as a Story.~~ The Planning Commission may grant an exception to this requirement as part of a Master Planned Development within Subzone A for the extension of below Grade subterranean HCB Commercial Uses.

(B) A ten foot (10') minimum horizontal step in the downhill façade is ~~required for a third (3rd) Story of a Structure~~ unless the First Story is located completely under the finish Grade on all sides of the Structure. The Planning Commission may grant an exception to this requirement as part of a Master Planned Development within Subzone A consistent with MPD requirements of Section 15-6-5(F). ~~On a Structure in which the First Story is located completely under finish Grade, a side or rear entrance into a garage which is not visible from the front façade or Street Right-of-Way is allowed. The horizontal step shall take place at a maximum height of twenty three feet (23') from where Building Footprint meets the lowest point of existing Grade. Architectural features, that provide articulation to the upper story façade setback, may encroach into the minimum ten foot (10') setback but shall be limited to no more than twenty five percent (25%) of the width of the building encroaching no more than four feet (4') into the setback, subject to compliance with the Design Guidelines for Historic Sites and Historic Districts.~~

(C) **ROOF PITCH.** ~~The primary R~~roof pitch must be between seven:twelve (7:12) and twelve:twelve (12:12). ~~A Green Roof or a roof which is not part of the primary roof design may be below the required 7:12 pitch. A Green Roof may be below the required 7:12 roof pitch as part of the primary roof design. In addition, a roof that is not part of the primary roof design may be below the required 7:12 roof pitch.~~

(1) ~~A Structure contain a flat roof shall have a maximum height of thirty five feet (35') measured from the lowest floor plane to the highest wall top plate that supports the ceiling joists or roof rafters. The height of the parapets, railings, or similar features shall not exceed twenty four inches (24") above the highest top plate mentioned above.~~

(D) **BUILDING HEIGHT EXCEPTIONS.** The following height exceptions apply:

- (1) An antenna, chimney, flue, vent, or similar Structure, may extend up to five feet (5') above the highest point of the Building to comply with International Building Code (IBC) requirements.
- (2) Water towers, mechanical equipment, and associated Screening, when enclosed or Screened, may extend up to five feet (5') above the height of the Building.
- (3) **ELEVATOR ACCESS.** The Planning Director may allow additional height to allow for an elevator compliant with American Disability Act (ADA) standards. The Applicant must verify the following:
 - (a) The proposed height exception is only for the Area of the elevator. No increase in square footage of the Building is being achieved.
 - (b) The proposed option is the only feasible option for the elevator on the Site.
 - (c) The proposed elevator and floor plans comply with the American Disability Act (ADA) standards.
- (4) **GARAGE ON DOWNHILL LOT.** The Planning Director may allow additional height on a downhill Lot to accommodate a single car garage in a tandem configuration. The depth of the garage may not exceed the minimum depth for an internal Parking Space as dimensioned within this Code, Section 15-3. Additional width may be utilized only to accommodate circulation and an ADA elevator. The additional height may not exceed thirty-five feet (35') from existing Grade.

Chapter 2.16 – Recreation Commercial (RC) District.

15-2.16-5. SPECIAL REQUIREMENTS FOR SINGLE FAMILY AND DUPLEX DWELLINGS.

[...]

(L) **BUILDING HEIGHT.** No Single Family or Duplex Dwelling Structure shall be erected to a height greater than twenty-seven feet (27'). This is the Zone Height for Single Family and Duplex Dwellings. Final Grade must be within four vertical feet (4') of Existing Grade around the periphery of the Structure, except for the placement of approved window wells, emergency egress, and a garage entrance. The following height requirements must be met:

(1) ~~A structure may have a maximum of three (3) stories. A basement counts as a First Story within this zone. A Structure shall have a maximum height of thirty five feet (35') measured from the lowest finish floor plane to the point of the highest wall top plate that supports the ceiling joists or roof rafters. Attics that are not Habitable Space do not count as a Story.~~

(2) ~~A ten foot (10') minimum horizontal step in the downhill façade is required for a third (3rd) Story of a Structure unless the First Story is located completely under the finished Grade on all sides of the Structure. On a structure in which the first Story is located completely under finished Grade, a side or rear entrance into a garage which is not visible from the front façade of Street Right-of-Way is allowed. The horizontal step shall take place at a maximum height of twenty three feet (23') from where Building Footprint meets the lowest point of existing Grade. Architectural features, that provide articulation to the upper story façade setback, may encroach into the minimum ten foot (10') setback but shall be limited to no more than twenty five percent (25%) of the width of the building encroaching no more than four feet (4') into the setback, subject to compliance with the Design Guidelines for Historic Sites and Historic Districts.~~

(3) ~~Roof Pitch. The primary Roof pitch must be between seven:twelve (7:12) and twelve:twelve (12:12). A Green Roof or a roof which is not part of the primary roof design may be below the required 7:12 pitch. A Green Roof may be below the required 7:12 roof pitch as part of the primary roof design. In addition, a roof that is not part of the primary roof design may be below the required 7:12 roof pitch.~~

~~(a) A Structure contain a flat roof shall have a maximum height of thirty five feet (35') measured from the lowest floor plane to the highest wall top plate that supports the ceiling joists or roof rafters. The height of the parapets, railings, or similar features shall not exceed twenty four inches (24") above the highest top plate mentioned above.~~

(M) **BUILDING HEIGHT EXCEPTIONS.** The following height exceptions apply:

- (1) Antennas, chimneys, flues, vents, and similar Structures, may extend up to five feet (5') above the highest point of the Building to comply with International Building Code (IBC) requirements.
- (2) Water towers, mechanical equipment, and associated Screening, when Screened or enclosed, may extend up to five feet (5') above the height of the Building.
- (3) Elevator access. The Planning Director may allow additional height to allow for an elevator compliant with the American Disability Acts standards. The Applicant must verify the following:
 - (a) The proposed height exception is only for the Area of the elevator. No increase in square footage is being achieved.
 - (b) The proposed option is the only feasible option for the elevator on the site.
 - (c) The proposed elevator and floor plans comply with the American Disability Act (ADA) standards.
- (4) Garage on Downhill Lot. The Planning Director may allow additional height on a downhill Lot to accommodate a single car garage in a tandem configuration. The depth of the garage may not exceed the minimum depth for an internal Parking Space as dimensioned within this Code, Section 15-3. Additional width may be utilized only to accommodate circulation and an ADA elevator. The additional height may not exceed thirty-five feet (35') from Existing Grade.

Exhibit B

**PARK CITY PLANNING COMMISSION
WORK SESSION MINUTES
AUGUST 22, 2012**

PRESENT: Charlie Wintzer, Brooke Hontz, Mick Savage, Adam Strachan, Jack Thomas, Thomas Eddington, Katie Cattan, Mathew Evans, Polly Samuels McLean

WORK SESSION ITEMS**Land Management Code Amendments – General Discussion**

Planner Kirsten Whetstone reported that the Staff was doing an annual update of the Land Management Code. She handed out a Staff report that outlined a few of the major changes for consideration. Additional minor changes were not included in the Staff report. Planner Whetstone pointed out that four pages of the Staff report was a pending ordinance for these various amendments.

Planner Whetstone reviewed the redlined packet of amendments. The first was Review Procedure under the Code and addressed different sections of the Code related to review procedures, primarily the appeal process. Planner Whetstone explained that the primary reason for the change was that an applicant could not go through two appeals with the City. It has to move on to a court jurisdiction. She noted that it applied to design reviews, administrative reviews and final actions that get appealed to the Planning Commission and then to the Board of Adjustment.

Planner Whetstone acknowledged that the Planning Commission had only been given the material this evening. She recommended that the Planning Commission read the material and the pending ordinance and come prepared to discuss it at the next meeting on September 12, 2012.

Chair Wintzer asked if the next meeting would be a work session discussion or whether the Planning Commission would be asked to take action. Planner Whetstone stated that the LMC amendments would be noticed for public hearing and discussion, but no action would be requested.

Planner Whetstone referred to the redlined amendment addressing changes to roof pitch, patios and the proposal to require a building permit for certain impervious surfaces in the Historic District.

Planner Whetstone noted that the section titled Master Planned Developments was a relook at various items and issues raised over the past year regarding master planned developments in Old Town and criteria that should be looked at in Master Planned Developments.

Planner Whetstone referred to Chapter 10 – Board of Adjustment and noted that that redlined version removes the Special Exception. The Board of Adjustment is allowed to grant variances and various things, and they can also act on a Special Exception, which is no longer in the State Code. The Staff proposed to delete the Special Exception, but they had not decided what to replace it with. Some of their ideas would be presented to the Planning Commission at the next meeting for discussion.

Planner Whetstone commented on the Definitions Section and the proposal to add definitions for green roofs, impervious surface, split level, story, half-story, and a zero net energy building.

Work Session Minutes
August 22, 2012
Page 2

In response to a question of whether or not the Planning Commission would take public input on the proposed amendments, Chair Wintzer believed it was best to hold public comment until the next meeting to give the Planning Commission the opportunity to review the material handed out this evening. Chair Wintzer encouraged the Commissioners to carefully read the proposed amendments and contact the Planning Department with any questions prior to the next meeting. Director Eddington stated that Planner Whetstone was the lead planner on the amendments; however, other Staff members would also be involved. He encouraged the Commissioners to contact Planner Whetstone to schedule a time to meet with her or another Staff person.

Assistant City Attorney McLean commented on the review process for Historic District Design Review, as well as Administrative Conditional Use Permits. She explained that the proposed change came out of litigation involving 811 Norfolk, in which the court ruled that the City process applied in that case had excessive appeals, which is not allowed by State Code. However, Section 302 of the State Code allows for an application process that allows designation of routine land use matters. An application of proper notice will receive informal streamlined review and action if the application is uncontested, and shall protect the right of each applicant and third party to require formal consideration of any application by a land use authority; and that that decision can be appealed. Ms. McLean stated that that portion of State Code reflects the process the City has where the Staff review is a streamlined review that can be taken to the HPB and further appealed to the Board of Adjustment. Ms. McLean remarked that the amendment tailors the language to more closely reflect the State Code language to make clear that their intent is to follow the State Code.

Commissioner Strachan asked for the impetus behind the changes to the MPD portion of the Code, Chapter 6. Director Eddington explained that the Master Planned Development process began in 1994 and at that time it was allowed in most of the zones. It has morphed over the years and MPDs are allowed in some zones and disallowed in others. The language has been altered and it is now at a point where MPDs are allowed in the Main Street zone if it crosses over into another zone. The intent is to clean up the language and make it more applicable.

Director Eddington noted that a related discussion on the Kimball Arts Center was scheduled before the City Council to consider the opportunity to have that project go through an MPD. Projects on infill lots are challenging and currently there is no opportunity to look at an MPD. Director Eddington clarified that the City Council would not take action on the Kimball Arts Center. It would simply be a policy discussion on whether to allow an MPD to be applied in that situation. Director Eddington invited the Commissioners to attend the City Council meeting to hear that discussion. He clarified that it would be a general policy discussion and not specific to the Kimball Arts Center.

Commissioner Strachan pointed out that the information handed out this evening had a definition of story and split level. Therefore, when the Planning Commission provides the Staff direction for the next work session on the story issue, they should not ask for those definitions because they have already been provided.

Commissioner Savage noted that the applicants who had their projects continued this evening had stayed for the work session because the Planning Commission committed to have a discussion regarding the interpretation of story, independent of the proposed amendments. He pointed out

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that whatever changes are made to the LMC would not apply to these applications. Commissioner Savage believed the Planning Commission needed to discuss the interpretation question in an effort to provide those applicants some guidelines related to their projects as a consequence of the continuation.

Planner Whetstone agreed that it was a two-prong discussion. One was an interpretation of the current Code and the other would be the LMC amendment that addresses potential reasons for different interpretations.

Commissioner Thomas was unsure if they could resolve both issues this evening without first seeing the minutes from the Planning Commission and City Council meetings when the Steep Slope criteria was established. He vaguely recalled talking about stories and heights and he would like to have those documents to clarify some of the issues.

Assistant City Attorney McLean recalled, and as reflected in the Code, that the three stories was under the Historic District height limitations for each zone; and not part of the Steep Slope CUP. Commissioner Thomas concurred, but he still felt that the previous minutes were important because it pertained to the discussion.

Planner Katie Cattan provided a brief history of the process. She explained that when the Planning Commission went through the Steep Slope process there was a 10 foot limit per story. It was quantifiable for Staff to enforce the 10-foot story limit. However, when the process reached the City Council level, the 10-foot limit per story was removed. That changed the clarity because people could expand the stories and work up the hill.

Planner Cattan recalled that the reason for removing the 10-foot limit was based on construction issues on some of the challenging slopes, particularly for the garage. The City Council decided to take out the 10-foot limit for the garage level to create a garage entrance on grade.

Planner Whetstone remarked that the current definition of story in the LMC does not make sense because the City Council took out the vertical measurement. Commissioner Thomas thought it still made sense, but it changed the definition. Planner Whetstone pointed out that the LMC does not address how the stories should be added up.

Commissioner Savage asked Commissioner Thomas to explain his perspective on the story issue and his concerns.

Commissioner Thomas stated that the issue evolves from the beginning of the Steep Slope criteria. The intent was to reduce the mass and scale of projects that were coming before the Planning Commission. They were seeing projects that cascaded up as high as eight stories. Therefore, size, visual impact, and commonality with other projects in the neighborhood became a primary concern. Steep Slope criteria was established to reduce the mass and scale. Commissioner Thomas believed the Planning Commission clearly intended to have a Code that created buildings that had more commonality with the historic character of the community. He noted that the Steep Slope process included discussions about number of stories, modifying grade, maximum heights, and shifts in building. It was not isolated to the number of stories inside the volume. It was also the impact from across the canyon.

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Commissioner Thomas recalled the 10-foot per story limit and he thanked Planner Cattan for reminding him that the City Council had made that modification. Commissioner Thomas stated that the floor to ceiling issue was still defined in the definition. He believed the issues have been clarified and defined, but they need to see the minutes and come together on the interpretation.

Commissioner Savage believed there was a clear misunderstanding on the definitions since three applications came from the Planning Commission with a recommendation to approve, and the Planning Commission would not move forward on those applications based on interpretation. If the Planning Commission thinks the Staff misinterpreted the definition, he wanted like to hear the Staff's reasoning.

Director Eddington stated that part of the challenge was the vertical measurement between finished floor to finished floor. What is not addressed in the definition is the issue of a half floor and/or a split level. Depending on where they take a section drawing, a project could end up with three or six levels if they are split levels. Director Eddington remarked that finished floor to finished floor was ill-defined in the definition section of the Code.

Commissioner Strachan believe there were two separate issues. The first is from which point inside the structure to take the vertical measurement. The second is the issue of getting around the story requirement by creating separate accessory structures. There may not be three stories in one structure, but cumulatively there could be several. Commissioner Savage agreed, and felt they could have divided the applications this evening into those two different parts. Commissioner Savage concurred; however, those projects were still tied to the definition of a story and different interpretations.

Planner Whetstone read the definition of a half-story taken from the Webster definitions. "A half story is an uppermost story, which is usually lighted by dormer windows in which a sloping roof replaces the upper part of the front wall". She clarified that the definition only talks about half stories on the upper portion.

Commissioner Strachan stated that he attended the City Council meeting when they approved the LMC amendments proposed by the Planning Commission. He recalled from the discussion that the Council took the position that what happens inside the structure does not matter if the applicant is bound by the 27 foot requirement. The City Council was not concerned with how large the story could get, which is the problem they have today.

Commissioner Thomas pointed out that the Code does not say you can have 3.5 or 3.25 stories. It specifically says three stories, whether the stories are 10 feet floor to floor, 9 feet floor to floor, or 12 feet. Using an example similar to a plan they saw this evening, Commissioner Savage thought they could keep the outside looking exactly the same and reconfigure the inside to where it would adhere to the three story rule. If applicants have that ability they would be compliant. Beyond that he did not understand why they should care how the inside is configured.

Planner Whetstone explained that the Staff interpreted some projects as three stories because it had a mezzanine or landing. She asked if they should count a landing that gives character inside a

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house as a story. Planner Whetstone felt that was the issue that needed clarification.

Chair Wintzer stated that the mistake they continually make is that they write the Code with words and not with pictures. He suggested that the Staff prepare drawings that clarify and interpret the definition of a story. Commissioner Strachan noted that the definition of a basement in the LMC does show a drawing.

Commissioner Hontz stated that she attended the same City Council meeting that Commissioner Strachan had referenced, and the entire reason for removing the 10-foot limitation was to create flexibility between the three stories and the height. The City Council felt that defining 10-feet per story would limit flexibility. Commissioner Hontz thought they were where they were supposed to be based on the idea of flexibility. She understood that the Planning Commission needed to come to some consensus, and believed the City Council had set them up for this.

Commissioner Thomas stated that not allowing the additional half level above three stories reduces the mass of the building. In effect, that is working according to the initial intent of the Code. Commissioner Savage argued from the perspective that if someone presents a plan that is compliant with Code, it is no one's business what it looks like inside. Chair Wintzer and Commissioner Thomas explained why they disagreed with Commissioner Savage. Commissioner Savage thought the criteria should be based upon whether it is consistent with the objectives about how it looks from across the valley. The valley does not know how many stories are in the building. Commissioner Thomas pointed out that if a limit is not set on the number of stories it can cascade up the hill. That was the reason for having the criteria. Commissioner Savage believed that could be constrained by footprint, setbacks and other constraints from the outside.

Chair Wintzer clarified that the Planning Commission could not move forward on any applications as long as they are in conflict with Staff on the definition of story.

Planner Cattan suggested that they talk about whether a story that goes up 5 feet in elevation is considered a half story or one story. She stated that if the Planning Commission agrees that the three applications seen this evening were 3-1/2 stories, then the Staff interpreted the Code wrong by saying that the level of a story could be split.

Planner Whetstone referred to a house on Park Avenue that has a door, two windows, a roof and dormers. The structure is a simple box without a basement. It has a 9 foot ceiling because of the roof pitch. Based on her research, that structure is a 1-1/2 story house.

Chair Wintzer called for public input on the issue of a story. Speakers were advised to keep their comments general and not related to a specific project.

Craig Elliott with the Elliott Work Group asked the Commissioners to clear their minds of their own opinions and listen to his comments. Mr. Elliott regretted that he had not come before the Planning Commission to argue the three-story issue during the amendment process. At the time he thought it dealt primarily with Ridge Avenue and 75' lots that had 50 feet of grade change. Mr. Elliott stated that the interpretation had become such that it was changing the way he thinks about what they were doing in town. Mr. Elliott remarked that the Code definition is nearly identical to the definition

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in the International Residential Code and the International Building Code. It talks about a story being vetted from a floor level to the floor level next above. That means perpendicular to the floor or the roof; and not to the side. Mr. Elliott noted that the Building Code never addresses a shift in floor plane. He pointed out that the discussion is about a shift in floor plane and not different floors or different stories. It is all one floor that shifts. He stated that being able to shift the floor plane is a fantastic tool for an architect because it provides variety, the opportunity for interest, and delight. It is something that is valuable and can add interest to the town and the community, and not just the interior of a space.

Mr. Elliott stated that he lives in a split level house in Thaynes. He designed it, built it and has lived there for 18 years. He has been in Park City for 19 years and he never thought they would be having this discussion.

Mr. Elliott stated that an interpretation like this is not going to protect neighboring property owners or Park City. It is not going to provide additional value to the community. It will not reduce the densities in these houses because they will design them differently. Instead of having a garage with a level above it and three stories, the garage will be the top floor with two floors below it, just like all the houses on the east side of Lowell. Mr. Elliott remarked that the solutions they have seen through the shift in the floor plane gives variety and building mass above a garage. It is an opportunity to do something good. Mr. Elliott stated that if everything is pushed down to the same floor, they would be digging a deeper hole. They would be trucking more dirt out of town and driving more dump trucks. It would require more shoring and more concrete to support and retain the earth around it. The result will be more dangerous to the adjacent house than what already exists. Mr. Elliott reiterated that changing the interpretation will not change the amount of square footage that people build, and it will not improve the character of the architecture on the street. It will not change how things look from across the valley.

Mr. Elliott commented on issues that deal with the depth of a lot. Discussions over the past year with Staff have been about building multiple buildings on a lot and the story definition made by individual buildings. Mr. Elliott stated that a story is defined across the entire lot. A 140 feet deep lot is typical of what is going on. Different colors, forms and shapes are unique to Park City and the goal is not to put everything into the same box.

Mr. Elliott stated that he was not interested in doing any more houses on a steep slope in town. He has three under contract that he intends to finish. If the interpretation goes in the direction of their discussion it will not benefit the town and it will not benefit the people who own the property.

Commissioner Thomas stated that Mr. Elliott's interpretation of story and that a story is relative to the immediate space below, goes back to the notion of stepping a house completely up the hillside. He noted that the Code was created to put a limitation on that.

Mr. Elliott drew a sketch of a storied house to make his point.

Commissioner Strachan asked Mr. Elliott for his opinion on how the definition of a story applies to a structure that has a number of detached accessory structures, but has the appearance cross-canyon of seven or eight stories. Mr. Elliott replied that on a lot deeper than 75', separate buildings

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in a surrounding context was not a bad thing. Commissioner Strachan asked Mr. Elliott's opinion if the compatibility requirement was the only regulation and there was no objective limitation. Mr. Elliott stated that as some who does design work, he believed the context of the site and where you build is the most important element in any design.

Commissioner Thomas thought Mr. Elliott would agree as a professional that they also have the responsibility to look at how a structure fits into the compatibility of a community and its impact on the historic character of the community in terms of mass, scale and size. He remarked that the Code originated with trying to create a Code that resulted in more commonality with the historic character of the community. Commissioner Thomas stated that the building could still be stepped in the process Mr. Elliott identified in his diagram, but only three stories were allowed.

Chair Wintzer suggested that the Staff schedule this as a work session item and come back with a series of drawings that show different scenarios to help define the definition of a story.

Commissioner Hontz stated that the Code change was precipitated by multiple structures that came in. She was not on the Planning Commission at the time and she opposed one of the structures. She came in a demonstrated that it did not meet the Code. Commissioner Hontz stated that when she came to the Planning Commission with her concerns they agreed with her but could not make that finding, and it went to the City Council. She believed it would have been a better design had it done what they were trying accomplish this evening. That era is the reason why they got to three stories. She did not want to turn back the clock. Commissioner Hontz stated that she lives in a two-story house; however by Staff interpretation, it is actually one story. There are many consequences to contemplate and she thought the Planning Commission should refine what they wanted to see come back. She needed time to read and digest the definitions and personally did not want more input before they had the conversation.

Director Eddington suggested that the Staff come back with a set of clear drawings to help the Planning Commission understand and aid in their discussion. Chair Wintzer noted that the Planning Commission had three applications that were waiting on an answer to the question. He thought the Staff should come back with a professional opinion on the definition of story.

Commissioner Savage acknowledged that he was not on the Planning Commission when the definition was written. However, speaking from logic, he believed the constraint that was applied related to the mass, scale and appearance from the exterior. In his opinion, a story is what is directly above and not what is on the other end of the building.

Director Eddington pointed out that the definition as written talks about the interior and floor plane to floor plane; and that is the challenge. He agreed that the intent may have been misguided in the definition, but they have to work within the definition. Commissioner Savage stated that if floor plane to floor plane is a vertical measurement, he would argue that at least one structure they saw this evening was never more than three stories at any point.

Planner Evans noted that not all development in Old Town require a Steep Slope CUP. Therefore, some structures with the same scenario may have been approved by various Staff members under

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the HDDR process and never came before the Planning Commission. Commissioner Savage stated that if that did occur, it would be valid precedence independent of the CUP requirements. Planner Evans noted that he currently has two applications that do not require a Steep Slope CUP that do exactly what they were talking about. Commissioner Thomas felt that was another reason to come to some agreement on interpretation.

Assistant City Attorney McLean explained that the definitions were in the Code. In thinking about this issue, she directed them to the definitions in the last chapter and the key words, 1st story, story and structure. They should also look in the H Districts for guidance on what constitutes a story. Commissioner Savage requested that the Staff email a document to the Planning Commission that includes all the components of the Code that would help prepare them for the next meeting. Director Eddington offered to provide that documentation and include images.

Jonathan DeGray was not opposed to the Planning Commission discussing heights and levels and amending the Code for future projects. However, he agreed with Ms. McLean about looking at the Code as written because the projects currently before them were based on that Code. It was important for the Planning Commission to come back with a solid interpretation on what is written.

Chuck Heath asked about process and the time frame for taking action on the projects that were continued this evening. His project was continued once for additional information and when the information was provided, it was continued again because there was a question about interpretation. He felt it was important for the Planning Commission to define the interpretation of a story so these projects could move forward or go away. Chair Wintzer stated that the issue should be resolved at the next meeting. Once they have that resolution, they could begin discussing projects that were continued for that reason.

Assistant City Attorney McLean pointed out that the applications this evening were continued to a date uncertain. To be fair to the applicants, the Planning Commission should resolve the issue at the September 12th meeting and the items could be re-noticed for the meeting on September 26th.

Commissioner Thomas clarified that he raised the issue because he had heard three different interpretations of a story and he felt it was important to have a consistent interpretation that benefits the community.

The Work Session was adjourned.

Exhibit C

**PARK CITY PLANNING COMMISSION
WORK SESSION MINUTES
SEPTEMBER 12, 2012**

PRESENT: Nann Worel, Brooke Hontz, Stewart Gross, Adam Strachan, Jack Thomas, Thomas Eddington, Francisco Astorga, Polly Samuels McLean

WORK SESSION ITEMS**Land Management Code – Discussion of Story & Height**

The Staff recommended that the Planning Commission discuss the interpretation of story as currently defined in the LMC.

Planner Astorga stated that in 2009 the Planning Commission and City Council held several meetings to discuss amending the Land Management Code. At that time the Steep Slope Conditional Use permit criteria was updated, as well as the overall height and how height is measured. It also addressed specific regulations related to the HR-1, HR-2 and the HRL District. Planner Astorga reviewed the existing regulations using a hand-drawn illustration.

Planner Astorga remarked that the major change in 2009 was the requirement to add a 10 foot setback for the third story. Another regulation indicated that final grade had to be within 4 feet of existing grade. The maximum number of stories was limited to three, and the basement counts as a first story. Planner Astorga pointed out that on a 30% lot and with the 27' height regulation, the numbers for a 10' setback do not work. If the entire lot is 30%, the minimum setback has to be 18 feet. Planner Astorga noted that another item added to the LMC in 2009 was that the roof pitch had to be between 7:12 and 12:12.

On a downhill lot, if the applicant wanted to accommodate a tandem two-car garage, an exception could be authorized for up to 35' instead of 27' to accommodate tandem garages. The Code indicates that a single family dwelling must have at least two parking spaces.

Planner Astorga noted that items were also removed from the LMC in 2009. The Planning Commission had the ability to allow a maximum height of up to 45 feet on lots with slopes 30% or greater, and that was removed.

Planner Astorga read the definition of a story per the current Land Management Code. "The vertical measurement between floors taken from finish floor to finish floor. For the top most Story, the vertical measurement is taken from the top finish floor to the top of the wall pate for the roof structure." Planner Astorga stated that the Staff has recently received several applications on downhill lots, where different architects have introduced a split level concept. He requested that the Planning Commission discuss split level this evening.

Planner Astorga reviewed a diagram to show the shift in levels and the staircases dividing the structure. He noted that the application would meet all the requirements of the LMC, with the exception of the number of stories based on interpretation of the definition.

Commissioner Thomas believed the present interpretation is the same interpretation the Planning Commission has given in the last two meetings. According to the strict definition of the Code as written, the diagram shown exceeds the three-story limit. Commissioner Thomas agreed that the

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definition needed to be modified and corrected, and he thought the Planning Commission should consider the modification as suggested by Staff. He favored the idea of varying the floor plates as long as they stay within the maximum height. The Staff had suggested 37-1/2 feet as a discussion point, and Commissioner Thomas thought it was an appropriate height and closer to the intent.

Commissioner Thomas pointed out that when the Code first came before the Planning Commission there was a 10-foot story criteria that would have allowed more flexibility. When it went to the City Council, that criteria was modified and changed and the result affected the process. The Commissioners concurred.

Planner Astorga stated that the Staff understood the concerns and was prepared to introduce a solution, which would add a regulation to the Land Management Code. The measurement would be the vertical distance between the lowest finished floor towards the highest point on the highest ridge. The Staff believes that if they could implement that specific regulation, it would stop the terracing affect that could take place on a longer than usual lot.

Planner Astorga presented a diagram to show how the Staff reached the 37-1/2 feet height recommendation.

Commissioner Thomas felt that the overall maximum height made the story discussion less significant. Director Eddington felt it was best to define a story as one above the other and add a vertical maximum measurement. Planner Astorga pointed out that the intent for the 7:12 to 12:12 range was to encourage variety and avoid every building having the same pitch. Director Eddington remarked that the steeper the slope, the more impacted the project would be by the vertical measurement.

Planner Astorga stated that the Planning Commission researched the definition of story in other ski resort town. Based on that research, The Staff recommended changing the definition of story to, "That portion of a building included between the upper surface of a floor and the upper surface of the floor next above, except that the top most story shall be that portion of a building included between the upper surface of the top most floor and the ceiling or roof above." He asked for feedback from the Planning Commission on the proposed definition. Planner Astorga noted that the difference between the existing language and the proposed language is the reference to the floor next above it. He remarked that the language mirrors the definition of a story per the International Residential Code.

Commissioner Thomas stated that if they remove the three story restriction and add a new height restriction, the definition of a story has less meaning. However, he liked having some commonality with other communities on what is logical in the building world. Commissioner Thomas thought that cleaning up the story definition was a good idea.

Director Eddington clarified that the Staff had not considered completely removing the three-story issue. They had talked about giving better definition and parameters to a mezzanine or a split level. Commissioner Thomas thought they needed to think of the effects of half-story. Under the current definition, some of the cross sections are six stories. He felt the definition was too restrictive.

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Commissioner Gross thought the 25% limitation on the intermediate floor seemed reasonable. Commissioner Thomas wanted to see diagrams of how that would work before making a decision. He suggested taking input from the design community to see if there were other conditions they had not thought about. The idea sounded good and he would like to support it, but he wanted to understand the fallout and what situations could occur under different scenarios. He felt the discussion was going in the right direction, but it needed to come back for further consideration.

Director Eddington stated that the Staff would work with different scenarios and come back with alternatives.

Commissioner Hontz was leaning towards the revised definition of a story because the new language clarifies that it has to be above. She favored keeping the 3-story limitation and the additional height limitation. She agreed with Commission Thomas about looking for unintended consequence.

Commissioner Thomas believed the intent of the Code is to reduce the mass and scale of houses in the Historic District, but there should be some flexibility in doing that.

Commissioner Strachan asked if the definition of mezzanine floor or loft had been pulled from somewhere. Planner Astorga recalled that it was a combination from Crested Butte and other towns. The language was not pulled word for word and the Staff tweaked it specific to Park City. Commissioner Strachan thought it set up inconsistent and vague language in the Code. He felt the revised definition of a story and the 37-1/2 overall height limitation was sufficient. The architects would have the ability to do what they wanted inside those parameters. He believed the mezzanine, loft, or intermediate floor definition was unnecessary and would only create problems. Director Eddington clarified that Commissioner Strachan was not concerned about split levels or mezzanines. Commissioner Strachan replied that this was correct. He thought it everything could be accomplished by the stepping requirement, setbacks, and a change to the height requirement. He was concerned that the 25% floor area calculation would be hard to do because the total floor area of the story in which it is placed would not be calculable. There would be so many half stories and steps that they would never reach the 25% point. Commissioner Thomas agreed.

Commissioner Thomas believed a critical step was the addition of the 37-1/2 foot height limitation, because it restricts the height of the building without being concerned about the stories inside. However, he still wanted time to think it through to make sure they were not opening Pandora's box.

Director Eddington stated that the Staff would come back with code definitions that address that issue, as well as definitions that would address keeping in the story and mezzanine.

Commissioner Hontz suggested keeping the story definition as revised and the 37-1/2-foot height limitation, and not the mezzanine definition. From her reading, when it is stepped, there would never be a loft or a split level. Commissioner Strachan asked if Commissioner Hontz was suggesting that a story is the portion of the building included between the upper surface of any floor and the upper surface of the next floor above, and that measurement could be taken from anywhere in the home. Commissioner Strachan provided a scenario based on Commissioner Hontz's interpretation. He noted that not all the floors in the diagram may expand the width of the home.

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Director Eddington stated that it would be the entire width of the home depending on where the sections are drawn.

Commissioner Strachan was concerned about a building cascading up the hillside on a long lot. Director Eddington explained how the 37-1/2 overall height limitation would address that issue. Commissioner Strachan felt the explanation made it more certain that the mezzanine definition and the three story definition were not needed, as long as the height controls the cascade effect up the hillside and the concern for the cross canyon view.

Commissioner Thomas pointed out that the cross sections, like the example they were looking at, was consistent with the Code, as long as it remains under the 37-1/2 foot limit. However, under the current definition, the cross section would show six stories. Commissioner Strachan stated that without a cross canyon view, it would be difficult to know if that home would present the cascade problem. Commissioner Thomas replied that it has a footprint restriction and a maximum height from one point to another point.

Chair Worel thanked Planner Astorga for the background information he provided. It was helpful to see how other communities address these issues. Chair Worel opened the public hearing.

Craig Elliott, an architect with Elliott Work Group, felt the Planning Commission was headed in the right direction as far as capping maximum height and removing the requirements for floors. He noted that most sites have cross slope in addition to the slopes front and back. Removing the discussion about stories and maximizing the height and using the 27 foot grade makes a lot of sense with respect to a 75-foot deep lot. Mr. Elliott presented an image of homes in Park City that was taken from the Marsac parking lot. He noted that the majority of buildings in the photograph do not meet the existing current Code for various reasons, but it is a great depiction of what Park City is and can be. He chose that photograph because it is one of the steepest sections in Old Town. Mr. Elliott would like to have the discussion on lots greater than 75 feet deep and breaking the building into separate buildings or structures that are not connected. He believed there was an opportunity to maintain the existing character and scale, and still give people with larger lots the ability to create diverse and interesting projects. Mr. Elliott agreed with the discussion about removing the floor definition. He liked the cap of the building and the maximum height and following the 27 foot grade, as long as it pertains to a typical lot depth. Variations in lot depth and shape becomes a separate issue.

Joe Tesch disagreed with Commissioner Thomas' comment that the idea of the Code was to reduce massing and height. That was the case in 2009, but additional suggestions were made in 2011. There were joint meetings with the Planning Commission, Planning Staff and City Council and the idea of reducing height and size further was rejected. Mr. Tesch remarked that they were dealing with what occurred in 2009, but the idea is to not go smaller. Operating today under the impression of a mandate to reduce what has been occurring is a mistake. Mr. Tesch stated that another thing that came out of those joint discussions was that Park City is different neighborhoods and one size does not fit all. His recollection for those discussions was that there was no mandate for any neighborhood to attempt to reduce height or massing.

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Chuck Heath, the applicant for 916 Empire, understood that there were recommendations to change the Code and possibly the rules. He wanted to know how this would affect his application, since his application was submitted under the current Code.

Assistant City Attorney McLean explained that Mr. Heath was vested under the Code in place at the time his application was submitted, and the interpretation of that Code. If the changes are less restrictive Mr. Heath could avail himself of that, but if they are more restrictive, he was still vested under the current application.

Mr. Heath asked how the new interpretation would differ from the current Code and how it would affect his application.

Commissioner Thomas clarified that the Planning Commission was talking about general amendments to the LMC with regard to stories, and not specific to any project. He recommended that Mr. Heath talk with the Staff regarding the interpretation to evaluate whether it would be more beneficial to move forward with his current application or wait until the changes are made and adopted and then resubmit his application.

Mary Wintzer commented on Mr. Tesch's remarks about there not being a mandate. She thought the visioning result had brought this to the forefront. Over 400 people responded and the City spent \$60,000 to do a survey. People overwhelmingly talked about scale and wanting to keep the small town feel and the historic nature. Ms. Wintzer believed the home on Ontario was the poster child for loopholes and being able to build a house far out of scale of the adjacent historic home. Ms. Wintzer believed there was wide sentiment among many people in Old Town to look at mass and scale to keep with natural setting, historic character and the small town feel.

The Work Session was adjourned.

Exhibit D

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changes would not permit that. The reason for a master planned development does not match the construction of one building in one zone on one lot. He was unsure what changes were being proposed, but he hoped they could prevent that from occurring.

Coleen Webb an owner in the Town Lift condos stated that her building is next to the Kimball Arts Center. She is a part-time resident in Park City and it is difficult to always attend meetings when a subject of interest is being discussed. She tries to attend as often as she can. Ms. Webb stated that she would not be in town on October 24th. She is on the Board of the Town Lift Condominiums HOA. Last week the Board members and residents met with Robin and others from the Kimball Arts Center to express their concerns and the impacts that would be created for the residents living next to the Kimball Arts Center, and what an expansion under an MPD would do to their property. Ms. Webb also had concerns with how a project that size would affect the look and feel of Old Town if the MPD goes through. Ms. Webb was comforted when she saw the concern the Planning Commission had for the neighbors when discussing the Stein Eriksen project and the Richards annexation. As a neighbor to the Kimball and a resident of Old Town, she hoped the Planning Commission continues to be that detailed and that interested in what the change of allowing an MPD could do on Main Street. It is more than a white fence or one house in your face impact. It impacts the Historic District and those who live there and abide by the 84 page guidelines of the Historic Preservation Board. Ms. Webb was not opposed to amending the LMC to make them better over time, but it is important to understand the circumstances as to why they were put in place to protect the Historic District. Ms. Webb stated that everyone respects the Kimball and the HOA and owners want the Kimball Arts Center to expand. They would like the property improved and the programs expanded. They have been great neighbors and have worked together many times with the Kimball Arts Center; but the issues that an MPD would allow has caused them great concern. She asked the Planning Commission to consider the impacts that would be created by allowing MPDs in a community that is so dedicated to keeping the District historic. Changing the LMC for a one-time project would hurt what the rest have tried to maintain and the rules they have lived by in Old Town.

Chair Worel closed the public hearing.

Commissioner Hontz thought the Planning Commission should discuss some of the issues in the Chapters that would be continued to give the Staff direction for the next meeting.

Building Height Measurement and Story Definition

Commissioner Hontz found the exhibits in the Staff report to be helpful, but she had expected additional information based on the discussion at the last meeting. She wanted to see an exercise on a variety of unbuilt lots in Old Town, both downhill and uphill, that maxes out the heights using stories as an example to see what the mass and scale and height would do. She wanted an idea of worst case scenario. Commissioner Hontz remarked that they look at the existing built environment in analyzing the definition and the application. They overlook what type of development could occur on the existing vacant lots. She recalled a recent application where the applicant was asked to do that exercise and he was unable to show that he could build a house on the lot. Commissioner Hontz pointed out that based on the proposed language a house could not be built on a 40% slope. She believed the analysis was important to make sure they would not make all the vacant lots in Old Town undevelopable.

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Planner Francisco Astorga stated that the Staff could provide the variety of examples on unbuilt lots. However, there are a number of lots that are not listed as Landmark or Significant status, and could potentially be demolished and rebuilt. Planner Astorga proposed to come back with the information requested as well as other scenarios he had created for massing and volume on various slopes. He believed they could create specific worst case scenarios. Director Eddington thought that the Planning Commission would be able to see how different aspects of the Code work in each scenario depending on the location of the slope.

MOTION: Commissioner Hontz moved to CONTINUE the LMC amendments for Chapter 2-Zoning Districts; Chapter 6-MPDs; Chapter 7-Subdivisions; and Chapter 15-Definitions as identified in the Staff report to October 24, 2012. Commissioner Strachan seconded the motion.

VOTE: The motion passed unanimously.

The Planning Commission discussed the remaining LMC amendments outlined in the Staff report.

Amendment to require a building permit for driveways, parking areas, patios and other non-bearing construction that create impervious areas.

Planner Whetstone noted that the Planning Commission discussed this change at the last meeting. The Staff had recommended a building permit for all flat work in all zones. Requiring a building permit would ensure that all LMC requirements are met. Currently a building permit is not required and it is difficult to know when flat work is being done and whether it meets the requirements.

City Engineer, Matt Cassel, stated that the amendment allows the City to be proactive on an issue they have struggled with for years. When someone calls to ask if his neighbor has a permit for a patio or driveway, they have to inform that person that a permit was not required. The City then has to follow up to make sure the work was done within the requirements and many times they find Code violations. The intent is to communicate with people before work is started. He used 170 Daly Avenue as an example. They were fortunate enough to catch it before the driveway was poured; otherwise, the owner would have a new driveway that accessed at the intersection. Mr. Cassel explained that it would be a simple permitting process. The owner would be required to pay a minimal fee and have their plans reviewed for Code compliance before starting any work.

Chief Building Official, Chad Root, stated that another factor is to provide guidance for the homeowners who do the work themselves in an effort to reduce the number of neighbor issues. If a permit is required City-wide, the City has control over types of materials, size, and encroachment issues. Mr. Root pointed out that most jurisdictions outside of Utah regulate all flatwork and driveway work. Utah has a State Adopted Code that adopts the minimum standards, and the minimum standards cannot be exceeded. The proposed LMC amendment would provide a mechanism around the provision in the State Building Code and allow the ability to regulate driveways and flatwork in Park City.

Exhibit E

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by a private, non-private, educational, religious, recreational, charitable, or philanthropic institution serving the general public".

Commissioner Strachan thought Public and Quasi-Public should be capitalized in the definitions, and should say "Public Uses" with "Use" capitalized and "Quasi-Public Use" capitalized.

Commissioner Strachan asked if there was a definition for Industrial, and if so, that should also be capitalized. Director Eddington stated that there was not a definition for Industrial, and the Staff would write one. Commissioner Strachan thought "Commercial and Industrial" was redundant language. Planner Whetstone pointed out that it was actually Light Industrial (LI). Park City does not have a zone that allows straight Industrial business. Planner Whetstone thought that they should also define a "lodging project".

The Planning Commission moved on to the remaining LMC Amendments.

Chair Worel stated that due to the late hour and the number of amendments that still needed to be discussed, Planner Francisco Astorga would give a presentation on Stories and the Planning Commission would discuss the proposed changes at a work session on December 12th.

Planner Astorga referred to page 164 of the Staff report, and an added regulation related to the split level concept. He had failed to put the language in the ordinance and he wanted that mistake clarified. He noted that the regulation language should be added between bullets C and D on pages 198, 200 and 201. The regulation read, "The overall height of a structure measured from the lowest point of the finished floor to the highest exterior ridge point shall not exceed thirty-seven and a half feet (37.5')". Planner Astorga noted that the language was introduced to the Planning Commission on September 12th, at which time the Commissioners had issues with the language and wanted to explore specific scenarios.

Planner Astorga stated that the Staff had prepared the different scenarios and wanted to hear as much input as possible from the Planning Commission. However, due to the late hour this evening, there was not enough time to sufficiently review the scenarios and give the Planning Commission the opportunity to brainstorm and provide comments. He noted that the regulation was applied to scenarios on a flat lot in the worst case scenario. The same was done on uphill lots at 15% grade, 30% grade, 45% grade and 60% grade. Consideration was given to the fact that many buildings are not historic and could be demolished for brand new construction.

Planner Astorga noted that Commissioner Thomas was absent this evening and his input on the regulation would be valuable based on his professional expertise. Planner Astorga apologized if any members of the public had waited for this discussion, but he felt it was better to wait and give the issue the time it needs to make sure everyone is on the same page and that they fully understand what was adopted in 2009.

Planner Astorga briefly reviewed some of the visuals to give the Planning Commission and the public a preview of the massing scenarios.

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Commissioner Hontz was unsure if she could support the regulation because the historic portion of the structure could be on the bottom. She would like to see the step on new construction. Director Eddington stated that the Staff would have drawings to present at the next meeting to help address her concern. Commissioner Hontz felt that by now the Planning Commission should have a good understanding of the changes made in 2009, but it would be important to understand the effects of applying the new definitions. At this point, she was not comfortable with half stories and split levels shown in the scenarios provided. Commissioner Strachan agreed. He suggested that Planner Astorga redraft a couple of options because the ones shown were difficult to understand.

Planner Astorga clarified that he was not speaking about stories at this point. His comments related to the regulation regarding overall height on page 164 of the Staff report. Commissioner Strachan requested that Planner Astorga re-draft the definition of split level and story. Commissioner Wintzer suggested that the Staff draft two or three definitions to give the Planning Commission a choice.

Chair Worel opened the public hearing.

Ruth Meintsma, a resident at 305 Woodside, addressed the overall height of 37.5 feet. She assumed the language, "...from the lowest point of the finished floor..." probably means from the lowest point of the lowest finished floor. Ms. Meintsma thought better language would be, "from the lowest point where grade meets footprint", because often the lowest floor is quite a bit above grade and sometimes on piers. She requested that the Planning Commission consider her suggested revision because where the grade meets footprint is where the massing begins visually.

Commissioner Hontz thought Ms. Meintsma made a good point, however, under the current Code you could not build on piers because of the four-foot return to grade regulation. Planner Astorga noted that it would also not be approved through the design guidelines.

Director Eddington agreed that Ms. Meintsma made a good point and the Staff would discuss her revision.

Craig Elliott commented on the Story issue. He was generally comfortable with the resolution, but he wanted to confirm his understanding of how the zone works. On a very large parcel with multiple structures the height resets with each structure. He wanted to make sure that was still the case.

Commissioner Strachan replied that it was subject to discussion at the work session on December 12th.

Mr. Elliott felt it was important to keep because otherwise the Code, particularly in the HR1 addresses designers to create smaller buildings in scale and mass. If they do not allow that to happen in this form, they would encourage larger buildings in scale and mass on those types of properties. The unintended consequence of trying to limit something would only create what they do not want. Mr. Elliott wanted to make sure this issue was addressed in the process so they get the right things in the historic district.

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Commissioner Wintzer asked Mr. Elliott to give an example. Mr. Elliott stated that he has worked on several properties, but he was hesitant to give an example because those projects may come back to the Planning Commission. Mr. Elliott provided a hypothetical example to explain the importance of keeping with what the Code currently allows to keep structures smaller in the historic district. Chair Wintzer was concerned about the cross canyon views. Mr. Elliott stated that the nature of Park City is that looking across the canyon you see a series of buildings that march up and have different colors, shapes and forms. That was the intent of his comments at a previous meeting when he talked about the quality of design and the ability to solve those issues as designers.

Chair Worel closed the public hearing.

Planner Astorga remarked that interpretation of story was the reason why they were having this story discussion. Based on discussions in July and August the height did not reset. Commissioner Strachan believed there was a difference of opinion as to how to read the Code based on Mr. Elliott's comments. The purpose of the work session is to determine what they uniformly believe the Code says.

Planner Whetstone reviewed the list of topics for discussion on page 154 of the Staff report and identified the ones that were time sensitive for recommendations to the City Council.

1. Pre-application process, review process for Historic District Design Review and revisions to the notice Matrix (Chapters 1 and 11).

Planner Whetstone referred to page 157 and noted that language was added to Strongly recommend that the Owners and/or Owner's representative attend a pre-application conference with the Planning and Building Departments. She clarified that the existing language requires a pre-application conference. She explained that if a pre-application conference is required it becomes an application and can be vested. The Staff felt that changing the language to "strongly recommended" resolved many of the issues. A pre-application conference benefits the applicant and the Staff believed the applicants would still request one.

Chair Worel opened the public hearing.

There were no comments.

Chair Worel closed the public hearing.

MOTION: Commissioner Wintzer moved to forward a POSITIVE recommendation to the City Council for the amendment to Item 1 as written. Commissioner Hontz seconded the motion.

VOTE: The motion passed by all Commissioners present.

Planner Whetstone stated that (B) on page 157 address proposed language to the Appeals process for administrative applications (HDDRs and Administrative CUPS) including revisions to the Notice

Exhibit F

**PARK CITY PLANNING COMMISSION
WORK SESSION MINUTES
JANUARY 9, 2013**

PRESENT: Nann Worel, Brooke Hontz, Stewart Gross, Jack Thomas, Mick Savage, Adam Strachan, Charlie Wintzer, Thomas Eddington, Kirsten Whetstone, Francisco Astorga, Matt Cassel, Polly Samuels McLean

WORK SESSION ITEMS**Land Management Code – Discussion of height/story in Chapter 2 and 15**

Commissioner Wintzer provided a topo map of Old Town showing every ridge. He requested that the Staff use the map to prepare for a future discussion regarding ridges.

Planner Astorga remarked that the objective this evening was to make sure the Staff and the Planning Commission were correctly interpreting building height in the Historic Residential Districts; the HR-1, HR-2 and the HRL. He noted that some of the Commissioners have been on the Planning Commission long enough to understand heights in Old Town; while others have only been on the Planning Commission a short time. The Staff believed this work session would be a good exercise for everyone.

Planner Astorga explained that the Staff chose scenarios of different slopes starting at 15%, 30%, 45% and 60% for uphill and downhill lots. The structures were designed to the highest maximums allowed by Code in terms of height and footprint and the setbacks were minimized to create the worst case scenario. Planner Astorga wanted this exercise to be a true discussion and he wanted the Commissioners to ask questions and critique the individual scenarios.

Planner Astorga reviewed the LMC Height Restrictions as outlined in the Staff report. The allowed height is 27-foot maximum from existing grade. Final grade shall be within four-feet of the existing grade around the periphery. A structure may have a maximum of three stories. A ten-foot minimum horizontal setback is required. The roof pitch must be between 7:12 and 12:12. The downhill lot has an exception for the tandem garage. Planner Astorga recalled previous discussions regarding exceptions to roof pitch; however, until that was adopted he preferred to focus on the existing Code.

Commissioner Savage asked for clarification on how existing grade is defined. Planner Astorga replied that existing grade is the existing topography. Commissioner Savage wanted to know how they could be certain that the grade was not changed. Commissioner Thomas explained that the topo is examined at the beginning of the project and the grade is examined at the end of the project. The Building Department should be able to confirm whether the grade has been manipulated. Commissioner Hontz thought Commissioner Savage made a good point because there are situations where the previous owner changed the grade of the site. She recalled a project where Planner Astorga realized that the grade had been change and suggested that the Planning Commission add a condition that the structure should be built from the previous existing grade and not the current existing grade. Commissioner Hontz stated that if someone moves the dirt now and calls it existing grade ten years later, they would probably get away with it. Commissioner Thomas pointed out that it is supposed to be natural existing grade.

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Commissioner Savage asked if there was a way to make a definite determination on grade. Commissioner Thomas replied that if there is an interpolation to be made between the existing grade and the natural grade, the Planning Director has the purview to make that decision. Planner Astorga recalled that when the Code was amended in 2009, a specific definition of existing grade was added. Planning Director stated that existing grade is defined as the grade of a property prior to any proposed development or construction and activity. Therefore, it is the grade prior to any altering of the site. Commissioner Savage pointed out that the language states, "prior to any proposed" altering of the site. Commissioner Hontz agreed. She may not be proposing to do anything, but that would not keep her from moving dirt on the site. Commissioner Savage thought it was important to find a way to tighten the definition with respect to interpolation of some extension of natural topological grade.

Director Eddington explained that the Staff visits the site and assesses the grade. If the existing grade appears to be different than what is shown on the topo, the Staff assesses the natural grade which, by definition, is "The grade of the surface of the land prior to any development activity or any other manmade disturbance or grading. The Planning Department shall estimate the natural grade not readily apparent by reference".

Commissioner Savage was satisfied that the existing definition addressed his concern. Commissioner Thomas remarked that grade is a game that had been played and he expected it to continue.

Planner Astorga reviewed the first scenario, Scenario A, on a downhill lot. A blue line represented the property lines. The lot is 75' in length. The first scenario had the requirement of one exterior and one interior parking space. He noted that the property could be designed with two interior parking spaces. The structure was three stories. In this particular scenario the lot was accessed from the left-hand side. Planner Astorga reminded the Commissioners that these examples were worst case scenarios. Based on the access in this scenario, the front yard setback increased from 10-feet to 18-feet because of the minimum standard of the parking pad. He indicated the 10' setback on the downhill façade. This scenario was drafted at a 15% grade and it would not require a review by the Planning Commission because it does not reach the 30% or greater requirement. The project could be three stories, meet the 10-foot setback and still meet the height requirement. Planner Astorga pointed to the line indicating existing grade. Two other redlines showed 4' up or down from grade. This scenario had a one-car garage. The second required parking space was outside.

Commissioner Strachan noted that the basement was almost totally submerged, and he asked how low it could go. Planner Astorga replied that the basement could be completely submerged. Director Eddington referred to the heavy red line indicating existing natural grade, and noted that it could go 4' down from there and expose more light in the basement. Commissioner Strachan pointed out that someone could also make the floor 25' feet high and dig down further. It would provide very little light but they might not care. If someone wanted to excavate more dirt to increase the square footage of the overall home, they could do that. Commissioner Thomas commented on the ramifications that would occur with over-excavation. He questioned whether it was unrealistic to define a basement depth. Commissioner Wintzer thought the control would be shoring engineering to address the issue of digging a large hole three feet away from the neighbor.

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Commissioner Strachan remarked that larger basements have been the trend in more recent applications and the amount of excavation continues to grow. Because the lots are so steep, the portion that daylight gets bigger with the slope and results in significantly more excavation in the back. He understood that the LMC states that the effects of excavation must be mitigated, but he believed it was a very loose standard.

Commissioner Thomas was unsure about placing a restriction on the depth of the lowest level. Commissioner Hontz suggested that they continue with the presentation before discussing specific restrictions, since the other scenarios may help provide the answers.

Planner Astorga presented the second scenario, Scenario B, which was also a 15% slope. The difference between this scenario and the previous scenario is that scenario two has two interior parking spaces. The setback was only 10' feet from the front. Planner Astorga noted that in the second scenario, the third floor was completely buried. The Code indicates that window wells could be approved, however, the setbacks must be at least 5' and the window wells could encroach 4' onto the side yard setback. Planner Astorga stated that some of the basement space could be used for mechanical equipment, but he did not believe anyone would use an entire floor for that purpose.

Commissioner Strachan asked why there was not a 10-foot stepback. Planner Astorga replied that the basement was buried completely. The stepback is only required for the third floor above grade.

Planner Astorga presented the third scenario, Scenario C. It was still a 15% slope, however, the difference between the first two scenarios and the next two was that the building would go down the slope. In scenarios one and two the driveway went up 14% positive grade. In the next two scenarios, the driveway goes down 14% negative grade. Planner Astorga noted that the roof pitches in all the scenarios were designed at 7:12 pitch, to again create the worst case scenario.

Commissioner Savage commented on the tendency towards thinking that taking a structure to the maximum allowed by Code is negative. He did not believe the end result was always negative, and sometimes it could be positive. Commissioner Savage stated that maximum utilization of a lot is within the rights of the applicant, and the Planning Commission should not consider that to be a negative independent of subsequent analysis.

Planner Astorga reviewed the scenario, which showed one interior and exterior parking space. Because the grade goes down 14%, the vehicle is stored on the main floor. Due to stepbacks and the roof pitch, the third story is smaller than in the first two scenarios, which affects overall square footage. Planner Astorga stated that the floor area in this structure was 2100 square feet. The floor area in the first scenario was 2400 square feet, and 2500 square feet in the second scenario. He noted that the third scenario would have a walkout level on the lower basement.

Commissioner Thomas noted that most cars are fairly long and the larger vehicles can exceed 18' long. He pointed out that the bumper on larger vehicles touch the front of the house on one end and the property line at the other end. He was not in favor of adding to the front yard setback, but there is a challenge with larger vehicles. Director Eddington stated that if someone has that large of

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a vehicle, they would probably reduce the square footage of the house to make the garage larger. Commissioner Hontz remarked that instead of reducing the house size, people build the minimum size garage and park on the street. Either that or they park one car in the garage but leave the door open because the vehicle extends out, and then park their other cars in the street. Commissioner Hontz believed that the standards were not working and there were many questions on how to resolve the garage issue.

Commissioner Savage asked who was responsible for making decisions regarding parking and parking density on the streets. Director Eddington replied that Public Works handles parking issues. Since this was an issue with respect to car length, Commissioner Savage thought it would be appropriate to have Public Works look at a regulation that would prohibit cars greater than a certain length from parking in the driveway unless the driveway is a certain length. Commissioner Thomas pointed out that such a regulation would create an enforcement issue. Commissioner Hontz noted that enforcement is contracted out; therefore, Public Works would not be the enforcers. She believed it was a larger problem than just trying to solve it on paper. Commissioner Hontz thought they needed to look at places with 14% uphill and 14% downhill. She could not think of too many with 14% uphill; and the downhill ones were disasters.

Commissioner Wintzer indicated the potential for a green roof in one area, and noted that it could create living space per the Code. In that situation, the green roof was an issue of increasing square footage, not being compatible with the house. Commissioner Thomas stated that in Park Meadows, for a flat roof less than 4:12, the maximum height is reduced from 33' to 28'. Director Eddington replied that the rule did not apply in Old Town. Commissioner Thomas thought it might be worth considering that for Old Town. If they could encourage green roofs and reduce the heights, the visual impact of the volumetric would be overwhelming. If they allow flat roofs they should have a reduced height below 27'. Commissioner Wintzer thought the green roof issue in Old Town should be revisited because allowing green roofs was passed without any input from the Planning Commission. The language basically allows green roofs in Park City without consideration for compatibility with historic structures or other related issues. Commissioner Wintzer agreed that flat roofs were better in Park City's climate than pitched roofs, but he thought the green roof scenario should be revisited for Old Town.

Planner Astorga reviewed scenario four, Scenario D, which was still at 15% grade. This scenario had two interior parking spaces. The basement was exposed with a rear walkout. The garage was tandem. The house size was 2050 square feet, which was slightly decreased from the previous scenario at 2100 square feet.

Planner Astorga presented scenario five, Scenario E, which was on 30% grade and would require Planning Commission review. It was a downhill scenario because at 30% there was no way to go up. The driveway was 14% grade with one exterior and one interior parking space. The lower level had a rear walkout. Planner Astorga noted that the lot would meet the height requirement and the 10' foot setback would become 20 feet. The house size at 2200 square feet was slightly larger than some of the 15% grade lots.

Planner Astorga noted that the black lines in all the scenarios indicated the story. The stories in all the scenarios were designed at 10' each.

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The sixth scenario, Scenario F, was also 30% grade. There were two interior cars. This scenario breaks the maximum height of 27'; however, the Code states that for a two-car garage in tandem configuration, a height of 35' would be allowed. This scenario would meet the Code.

Commissioner Thomas asked for the allowed length of a tandem garage. Planner Astorga replied that the Staff capped the length at 37 feet. The Code does not indicate the length of a two-car garage in tandem configuration. It only specifies that the garage must be 11' x 20' for a single car and 20' x 20' for a double car garage not in tandem. Commissioner Strachan asked if the garage could be larger than 400 square feet but not smaller. Planner Astorga replied that it could be larger. The 400 square feet is the standard used for allowances. Commissioner Thomas pointed out that the impact of having a tandem garage on a downhill lot over 30% was dramatic. He has a tandem garage on his home and it is less than 32 feet long. He parks two smaller cars in tandem and the larger car on the other side. Commissioner Thomas believed it was realistic to have an 18' car on one side and a 13' car on the other side, parked 16" apart. He expressed concerns about designing to the maximum and suggested that they design for the minimum.

Planner Astorga stated that for consistency with the LMC, the Staff decided to cap the garage length at 37' to achieve a 400 square foot garage. Commissioner Thomas stated that a 400 square foot garage could still be accomplished with a 34' length. Director Eddington stated that the downside of a shorter garage is the inability to park two larger cars, which puts one on the street. Another downside is lack of space to store skis.

Commissioner Hontz remarked that a current problem in Old Town is that people were not using their tandem garages. Rather than focusing on the dimensions of the garage, a better idea might be to have the square footage of the garage count against the overall square footage of the house. If someone wants a larger garage it would reduce the size of their house. Commissioner Thomas stated that his concern was the visual impact of the overall mass. Commissioner Hontz was not opposed to having tandem garages as an option, but they continue to see repercussions resulting from tandem garages. To address Commissioner Thomas' concern, Commissioner Hontz suggested resolving the problem from a height standpoint rather than square footage. Commissioner Thomas asked if the Code currently has a depth limit for tandem garages. Director Eddington replied that the Code did not specify a depth limit; however, the depth would be defined and limited by the 35' foot height limitation. Commissioner Thomas agreed with Commissioner Hontz's suggestion to stay within the height limitation and not allow height exceptions for tandem garages.

The Commissioners discussed flat roofs on tandem garages. Commissioner Savage asked what advantage that would be for Park City. Commissioner Thomas replied that aesthetically it demasses the volumetrics and it allows the second space in the garage to get a car off the street.

Planner Astorga offered to consider their suggestions to see what would work. He asked if the Commissioners would be more comfortable if the height exception was closer to 32' rather than 35'. Commissioner Savage preferred to leave it alone. Commissioner Thomas outlined the worst that could be done on the premise of a worst case scenario. Director Eddington pointed out that the depth of the garage could not exceed the minimum depth for an internal parking space within the Code, which is 40 feet.

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Commissioner Hontz pointed out that Scenario F was on a 30% grade and would require a Steep Slope CUP. She clarified that the Planning Commission currently has the ability under the Steep Slope CUP to deny a height exception. The purpose of this discussion was to codify certain requirements so applicants would know upfront that a height exception would not be granted.

Commissioner Savage understood that the height exception was in place to encourage tandem parking, but now they were concerned that people would use the tandem garage for storage and not cars. Commissioner Strachan stated that whether the garage is used for storage or cars, it would still have the visual impact Commissioner Thomas had mentioned.

Planner Astorga presented the seventh scenario, Scenario G, which was on a 45% grade. He noted that development on steeper slopes was unusual, but it does occur and it was worth the discussion. This scenario was allowed one exterior and one interior parking space. The garage was 11' x 20' and it would meet the exception. The only issue was the 10' setback at the end of the structure. A portion of the house would have to be shaved, otherwise it would be on stilts. Planner Astorga noted that the structure could not accommodate any type of walkout because it would not meet the 4-foot grade provision. Commissioner Gross pointed out that they could build a deck to level it out.

Commissioner Strachan wanted to know why living space could not be stilted. Commissioner Hontz stated that it would violate the 4-foot return to grade requirement. Commissioner Thomas did not believe the Code addressed stilt houses. Planner Astorga believed it was a question for the Historic District Design Review analysis.

Director Eddington noted that a deck could not exceed the setback because it would exceed 30" above final grade. Planner Astorga pointed out that a workable deck in this scenario would require a very creative solution. Commissioner Thomas thought this scenario demonstrated that the steeper the slope, the more difficult it was to build a house. Commissioner Strachan agreed, however, he used the drawing to show how the livable space could be increased. In his opinion, a deck is usable space, even if it is not technically considered livable space. The Commissioners discussed additional issues related to building on the steepest slopes. Commissioner Hontz believed the Code was written on the idea of 15-30% slopes. Planner Astorga noted that steeper slopes push the designers to move forward on a split level. Commissioner Thomas stated that the discussion had focused on stepping the exterior of the facade and the massing of the building. However, in terms of impact to the community and over-excavating the site, he wondered whether they should begin thinking about stepping the foundation to create a reasonable depth and maximum excavation requirement.

Commissioner Hontz referred to scenarios on extremely steep slopes and asked what happens when the driveway exceeds 14%. The average slope may be 45% or 60%, but the initial portion of the slope is 80% or 100% and a 14% driveway could not be reached within the setbacks. Commissioner Gross assumed that the percentage was calculated from the edge of the right-of-way to the building envelope. Planner Astorga stated that in his analysis he found that one thing affected another thing in the Code. In his experience, nothing could be built on a slope greater than 30% without a variance. However, Park City is different because of its historic character and

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topography and someone could apply for a variance. The 14% grade is a standard in the LMC, which the Board of Adjustment has the ability to override with appropriate findings. Commissioner Hontz pointed out that someone could ask for that variance or a six or four foot front yard setback variance. Commissioner Wintzer stated that a variance request typically goes to hardship. In most cases, the hardship is that the person could not build as large they would like. In his opinion, that hardship could be mitigated by building a smaller house and shifting it on the lot; however, the Board of Adjustment does not take that fact into consideration when reviewing the variance request. Commissioner Wintzer did not believe hardship was valid in those cases.

Commissioner Savage asked how often hardship cases go before the Board of Adjustment and how often they get approved. He questioned whether the Board of Adjustment would actually grant a variance if the only hardship was the inability to build a larger home. Commissioner Strachan pointed out that most people do not give home size as the hardship. Instead, they make the case that their lot is difficult to build on.

Commissioner Thomas asked if a tandem garage could be done on a very steep uphill lot. Director Eddington stated that it would exceed the 35 feet before the second car, and there is no exception on an uphill lot. Commissioner Thomas clarified that he was talking about the impact to grade below ground. He asked them to imagine an uphill lot with a tandem garage on a 100% slope. If the garage depth is 35 feet, there would be a 35' retaining wall on the backsides of that garage, which creates a significant impact. He thought consideration should be given to discouraging tandem garages on super steep slopes. Director Eddington asked if someone should be allowed to put a theater room underground if they chose not to a tandem garage. Commissioner Strachan felt the problem was the requirement for two parking spaces. If the lot is steep enough, it would be impossible to have two cars on site. He stated that one option would be to combine two or three 25' x 75' lots so they could access the driveway on an angle. He believed the issue was how deep to excavate and whether they could step back the problem, similar to stepping back the height problem.

Planner Astorga presented Scenario H, which was at 45% grade and two interior parking spaces. The driveway was 14%. This scenario would require an exception. Mandatory increased setbacks were placed on the rear because of the grade provision. Planner Astorga believed they would most likely see a split level with this scenario.

Commissioner Strachan asked why they were looking at the exceptions assumed. Planner Astorga replied that it was due to the requirement for two interior spaces. Commissioner Thomas clarified that there was an exception in the Code that allows the Staff to make the ratio determination. Commissioner Gross pointed out that they could also apply the green roof scenario that was discussed earlier. Planner Astorga recalled from the Code that a garage in tandem configuration could be as much as 35-feet. Commissioner Strachan stated that going to 35-feet would require an exception. It is not entitled. Planner Astorga read from the Code, "The Planning Director may allow additional height on a downhill lot to accommodate a single-car garage in tandem configuration." Commissioner Thomas pointed out that the tandem configuration could still be achieved by going to a green roof for the other segment and stay within 27-feet. Commissioner Wintzer stated that if half of the roof was a green roof, he was unsure how that could be considered historically compatible. Commissioner Thomas believed that should be a separate discussion. Planner Astorga stated that the Staff was in the process of drafting specific language for the LMC as an

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exception to the 7:12, 12:12 provision, if it complies with the guidelines and is granted by the Planning Director. The Commissioners discussed possible alternatives for meeting the requirements in Scenario H without an exception.

Commissioner Thomas recalled that the 7:12, 12:12 provision was established in an effort to find compatibility with the historic character of Old Town. Before the Code change people were flattening out the roof and making the volumetric as large as possible. If they decide to allow green roofs, they need to think it through and define the specifics.

Planner Astorga reviewed Scenarios I and J together. Both were on 60% grade. Scenario I has one exterior parking space, and Scenario J has two interior parking spaces. Planner Astorga noted that there were major issues with variances in both scenarios. If such a lot existed with 60% grade, it would again make sense to try and do a split level concept.

Commissioner Hontz pointed out that in addition to not meeting the height due to the garage, it also would not meet Code because the driveway could not be returned to within 4-feet of natural grade. The bottom two floors would also have to be on stilts. Scenarios I and J could not be built based on all three reasons.

Planner Astorga had prepared another packet of scenarios on uphill lots that he would present at a work session on February 13th.

**496 McHenry Avenue, McHenry Subdivision Replat – Plat Amendment.
(Application #PL-12-01717)**

Due to a conflict, Commissioner Thomas recused himself from this discussion and left the room.

Planner Astorga reviewed the application for the proposed McHenry subdivision replat. Sean Kelleher was the property owner. Planner Astorga reported that Mr. Kelleher owns approximately 12 lots of record. Three do not meet the minimum lot size; therefore, the lot lines would need to be shifted for development.

Planner Astorga reported that the current plan is to construct seven single-family houses that would be accessed from an underground, shared parking garage. The Staff report outlined specific points for discussion, and Planner Astorga requested that the Planning Commission provide direction to the Staff and the applicant on how to proceed. As part of the discussion, the Staff report also included the minutes from the December 12th meeting, at which time the Planning Commission held a site visit and a work session discussion on the three lots down the street from Mr. Kelleher's property.

Mr. Kelleher provided a power point presentation reviewing the history and background of the property. He has been in the periphery of Rossi Hill for a long time, but he has never come before the Planning Commission. Mr. Kelleher stated that when he first became involved with the property in 2006, he was a tenant in common with Mr. Bilbrey, a former owner. Mr. Bilbrey retained all the development rights for the property and Mr. Kelleher was the traditional silent partner. Mr. Kelleher remarked that his only involvement regarding plat applications that came forth since 2007 was to sign the plat as a co-owner of the property. All discussions and decisions made on the property

Exhibit G

**PARK CITY PLANNING COMMISSION
WORK SESSION MINUTES
February 13, 2013**

PRESENT: Nann Worel, Brooke Hontz, Stewart Gross, Mick Savage, Adam Strachan, Jack Thomas, Thomas Eddington, Katie Cattan, Kirsten Whetstone, Francisco Astorga, Polly Samuels McLean

WORK SESSION ITEMS**Land Management Code – Discussion of height/story in Chapters 2 and Chapter 15.**

On January 9, 2013 the Planning Commission discussed a number of scenarios prepared by the Staff that could occur on downhill lots. The Commissioners would review scenarios for uphill lots for discussion this evening. Planner Astorga had prepared specific scenarios for 50%, 30%, 45% and 60% slopes. He wanted to make sure the Staff and Commissioners had the same understanding regarding the current Land Management Code height provisions in the HR-1, HR-2 and HR-L zones.

Planner Astorga noted that the blue lines on the drawings in the packet represented the property lines on 75' lots. The red line on the bottom represented the grade. The bold red line was the existing regulation that indicates that the final grade shall be within four feet of existing grade on the periphery of each structure. The red line on top was the maximum height, which was capped at 27'. Planner Astorga noted that the Staff had designed what they considered to be worst case scenarios.

Planner Astorga presented Scenario A at 15% grade. The scenario has one exterior and one interior parking space, which pushed the front yard setback to 18 feet; the minimum area required for the exterior parking. This scenario has a mid-level access and a top level rear walk-out. It would be impossible to have a walk-out on the mid-level because it would not be within four feet of existing grade. Director Eddington pointed out that there could be windows on the mid-level. Planner Astorga agreed, noting that there could also be window wells on the basement level. Commissioner Gross asked about cathedral windows. Planner Astorga replied that cathedral windows would be allowed as long as they comply with the Historic District Design Guidelines. It would be challenging but good designers could make it work. The driveway in this first scenario was the 14% maximum.

Commissioner Thomas pointed out that if the driveway is 14% off the edge of the road and there is no transition, you would hit your bumper before you started driving up the hill. He suggested that practical and logical may be less than 14%.

Planner Astorga noted that Scenario A did not include the 10-foot stepback on the front because the basement is completely buried and stepback is not required. Commissioner Strachan asked if the stepback would be required if the basement was not completely

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buried and was within four feet of existing grade. Planner Astorga answered yes because a portion of the basement would be exposed.

Planner Astorga presented Scenario B at 15% grade with two interior parking spaces. The driveway is 14%. The house is slightly larger than Scenario A. Commissioner Savage asked why the front distance in Scenario B was shorter than in Scenario A. Commissioner Gross assumed it was because Scenario B had two interior parking spaces and Scenario A parks one car outside. Planner Astorga replied that this was correct.

The Commissioners discussed house size and footprint. Craig Kitterman, a member of the public, remarked that there is a maximum footprint which determines the size of the house. Planner Astorga agreed. He noted that all the scenarios were governed by the maximum building footprint.

Commissioner Strachan had questions regarding the stepback. Chair Worel asked if a stepback would be required if any part of the bottom level was exposed. Planner Astorga answered yes, except for a window well. He read from Page 3 of the Staff report, second bullet point, "Final grade must be within four vertical feet of existing grade around the periphery of the structure except for the placement of approved window well, emergency egress, and garage entrances". He noted that the basement could still be buried and have a window well, but it would not require the stepback.

Commissioner Thomas noted that emergency egress can be any window or door out of a bedroom, and he found that to be problematic.

NOTE: Due to equipment problems, a portion of the meeting was not recorded. The problem was discovered and resolved.

During the non-recorded portion, Planner Astorga had continued his presentation and the Commissioners discussed the remaining scenarios.

Craig Elliott, as a member of the public, questioned why they were having this discussion. He passed around photos that were taken in 2003 and in 2013. From the standpoint of a big picture for the City, he was trying to figure out whether anything was really causing a problem. Mr. Elliott presented boards illustrating various built structures and noted that the majority of the buildings were over 27 feet tall. He stated that in the last ten years there has not been a significant change in Old Town that has created a negative impact to the visual. Mr. Elliott pointed out that with every application the Commissioners want to see a cross-canyon view, but in looking at the illustrations, there has been no changes over the years, other than the trees grew larger.

Commissioner Thomas remarked that the boards Mr. Elliott presented showed the

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perspective from a distance, and it did not take into consideration the streetscape and the visual impact walking down the street. He believed the purpose of the Steep Slope CUP is to bring down the scale.

Mr. Elliott understood that the neighbors complain whenever the Planning Commission reviews a Steep Slope project, but that just happens. Neighbors always fight new development because they want to keep the land next door vacant. However, people have the right to build. Mr. Elliott stated that the difference is minimal between what was there and what changed in ten years through the largest building boom. He realized that the LMC changes in 2009 were in response to specific projects, and in hindsight he should have attended the public hearings to argue about the 3-story limitation. It was a mistake on his part and he was attending now to have this discussion. Mr. Elliott noted that there were nine statements of purpose in the LMC. They might be accurately discussing one, but the rest were going the wrong way. Applicants are always asked whether they read the purpose statement. He was now asking the Planning Commission if the discussion they were having meets the purpose statement. He could not understand the purpose of their discussion and he did not believe anything in their discussions would improve things through the Land Management Code. Mr. Elliott stated that restricting height on a 75' lot to 35' to 37-1/2' might make sense; but he could not understand it for a lot over 75'. The nature of Park City is that it keeps stepping up the mountain.

Commissioner Strachan asked if there would be a difference if Mr. Elliott had taken the picture 25 years ago. Mr. Elliott believed that most of the structures shown were built before the 1980's. Commissioner Strachan believed that most of the larger houses Mr. Elliot was showing were not built 25 years ago. Mr. Elliot pointed out that the larger houses would never go away. If they were to burn down they would be replaced with the same size structure in the same place. He felt that the Planning Commission has spent the last few months talking about heights and squares and angles, when they should be talking about the big picture and why they were having these discussions. If the discussion is that they want to limit the ability to develop, they were moving in the wrong direction.

Commissioner Savage stated that Mr. Elliott is a professional who presented visuals to support his position. He believed Mr. Elliott had a valid point. They can look at the various scenarios presented, but the reality of importance is the sense from the perspective of where these developments will take place and whether something is or is not consistent with that particular location and a particular set of visuals. Commissioner Savage thought that should be their guiding parameters more than trying to create a formula for calculating volume as a function of lot size.

Mr. Elliott stated that he works in Old Town every day. He experiences the streets every day and he walks to most of his projects. He was confident that the things that have happened over the past ten years have not negatively impacted the quality of the town.

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Changes are made and it does not make any difference in the overall impact. These discussions have kept people from building houses for the last six months and will cause them to miss two seasons of construction. Mr. Elliott believed the major question was why they were having these discussions and what it would accomplish.

Commissioner Thomas stated that prior to creating the 2009 LMC, they were seeing buildings stepping up the mountainside to maximize the volumetric. That had a dramatic visual impact on the neighbors, the street and the scale of the community. The reason for these discussions is to have a sense of scale to the historic fabric of the community at the street level. He did not think some of the images Mr. Elliott presented was a fair comparison of what this town is about or the character of the town. Mr. Elliott disagreed. Commissioner Thomas stated that the image does not represent what the neighbors experience when someone builds an enormous house next to an historic house. The purpose of the 2009 changes was to respect the neighbors and what was left of the historic fabric that was being whittled away by these monstrous structures.

Mr. Elliott reiterated that the Planning Commission should address the real question of "why" and if whether the "why" fits within the Land Management Code purpose statement. In his opinion it did not.

Commissioner Strachan asked if Mr. Elliott had any recommendations on how they could bring more families and primary homeowners back into Old Town. Mr. Elliott felt that would be driven by a number of different things. He suggested that current projects would bring people into town. He thought they would be fighting the issue of value for a long time because of its proximity to Main Street.

Ruth Meintsma stated that she lives on a street that is primarily second homes and nightly rentals. She does not mind nightly rentals in her neighborhood because it works. However, the houses in-between where people live are very important and adds cohesion to the neighborhood. Ms. Meintsma understood the reasons for limitations. A house across the street from hers is nightly rental. People come in and out and you never talk to them. The number of cars is astounding and the amount of trash in one weekend is more than she creates in two months. Ms. Meintsma believes there needs to be a balance. In talking about limitations, she understood the three stories limit and size reduction for second homes and nightly rentals because extra space is not needed for that type of living. However, when someone has a family they need to think about a new way of living. They need to think about space for storage, tools, food storage, etc. She believes that if there could be a second criteria of house building where a home or a residence is signed in perpetuity to no nightly rental, it would add to affordable housing because people could come in a rent for a minimum of one year. With larger structures people would create a home and it would allow for families. Sometimes the fourth story is necessary for a family. If someone wants to build a home for their family and wants extra space, the City should

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hold them to the family home use by having them sign in perpetuity to no nightly rental.

Planner Cattan stated that limiting nightly rental was not necessarily limiting second homes. Ms. Meintsma agreed, but it would still be someone's home. Commissioner Savage commented on the economic impact. If someone did not have the ability for nightly rental they possibly could not afford the home. In other cases, some people buy second homes on the fact that they can enjoy it themselves and offset some of their expenses by renting when they are not there. Ms. Meintsma understood the concern, but if someone was willing to sign their home into perpetuity from nightly rentals, they should be given some incentive such as extra space in their home.

Mary Wintzer stated that when side yard setbacks were reduced years ago, they saw huge impacts with snow shedding and people began to maximize their houses. The lifestyle of those living in Old Town has been drastically affected. Her neighbors raised four kids in a three-story house. When she was growing up people shared bedrooms. Ms. Wintzer was not totally opposed to the incentive of a fourth story, but if they return to what used to be they would not need monstrous homes.

Ms. Meintsma pointed out that lifestyles are completely different than how they used to live. She clarified that she was not talking about greater height or greater mass. She was only talking about an additional story. She understood that excavation was a major concern, but she believed that could be mitigated.

Ms. Wintzer remarked that several years ago four owners on Rossi Hill imposed a house size restriction on themselves. They realized that it would limit their profit when they decide to sell because the lots could not be maximized, but they did it because they value their neighborhood. Ms. Wintzer stated that they love Old Town, they love the mountain and they love what the community has given them. It is the neighborhood, the people and the land, and they are building up every square inch of the earth in Town. She believed they would pay a price some day. The old timers talk about the years when they had bad spring runoff and mud slides on this side of the Canyon. They have not seen that yet, but it is possible. If it occurs, there is no earth left to absorb it because it is all developed.

Commissioner Hontz felt good about this exercise because it was based on the purpose statements and it came out of the realization and the factual evidence of how many undeveloped lots are left and how tightly constrained they are. In her mind this was an exercise of education, but it also explored whether what they have meets what they want to do, how they need to tweak it, if at all, and if the scenarios were representative of what they thought they were trying to achieve. The discrepancy on the definition of story was another reason that prompted the exercise. Without those reasons they would have never done this and nothing would change. Instead, they went through this very thorough discussion to possibly visit some potential changes. Commissioner Hontz thought this was a useful

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“primary” for clarification. Vice-Chair Thomas was comfortable if the language gives the Staff the ability to look at the design and determine the primary roof and that a smaller roof element on the structure is a lower percentage of area and not a significant dominant roof form. He believed the Planning Commissioner needed to trust the judgment of the Staff

Vice-Chair Thomas recalled from the last meeting that the Planning Commission was comfortable with the 7:12 and 12:12 roof pitch in terms of compatibility in Old Town. However, the proposed language on page 71 of the Staff report provides the caveat of allowing a shallow roof it is more compatible with the historic structure. He thought that was appropriate. Planner Astorga clarified that the process for approval is through the HDDR by the Planning Director.

Commissioner Savage commented on green roofs in the Historic District. He noted that they continually talk about historic precedence and to the best of his knowledge green roofs did not exist in those eras. Commissioner Savage asked if the Historic Preservation Board was willing to integrate green roofs into the design guidelines for renovations of historically significant structures. Planner Astorga replied that the Code already allows a green roof if it is under the required roof pitch. That was added as part of the 2009 amendments. He explained that the intent is to clarify the language in terms of measuring. Commissioner Savage asked how a green roof would impact registering the home on the Historic Register. Planner Astorga stated that green roofs would not be allowed on historic structures. Green roofs would be allowed on new construction in the historic district or on addition to historic structures. He noted that the Code applied specifically to the Historic Residential Districts.

Planner Astorga remarked that several people have asked if they could have a flat roof that is not green but has solar panels. He asked the Planning Commission for input on that scenario. The Commissioners pointed out that the panels would have to be on an angle for sufficient use of the solar. Vice-Chair Thomas stated that solar collectors have been used on various roof pitches and they work in a lot of conditions.

Commissioner Hontz referred to the historic structures analysis on page 71 and the recommendation to add building footprint and building height. She pointed out several negative scenarios that could occur, which was why she did not favor adding the language. rector Eddington pointed out that the language only applies to structures listed on the Historic Sites Inventory. Planning Manager Sintz suggested adding, “designated historic structures.” Commissioner Hontz was still uncomfortable adding building footprint and height. Under the current process the Planning Director makes the determination and she preferred to keep that review process.

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Planner Astorga explained that the Staff recommended the change because they recognized that not all of the historic structures would comply with the height parameters in terms of the 10' setback. Commissioner Hontz still preferred to keep the process of review and determination by the Planning Director for all structures. She was willing to consider the possibility of only allowing the change for structures under 1500 square feet. Director Eddington stated that the Staff would look at revising the language to address the concerns.

Commissioner Hontz referred to a news article regarding a \$1 billion deficit the Jordan School District is facing next year because their Planning Department, Planning Commission and City Council approved more density than what they could accommodate for the number of people it generated. Commissioner Hontz pointed out that what the Planning Commission does matters because the number of people in a house affects the amount of traffic on the roads and the number of children in the schools. Vice-Chair Thomas pointed out that the Jordan School District was the best funded school district in the State of Utah. Unfortunately, they lost a lot of their funding due to the transformation Kennecott and how the money was disbursed. He agreed that growth was also a factor, but it is natural to expect some growth to occur. Commissioner Gross thought it was important to plan around growth expectations.

Director Eddington believed the Staff had enough direction to revise the proposed amendments and incorporate their comments. Commissioner Wintzer thought it would be helpful for the Staff to summarize the comments this evening and email it to the Planning Commission for verification and consensus before they make the revisions.

Assistant City Attorney McLean replied that the Staff could send a summary to the Planning Commission, but the Commissioners could only reply and communicate with the Staff. They could not do a "reply all". Vice-Chair Thomas felt a better approach would be for the Commissioners to visit the Planning Department two at a time to meet with the Staff prior to the next meeting. Vice-Chair Thomas thanked Planner Astorga for his patience throughout this process.

MOTION: Commissioner Hontz moved to CONTINUE the Amendments to Chapter 2 to a date uncertain. Commissioner Savage seconded the motion.

VOTE: The motion passed unanimously.

3. Lots 21-32, Echo Spur – 9 Lot Subdivision
(Application PL-12-01717)

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with the language in blue. The Commission concurred that the language in the Annexation Agreement allowed the condition to provide a certain level of Green Building to evolve as the standards evolve. The Commission concurred that Finding of Fact 1e. could be amended to include the language from the Annexation Agreement. The Commission agreed that restricting the language to "LEED Silver" did not allow the project to keep up with the Green Building standards as they evolve.

The Commissioners were opposed to heated driveways. Mr. White indicated that they discussed requiring off-sets to heated driveways, such as additional solar panels, consistent with Condition #49 of the MPD.

The Commissioners and Staff point out findings of fact and conditions of approval that may need to be modified due to the amended plat layout and requested changes. Such as Condition #43 regarding wildlife report update, Condition #55 regarding limits of disturbance and retaining walls for streets, Condition #24 regarding the new soils report, and Condition #59 regarding snow storage restrictions on the actual repository. The applicant stated that some conditions have been address by the revised plat, such as Condition #24 regarding the trail access between Lots 89 and 90. Planner Whetstone commented that Condition #56, which refers to lot numbers of the preliminary plat by Ensign Engineering could be updated to match the new preliminary plat.

The Staff and applicants discussed a schedule for future meetings to keep the process moving forward.

MOTION: Commissioner Strachan moved to CONTINUE the proposed Park City Heights MPD amendments and extension to November 6, 2013. Commissioner Hontz seconded the motion.

VOTE: The motion passed unanimously.

5. Land Management Code – Amendments to Sections 15-2.104, 15-2.1-5, 15-2.2-4, 15-2.2-5, 15-2.3-5, 15-2.3-6, 15-2.16-5(L), 15-2.16-5(M) & 15-2.16-6 regarding existing historic structures and building height in the HRL, HR-1, HR-2 and RC Districts (Application PL-12-02070)

Planner Astorga reported that the Planning Commission originally discussed the definition of a story during a work session in August 2012. During a Planning Commission meeting in September 2012, the Staff recommended reviewed the interpretation of a story as currently defined in the Land Management Code. At that time the Planning Commission had concerns related to the current building height parameters and how they applied to split-level concepts. It was interpreted that a three story split-level, per the current LMC definition of a story, would qualify as multiple stories adding up to six. The Staff had introduced an additional regulation which was based on the internal height of a structure measured from the lowest floor level to the highest roof form. The Staff offered to work with different scenarios and come back to the Planning Commission with alternatives.

Planner Astorga stated that during the September 2012 meeting the Planning Commission forwarded several items to the City Council for review and possible adoption. However, the Commissioner continued the proposed amendments regarding building height measurement

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and story definition to a later date, and requested additional information. On January 9, 2013 the Planning Department discussed with the Planning Commission specific scenarios regarding Building Height in the Historic Residential Districts (HRL, HR-1 & HR-2) relating to downhill lots. Another group of scenarios regarding uphill lots was presented on February 13, 2013. Planner Astorga noted that the January and February work session discussions were based on the current building height parameters outlined on page 260 of the Staff report.

Planner Astorga noted that currently the LMC defines a story as:

The vertical measurement between floors taken from finish floor to finish floor. For the top most story, the vertical measurement is taken from the top finish floor to the top of the wall plate for the roof structure.

Planner Astorga stated that there is no maximum or minimum number of feet for a story or a wall plate. The height of a structure is simply measured from existing grade, not to exceed twenty-seven feet. After analyzing the impacts of split-levels and multiple split-levels concepts on a standard lot of record, the Staff proposed adding provisions to the LMC related to Building Height which would limit the split-level concept so a project would not contain multiple numbers of splits stepping up or down the hillside.

Planner Astorga referred to the proposed amendment language in red on page 263 of the Staff report. He noted that the amendment deals with the alternate language to replace the maximum three-stories and does not replace the maximum height of 27' measured from existing grade. The proposed language reads:

A structure shall have a maximum height of thirty five feet (35') measured from the lowest floor plan to the point of the highest wall top plat that supports the ceiling joists or roof rafters.

The Staff also recommended adding clarifying language to the ten foot 10' minimum horizontal step. Planner Astorga noted that the current code does not indicate where the step back takes place on a vertical plane. The Staff found that the added language in red at the bottom of page 263 clarifies where the horizontal step should occur. The proposed language reads:

The horizontal step shall take place at a maximum height of twenty three feet (23') from where the Building Footprint meets the lowest point of existing grade. Architectural features that provide articulation to the upper story façade setback, may encroach into the minimum ten foot (10') setback but shall be limited to no more than twenty-five percent (25%) of the width of the building encroaching no more than four feet (4') into the setback, subject to compliance with the Design Guidelines for Historic sites and Historic Districts.

Planner Astorga presented a number of exhibits to show what could occur under the exiting Code and with the proposed changes.

The Staff proposed language under Roof Pitch to clarify green roofs. "A green roof may be below the required 7:12 roof pitch as part of the primary roof design. In addition, a roof that is not part of the primary roof design may be below the required 7:12 foot pitch." The Staff proposed adding a provision reflected in red on page 265 of the Staff report. Proposed provision clarifies the required roof pitch for green roofs, as well as adding a specific parameter of measurement. The proposed language reads:

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(1) A Green Roof is allowed on a Structure where it will not increase the visual mass, nor create additional shade on an adjacent property when compared to the allowed 7:12 to 12:12 roof pitch on the same structure. A structure containing a flat roof shall have a maximum height of thirty feet (30') measured from the lowest floor plane to the highest point of the roof including parapets, railings, or similar features.

The Planning Commission discussed split levels and whether or not to place a cap on the number of levels. Planner Astorga noted that when the discussions started in August of 2012 the Planning Commission said they would allow a cap. They needed to let the Staff know if they had changed their minds. He noted that there would be less excavation under the new scenario.

The Commissioners discussed footprint. Commissioner Strachan remarked that the footprint discussion trickles down to plat amendments. Planner Astorga noted that last year three applications proposed the split level concept and none required a plat amendment. Commissioner Strachan remarked that the standard 75' x 25' lot was no longer an issue because of plat amendments.

The Planning Commission discussed window wells that become bedroom space. The Commissioners generally did not like the idea of window wells and thought they should be minimized or restricted. Window wells encourage more livable space which generates more people and more traffic. Planner Whetstone pointed out that the Planning Commission wanted like to encourage more families in Old Town, and families require additional living space.

Vice-Chair Thomas opened the public hearing.

Steve Parker stated that he has a child and he would love to live in Old Town. Mr. Parker suggested that instead of limiting everything the Planning Commission should find better ways to design and create better spaces.

Vice-Chair Thomas closed the public hearing.

The Commissioners were not prepared to forward the proposed amendments to the City Council this evening. They requested that the Staff come back with more information on driveways, restrictions on window wells, particularly in setbacks, and footprint analysis. Vice-Chair Thomas referred to the language on page 263 proposing a 35' maximum height. He thought that should be reduced to 33' in the back and 27' in the front.

Commissioner Wintzer stated that this was a good opportunity to address flat roofs and requested that the Staff come back with language to start the discussion. He suggested the possibility of allowing a percentage of a structure to be a flat roof. Director Eddington noted that flat roofs are already addressed in the Design Guidelines. Commissioner Wintzer pointed out that the Planning Commission needed to have a conversation regarding flat green roofs in Old Town because the Design Guidelines are not in their purview. Vice-Chair Thomas agreed.

Commissioner Strachan thought the Planning Commission should forward the amendments they could agree on and discuss the rest at a later meeting. He was comfortable with the proposed horizontal stepping language on page 263.

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MOTION: Commissioner Strachan moved to forward a POSITIVE recommendation to the City Council to amend the LMC for the HRL, HR-1, HR-2 & RC Districts with the proposed language at the bottom of page 263 of the Staff report for a horizontal step at a maximum height of twenty three feet (23') from where the Building Footprint meets the lowest point of existing grade. Commissioner Wintzer seconded the motion.

VOTE: The motion passed unanimously.

MOTION: Commissioner Strachan moved to forward a POSITIVE recommendation to the City Council to amend the LMC for the HRL, HR-1, HR-2 & RC District with the proposed language at the top of page 263 of the Staff report, with a revision to change the maximum height from 35 feet to 33 feet at the rear. Commissioner Wintzer seconded the motion.

VOTE: The motion passed unanimously.

Commissioner Strachan referred to the proposed language on page 265. He was comfortable with the second sentence but he thought the first sentence should be part of the green roof discussion.

MOTION: Commissioner Strachan moved to forward a POSITIVE recommendation to the City Council to amend the LMC for the HRL, HR-1, HR-2 & RC District with the second sentence of the proposed language on page 265 of the Staff report regarding the 30' maximum height for a flat roof. Commissioner Gross seconded the motion.

VOTE: The motion passed unanimously.

The Park City Planning Commission meeting adjourned at 11:45 p.m.

Approved by Planning Commission: _____

Approved 06092024

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experience. She was unsure what the result would be based on all their opinions, but this was instrumental in educating the Planning Commission to be able to move forward.

Planner Astorga noted that page 2 of the Staff report contained language from the current Code. He asked if the Planning Commission had issues with any of the regulations and whether it needed to be strengthened or rewritten. He believed there was some consensus for spending more time and resources on adding internal maximum height. He asked if any of the other height parameters needed to be fine tuned. Commissioner Strachan felt it was sufficient to have the internal height limitation.

Commissioner Savage had issues with the third bullet point and the definition of three stories, and whether three stories was measured from a vertical point or by some other metric. Commissioner Strachan thought the three story restriction could be eliminated if they use the internal height restriction. Commissioner Thomas agreed. The internal height gives the designers more flexibility with the floor plan.

Director Eddington understood that the Planning Commission would not have as much consternation with regard to split levels and partial stories inside the building. He was told that this was correct. Commissioner Strachan clarified that applicant could do whatever he wanted within his own box as long as it meets the internal height limit.

Commissioner Thomas suggested a site visit to several sites that reflect the conditions discussed on uphill and downhill lots so they could see them in the field.

General Plan – Discussion and Overview of neighborhoods – the neighborhoods to be discussed include: Thaynes Canyon, Park Meadows, and Bonanza Park/Prospector

Nightly Rentals

Planner Cattan reported that the Staff had prepared a discussion on nightly rental because it was one of the more controversial topics to be discussed neighborhood by neighborhood as they decide to rezone and talk about residential neighborhood versus resort neighborhood. She preferred to start with nightly rentals before moving into the neighborhoods discussion.

Planner Astorga read that the current Land Management Code definition of a nightly rental. "The rental of a dwelling unit for less than 30 days." Another clause states, "Nightly rentals do not include the use of dwelling units for commercial uses." Commissioner Savage asked for clarification on the language regarding the use of dwelling units for commercial uses. Assistant City Attorney McLean explained that as an example, gifting parties cannot be held in a home that is a nightly rental.

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Said landscape plan shall incorporate the reintroduction of native landscape materials within this area, and reduce the amount of sod-grass, especially near the creek.

9. No pesticides, herbicides, or other non-organic fertilizers shall be applied to this landscape area.

2. Land Management Code – Amendments to Chapter 2.1, Chapter 2.2, Chapter 2.3, and Chapter 2.16 regarding Building Height (Application PL-13-01889)

Planner Francisco Astorga noted that this item addressed LMC amendments to change some of the parameters of the building height in the HRL, HR1, HR2 and RC Districts. The Planning Commission has had significant work session discussions as reflected in the Minutes from those meetings and included in the Staff report. The Staff was before the Planning Commission this evening with recommended proposed changes for review and a possible recommendation to the City Council.

Planner Astorga reviewed the current height provisions: 1) The height must be within 27 feet of existing grade. This provision was unchanged. 2) Final grade must be within four (4) vertical feet of existing grade around the peripheral of the structure except for approved window wells and access to the structure. Planner Astorga reviewed highlighted changes to this provision. The current language addressing a maximum of three stories would be replaced with an internal height parameter. The 10-foot minimum horizontal step on the downhill façade would remain. The mandated roof pitch would also remain based on direction from the Planning Commission during the February work session. The height exception would also remain.

Planner Astorga noted that the 3-story language would be replaced with language regarding internal height that would vary on a specific roof pitch on the roof form, as indicated in the table on page 230 of the Staff report. The language was revised to read, "The internal height of a structure measured from the lowest point of the finished floor level to the highest exterior ridge point shall not exceed the number based on the following table". Planner Astorga explained that they would still achieve the mass and scale of three stories, without saying that the maximum is 3-stories. The Staff thought it was better to use a scale because otherwise people would try to capitalize on their wall height for their stories and then give the lowest roof pitch each time. Therefore, the Staff created an incentive of 1' foot of step per higher roof.

Planner Astorga explained that the logic for the internal height was wall height plus the roof height. The wall height was derived from 3-stories. A ten-foot story including a floor joist may not be doable, and that number was increased to 11 feet for a wall height of 33 feet. The Staff calculated what each roof height might be depending on the pitch of the roof to determine the varying height.

Commissioner Wintzer was unclear why the Staff thought a 9-foot or 10-foot story was not doable. Planner Astorga stated that the scenarios the Staff presented in January and February were based on 10-foot stories, which included a floor joist. The intent was to be more consistent with what the market might drive. He pointed out that the proposed change does not dictate how tall the story might be. It could be less or more and the applicant has the ability to work with the design. Planner

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Astorga understood from previous comments that the Planning Commission thought the 10-foot story maximum was too small.

Commissioner Hontz thought believed that 10-feet was adequate and that 11-feet was a gift. However, she recognized that it did allow more flexibility. Commissioner Thomas was not concerned with whether it is 9, 10 or 11 feet on the interior. Commissioner Hontz was concerned that if someone takes the maximum internal height of 43', they would need to grub out again. She pointed out that the 27' would only keep it with the slope. However, internally, the house could continue to go further down. Planner Astorga noted that the internal measurement creates a split level. Commissioner Hontz was comfortable with split levels, but the question is how many splits. They were keeping down the height, but they also wanted to keep the structure from growing bigger side to side. She preferred the ten-foot story because it keeps the building from creeping down the slope too far.

Planner Astorga stated that based on the methodology selected for the scale, if they use the 10-foot measurement it would drop 3-feet from each internal height. Therefore, the internal height would range from 35' to 40'. Commissioner Hontz was more comfortable with those numbers. Commissioner Hontz stated that because the current Code does not allow stepping within the house, the current three-story solution works because it limits how far people are willing to go out and down the hill. Commissioner Hontz wanted to make sure that by allowing more flexibility in terms of steps within the interior, that they were not allowing creep up or down the hill.

Director Eddington asked if the Commissioners wanted to go to 10-foot floor plates and reduce the internal height by 3-feet each. Commissioners Hontz and Wintzer answered yes.

Commissioner Thomas was more concerned with the impact on footprint. They would still have the 27' maximum height from existing grade, but he was interested in knowing the relative difference in footprint between a 10-foot floor plate and an 11-foot floor plate.

Director Eddington did not believe the footprint would change either way because most people max out their footprint. He noted that the City has a formula for footprint for all of the historic zones. Commissioner Thomas stated that he was very comfortable with the 11-foot for interpretation as long as people are held to the 27' maximum height and the footprint could not creep up or down the hillside. Director Eddington clarified that it was a formula of lot size.

Commissioner Savage thought they should stay with the 11-foot floor plate as proposed. Chair Worel was comfortable with 11-feet as long as the footprint could be limited. Commissioner Wintzer was not opposed to 11-feet because people do build to the maximum. Commissioner Wintzer suggested that Planner Astorga include an illustration for clarification to show how it should be interpreted.

Commissioner Hontz asked for the definition of finished floor level? Commissioner Savage suggested that it could be defined as, the lowest point of the lowest finished floor level to the maximum vertical height of the structure. The Commissioners supported that definition. Commissioner Savage wanted to know how the number relates to not counting a basement if it is totally subterranean. Planner Astorga clarified that subterranean basements are counted. Commissioner

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Savage clarified that regardless of whether or not the basement is buried, the lowest level of the lowest floor is Point A, and Point B is the highest point of the exterior.

Director Eddington clarified that the language indicates the lowest point of the finished floor level and/or any structural element is the lowest point. Commissioner Thomas gave a scenario to show how talking about structure complicates the issue. Commissioner Savage thought the confusing word was internal.

Planner Astorga remarked that the next proposed change was to add two provisions to the Existing Historic Structures. This portion of the Code states that historic structures are valid complying structures in terms of parking and other issues. Planner Astorga noted that the LMC defines a Historic Structure, but it does not include any additions to the structure. The Staff wanted to keep the regulation for valid complying and added Footprint and Height to the existing Code language for the three Historic Residential Districts and the RC District.

Director Eddington clarified that it was already understood that if a structure exists with an existing footprint or building height, it is existing non-complying. Planner Astorga believed that most of the historic structures comply with the building footprint.

Commissioner Hontz noted that someone could take away some of the property associated historically with the historic structure that makes it complying currently. Director Eddington clarified that a building could not violate the Code and be taken into non-compliance. However, he understood Commissioner Hontz's concern. If someone had more than a single Old Town lot they could split a portion of the land and put it on another property. He pointed out that the footprint would be limited to the 844 square feet or whatever it exists as and the building would never get bigger. Commissioner Hontz agreed that the structure could not be bigger, but splitting a portion of the property would allow a larger structure next door.

Planner Astorga stated that the Staff also tried to clean up the section regarding Building Height. A number of historic structures do not comply with the existing heights. One of the parameters is a 7:12 to 12:12 roof pitch. The Staff did not think it was appropriate to do a complete analysis on how a structure is legal non-conforming, when a similar clause in the Code addresses setbacks.

Commissioner Savage asked if complying and conforming were synonyms for purposes of the Code. Director Eddington explained that conforming is for a use and complying is for a structure. Commissioner Savage understood that a valid complying structure could be legal non-conforming.

Planner Astorga noted that the final proposed change was a roof pitch exception. He explained that periodically the Staff encounters a historic structure that may have a 5:12 or 4:12 roof pitch. The Staff felt it would be more appropriate if the addition that comes in for that structure would be held to the same type of roof pitch or possibly lower. Planner Astorga noted that currently the Code would not allow that because it specifies 7:12 to 12:12 roof pitch.

Planner Astorga stated that the Staff was proposing to add language for additions to historic structures, stating that through an HDDR review and compliance with the Historic District

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Guidelines, the Planning Director has the ability to approve a roof pitch lesser than the one required in the Code.

Planner Astorga stated that the next question was how that would apply in the case of a split level and the maximum height. He noted that a secondary table was added for these types of exceptions.

Planner Astorga asked if the Planning Commission was comfortable adding the roof exception for additions to historic structures; and whether it would be appropriate to add the same type of scale for the maximum building height. Commissioner Thomas liked the idea because it would allow for a more appropriate design and more flexibility. The Commissioners concurred.

Commissioner Wintzer referred to the table on page 231 of the Staff report and corrected the 5:15 roof pitch to be a 5:12 roof pitch. Commissioner Thomas noted that 5:15 appears several times in the Staff report and it should be corrected throughout.

Commissioner Hontz referred to page 244 of the Staff report and asked what they would do about the 10-foot horizontal step that is referenced in conjunction with a third story, because people would now be able to have three stories. Planner Astorga replied that the provision is based on a 3-story building and it is mathematically impossible to have more than three stories. Commissioner Hontz did not believe it referenced what they were trying to accomplish now. She thought the language should be re-written relevant to where they want the 10-foot horizontal step to occur. Commissioner Thomas agreed that it was no longer clearly defined as the third story. Director Eddington suggested that it may need to be a numeric value.

The Commissioners were not comfortable forwarding a recommendation to the City Council without seeing the drafted verbiage regarding the roof pitch exception and associated illustrations.

Chair Worel opened the public hearing.

Ruth Meintsma, a resident at 505 Woodside, commented on the 3-story versus internal height issue and did not believe they were accomplishing what they intend to accomplish. Ms. Meintsma understood that they were first trying to accomplish visual height and mass from the exterior, and secondly to control the height and mass from stepping up the side of the hill with a 3-story limit. She thought the height limitation seemed complicated and she believed they would cause other issues. Ms. Meintsma presented a visual to support her concerns. Regarding the discussion about the lowest point of the lowest floor to the highest exterior to limit crawling up the hill, Ms. Meintsma pointed out that many houses in town have an exposed foundation way below the first floor. If they do not consider the exposed foundation and start from the bottom first floor and limit the interior, people will lift their house out of the ground and have an exposed foundation, which will significantly increase the visual mass. Ms. Meintsma stated that the interior measurement from the lowest floor was not accomplishing what they wanted. She believed that starting from grade would accomplish their goal and keep the structure from creeping up the hillside.

Ms. Meintsma commented on the different roof pitch options with different heights. She pointed out that a green roof is 33 feet and a 12:12 is 43 feet. No one will choose a green roof unless they are very environmentally conscientious, because people prefer an open ceiling roof. She believed the

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proposed formula would discourage green roofs. Ms. Meintsma also thought it discourages a steeper pitch because with a 27' height limitation a steeper pitch would move the structure further underground. She noted that most people want to be above ground as much as possible for light and windows.

Ms. Meintsma suggested that there were different ways of controlling visual height and mass. She thought it would be better to control the height and visual and put a limitation on cubic dirt moved under the house. That would address both issues separately and in a more appropriate way than the interior number of floors. Ms. Meintsma was pleased that Commissioner Hontz mentioned the third floor, because in her opinion the 3-story step back did not work. She provided different scenarios to explain her point.

Ms. Meintsma thought there needed to be some way to encourage green roofs through some type of height limitation. She asked if a conditional use for a higher height could be used as a negotiating tool for green roofs. Ms. Meintsma pointed out that the advantages of a green roof. She believed everything needed to be thought through to be productive and to have the control the Commissioners wanted.

Commissioner Wintzer asked the Staff to consider Ms. Meintsma's comments and work it through a number of drawings.

MOTION: Commissioner Wintzer moved to CONTINUE the LMC Amendments regarding Building Height to May 22, 2013. Commissioner Savage seconded the motion.

VOTE: The motion passed unanimously. Commissioners Gross and Thomas were not present for the vote.

3. Land Management Code – Amendments to Chapter 2.1, Chapter 2.2, and Chapter 2.3 and Chapter 2.16 regarding underground parking structures. Amendments to Chapter 2.18 regarding Prospector Overlay. Amendments to Chapter 6 regarding Master Planned Developments. (Application PL-1301888)

Planner Whetstone stated that these were the remaining amendments of the 2012 annual update of the Land Management Code. This agenda item addressed three amendments. The first was to clarify the purpose and the applicability of the Master Planned Development review process throughout Park City. It was not specific to any one area, but it clarifies the language. The second was to clarify and add additional review criteria to the Master Planned Development Review process. This would apply to any Master Planned Development. The review criteria were clarified and updated to make references that are specific to the Code. The third amendment was to clarify the lots within the Prospector Square overlay in the General Commercial (GC zone) that are subject to zero lot line development. Planner Whetstone noted that added language clarifies the lots subject to exceptions in the overlay. One of those exceptions is to have a zero lot line development. Planner Whetstone stated that when the Prospector Square subdivision was amended, the Code was not also amended to identify that those lots are also allowed zero lot line development.

Planner Whetstone referred to the General Commercial Zones, Section 15-2.18-3 of the LMC, Lot and Site Requirements. This section addresses lot and site requirements and several changes were

Exhibit I

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amendment.

3. Approval of the plat amendment, subject to the conditions stated below, does not adversely affect the health, safety and welfare of the citizens of Park City.

4. There is Good Cause to approve the proposed plat amendment as the plat does not cause undo harm on any adjacent property owners because the proposal meets the requirements of the Land Management Code and all future development will be reviewed for compliance with requisite Building and Land Management Code requirements.

Conditions of Approval – 305 Park Avenue

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

2. The applicant will record the plat amendment at the County within one year from the date of City Council approval. If recordation has not occurred within one year's time, this approval for the plat will be void, unless a complete application requesting an extension is made in writing prior to the expiration date and an extension is granted by the City Council.

3. No building permit for any work that expands the footprint of the home or would first require the approval of an HDDR shall be granted until the plat amendment is recorded with the Summit County Recorder's office.

4. Modified 13-D sprinklers may be required by the Building Official for renovation of the existing structure.

5. A ten foot (10') foot wide public snow storage easement will be provided along the frontage of the property.

2. Land Management Code – Amendments to Chapter 2.1, Chapter 2.2, Chapter 2.3 and Chapter 2.6 regarding Building Height. (Application PL-13-01889)

Planner Francisco Astorga remarked that the proposed amendments address development in the HRL, HR-1, HR-2 and the RC zones. The RC zone was included because specific

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standards for single-family dwellings and duplexes mirror the same standards that apply for the Historic Residential Districts.

Planner Astorga requested that the Planning Commission discuss the proposed language shown on Attachment 1. If the language needed to be amended, the changes would be included in a recommendation to the City Council in an effort to move forward.

Planner Astorga reported that the proposed amendments were two-fold. The first one related to the Building Height analysis on pages 66-71 of the Staff report. The second amendment related to the Existing Historic Structures Analysis on pages 71-72.

The Staff recommended that the Planning Commission review the proposed amendments to the Land Management Code for Chapter 2 as described in the Staff report, conduct a public hearing, and forward a positive recommendation to the City Council to adopt the ordinance in Exhibit A with any further changes resulting from the discussion.

Vice-Chair Thomas opened the public hearing.

Ruth Meintsma, a resident at 305 Woodside, had prepared a presentation showing various heights, stories and roof shapes. She recalled that stepping was an issue because the Code did not read as stepping three stories, and the Planning Commission wanted the ability to apply the Code in a way that stepping would work.

Ms. Meintsma had prepared a series of drawings. The first one had a third story, ten-foot horizontal step at a 27' foot height which was allowed under the current Code. A second drawing presented was not allowed under the current Code. A third visual showed the same mass in the third story and the fourth story, except there was more mass with the allowed structure versus the structure that is currently not allowed.

Commissioner Savage asked if the difference was attributed to the setback requirements in the front. Ms. Meintsma answered yes, because the only way to fit four stories in the 35' interior top plate ceiling height would be if the four stories had 8' ceilings. Vice-Chair Thomas clarified that the floor to floor heights were 9' floor to floor with an 8' ceiling. Ms. Meintsma believed it was in the best interest of the City to allow a structure that would actually have less mass.

Ms. Meintsma had prepared additional drawings to explain what she believed were the positives for allowing stepping and four stories and why the building would have a smaller appearance. She stated that the horizontal lines on four stories has a tendency to chop up the visual and makes it more attractive. Ms. Meintsma remarked that because the height

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would be 35' on top plate, it would possibly allow steeper roof pitches, which everyone would like to see, and still maintain the 27' height. She was working on language regarding a half-story to encourage steeper roof lines and more variety in roof pitches.

Ms. Meintsma stated that if stepping is allowed because it remains under the 35' height, the unintended negative of a split level is that the roof tends to create a roller coaster roof that is reminiscent of the ski slope roof. Ms. Meintsma presented a photograph of the structure that triggered the discussion and explained how the roller coaster roof could be mitigated. Ms. Meintsma believed that stepping could create a smaller structure.

Ms. Meintsma outlined the unintended negative flaws in the language proposed for height and roof pitch. She noted that the language talks about primary roof design; however, primary roof design is not defined in the Code, which makes it arbitrary. She believed they needed a definition for primary roof design. Ms. Meintsma reviewed a series of drawings with different heights, roof pitch and design to show some of the flaws resulting from the language. She suggested that "Primary Roof Design" should be changed to "Primary Roof", and the primary roof should be defined as the main roof structure to keep all the pitches at 7:12 to keep the roof from flattening against the 27' height.

Ms. Meintsma referred to language stating that the roof pitch must be a 7:12. She presented drawings showing that the 7:12 pitch were only small portions of the roof that she had marked.

Commissioner Hontz asked if Ms. Meintsma was saying that adding the word "primary" would make it less likely to see the hip roof. Ms. Meintsma believed that the hip roof was on its own regardless of whether or not it is allowed or how much is allowed. Commissioner Hontz clarified that in her interpretation, if the word "primary" is added it would allow someone to identify a secondary roof. Ms. Meintsma stated that a primary roof would be a 7:12 pitch roof; however, if it has a hip on it that would change the visual.

Mr. Meintsma presented an image of a barge rafter roof, which is one of the two rafters that support the roof and projects beyond the gable wall. She found the image as the best example of a gable roof. She was unsure whether it would flatten the roof or accomplish the visual they wanted.

Planner Astorga stated that the challenge in Old Town is that if the roof forms are perpendicular to the street, there is not an issue. The specific project that Ms. Meintsma used in her examples is parallel to the street. He believed it was a 7:12 roof pitch but the issue is that the ridge is parallel to the road and as it comes down, the massing perceived is different from seeing a gable on the street. The designer's intent is to provide additional

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headroom, and that is a challenge. However, the City cannot plainly prohibit these types of structures because historically those types of roof forms existed in Old Town. The Staff faces this challenge on a daily basis with the Historic District Design Review.

Commissioner Wintzer used the image of the house identified as hip, and noted that there was no reason for what was done on that house. The roof is under height everywhere and it could have been higher. He thought they could follow Ms. Meintsma's suggestion to make the roof simpler. Ms. Meintsma clarified that she was not implying that it should not have been done. She only questioned it because the 7:12 pitch was small portions and she wanted to know if this was what the Planning Commission wanted, because it did flatten the roof.

Vice-Chair Thomas closed the public hearing.

Vice-Chair Thomas remarked that someone would always do something creative with a roof that is unfamiliar or unfavorable. For that reason he felt it was hard to write a Code that limits every condition and still gives the applicant the opportunity to design what they think is an attractive house.

Planning Manager, Kayla Sintz, stated that the Historic District Guidelines direct the applicants to choose a style. The language proposed reduces the roof pitch in order to be consistent with other types of historic homes, and that means that someone chooses that style of a home with a shallower roof pitch. It does not mean they could choose all the options and put them on to one house. She believed there was a need for a strong statement and direction to an applicant to select one style. The Historic District is simple and it is not about a conglomeration of roof lines. Planning Manager Sintz thought it was an issue of choosing a style of architecture and one with compatibility through design.

Planning Manager Sintz cautioned against a primary roof form definition because people would eventually challenge the definition. She thought the Planning Commission should be cautious about delineating primary versus secondary or taking a stricter stance.

Commissioner Savage applauded Ms. Meintsma for her insight, efforts and continued participation in these important issues for the City. Commissioner Savage believed that the Planning Commission should focus on the exterior of a building and let the applicant focus on the inside. He noted that the City has an HDDR process and Design Guidelines and the Planning Commission should not be concerned with the design. The Planning Department is mandated with the responsibility of making sure the issue of compatibility is being met. Commissioner Savage stated that he would continue to trust in that process until he is given a good reason not trust the process. Commissioner Savage liked what Ms.

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Meintsma had done with the volumetrics and he personally felt it was the right way to look at it. Whether it is three stories or four stories inside, both can be accommodated within the same volumetrics and the external appearance would be essential the same or possibly improved with the multiple stories.

Commissioner Savage was unsure as to how they could draft an appropriate definition for a primary roof and what they would call that roof. He was thought it would be difficult to define a primary roof. Commissioner Savage stated that he had not thought about the roller coaster issue Ms. Meintsma had raised and he was unprepared to comment.

Commissioner Wintzer echoed Commissioner Savage regarding his appreciation to Ms. Meintsma. It makes a difference when someone comes in with a different idea. Commissioner Wintzer agreed that the job of the Planning Commission is to focus on the volumetrics, but they are also challenged with making the structure compatible with the neighborhood and the existing structures. Therefore, he believed the Planning Commission should look at design and compatibility. Regarding the issue of flat roofs, he noted that four 9' floor to floor heights would allow four stories and still be within the height limit and the volumetrics would be totally different than if it was filled in. Commissioner Wintzer felt it was important to understand flat roofs and how they relate to structures in Old Town. He recommended that as they discuss heights that they look at structures with flat roofs in mind.

Commissioner Hontz thought they had made progress and she believed they were getting closer. She stated that some of the things affected by height is the amount of excavation, setbacks, and snow shed and that should be considered as they determine the height definition. Commissioner Hontz referred to the drawing on page 69 of the Staff report and noted that 14% driveways are allowed on uphill lots. Drawing a line at 14% and starting the structure at that point, and then drawing a straight line from the top of car, she pointed out the amount of excavation that would be reduced on an uphill lot. In her scenario, Commissioner Hontz noted that the garage elevation would not start until 15 or 20 feet higher. Therefore, the 27' height is 20 feet higher. Commissioner Hontz remarked that this was the type of house they keep seeing built on both uphill and downhill lots. She remarked that that entrance into a structure is not historic and it ruins how people approach structures and the feel of Old Town. Secondly, it is not useful. The first rainfall on the downhill lots in certain places fills the driveways and garages because it is a good place for water to run. On the uphill lot the garages cannot accommodate the height of an SUV and they end up being parked in the driveway. Commissioner Hontz reiterated that it adds to the height and the steepness of these driveways, which is not historic, and they are not useful.

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Commissioner Hontz stated that moving the finished floor plane up puts the structure at 20-30 feet taller from the street, and makes it appear to be 80 feet tall. She believed that needed to be a component in their discussion. Commissioner Hontz thought the biggest failure is the fabric that is eroding due to the driveways, as well as the perceived height.

Commissioner Hontz liked Ms. Meintsma's comment about the benefit of less mass with four floors. However, in looking at the 9' foot ceiling structure of the 4th floor, they would see more bedrooms and more people, which generates more cars and more impacts. Commissioner Hontz agreed that the Planning Commission does not need to regulate the interior, but they still need to regulate the scale and mass, particularly when the mass is also bedrooms and number of people in an area that cannot accommodate the extra traffic.

Commissioner Hontz stated that based on where they allow people to go up in height, because of the retaining required, the limits of disturbance is the lot line and every piece of vegetation on the entire site is eliminated to accommodate the structure. Commissioner Hontz did not believe the proposed solutions address all the concerns. It is difficult to grow vegetation in Park City and when the removed vegetation is replaced, it will not be the same quality.

Commissioner Hontz stated that another proliferation they see on the uphill and downhill is the manipulation of the Code with window wells allowing habitable space, which results in more massing and additional excavation under the house and to the setbacks. She thought disallowing the 14% driveway might resolve the problem because people could no longer dig out that space.

Commissioner Hontz understood that they were still looking at green roof and roof pitch. She thought they needed to consider that a green roof could turn into a brown roof that is never planted or maintained. They needed to find a way to manage it and require that someone continues to manage it. Vice-Chair Thomas suggested that a green roof could be subject to a landscape plan approved by the Planning Director. Commissioner Hontz clarified that a green roof cannot be considered as setbacks or open space.

Commissioner Gross agreed with most of the comments expressed by his Fellow Commissioners. However, he believed that people should be able to do whatever is allowed within the 35' maximum as long as it complies with the Building Codes. The Planning Commission is tasked with looking at the exterior and making sure the impacts are properly mitigated. Commissioner Gross recalled a previous discussion regarding green roofs and that a landscaping plan needs to be part of the package before receiving the certificate of occupancy permit. He was unsure how the green roof could be monitored over time.

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Vice-Chair Thomas believed they were moving in the right direction. The intent was to allow flexibility within the volume to have shifted floor planes and accessing grade. He believed the 35' height helps tighten it up, but a few things still need to be resolved and the green roof is one issue, along with the landscape plan relative to the green roof. Vice-Chair Thomas stated that a flat roof has a bigger visual impact if it is allowed the same 27' height. In many parts of the community if someone chooses to use a flat roof, there is a reduced height associated with the flat roof. He asked if that had been factored into the flat roof discussion.

Planner Astorga replied that flat roofs were only incorporated with regards to green roofs. The Staff analysis is that when the application comes in the applicant needs to demonstrate that it will not cause any additional shade and it would not be taller than a standard gabled roof. Vice-Chair Thomas asked if a standard roof would be allowed to go up to the ridge height with a flat roof. Planner Astorga explained that the applicant would have to demonstrate how the proposed green roof/flat roof fits in a 7:12, 9:12, all within 27' from existing grade. Commissioner Wintzer asked if they could go up as high as 27'. Planner Astorga replied that it could, but it would be breaking on the corners. Therefore, it would have to be reduced until the entire flat roof is down within a standard compliant mass of roof form.

Director Eddington understood that Vice-Chair Thomas was asking whether a flat roof could appear to be a bigger mass because it does not have the sky on the side of the slope. If that was the question, the answer was no. Commissioner Wintzer asked Planner Astorga to bring back some drawings. Planner Astorga was prepared to do drawings this evening to demonstrate how the green fits at a standard gable. Vice-Chair Thomas clarified that the maximum height of the green roof would have to fit within the 7:12 context. Commissioner Savage understood that the higher the roof, the skinnier the building. Planner Astorga replied that this was correct. Commissioner Savage stated that most people want the square footage and that would keep them from building a taller building. Therefore, the footprint trumps the roof. Planner Astorga reiterated that the Staff analysis only applied it to green roofs and not standard flat roofs. Commissioner Wintzer clarified that green roofs was the only thing allowed in Old Town.

Vice-Chair Thomas stated based on his education and experience, mass, form, scale and compatibility are design; and to that extent the Planning Commission is involved in design.

Vice-Chair Thomas thought Commissioner Hontz made an excellent point about the driveways. There needs to be a transition slope from the street to the driveway and based on industry standards, it is a 5% slope up to 20 feet. The City allows 14% and he

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questioned how they could get a transition slope into that realm. He believed that issue needed to be addressed because it is impossible to get a car up those driveways without bottoming out. The impact is that people will park on the street.

Commissioner Gross asked why they could not change the 14% slope. Commissioner Hontz replied that it could be changed but it also affects other things, such as height and mass. Vice-Chair Thomas pointed out that 14% slope would be sufficient with a long enough driveway, but there needs to be a transition slope at the curb approaching the street. Summit County has a code requiring driveways to be within 5% for the first 20 feet of the public street. He recognized that 5% was too restrictive for Old Town, but he thought they should factor it down and consider a more reasonable length that would still allow the transition.

Commissioner Savage asked if the driveway issue was a height issue. Vice-Chair Thomas replied that it is connected because it cascades into the lowest finished floor. Commissioner Savage could not understand why they would need to adjust the building height if they control the driveway slope. Vice-Chair Thomas replied that they would exceed the maximum height. Commissioner Hontz stated that if they add the driveway component and control it through some calculation, they would be addressing the height issue. Vice-Chair Thomas stated that if they lower the slope of the driveway and drop the elevation of the driveway it would increase the excavation of the project. He believed there were ramifications that needed further thought and discussion.

Commissioner Savage felt they needed a robust discussion regarding excavation. He thought the issue warranted further dialogue and education. He personally could not understand why they should care about the amount of excavation as long as the footprint was managed. Vice-Chair stated that they care about the amount of excavation because of the impacts created by the number of truck loads of material hauled through the neighborhood. The issue is life safety, as well as the depth of footings and excavation and cuts.

Commissioner Hontz commented on the vegetation removal that occurs with significant excavation, particularly the vegetation that has existed historically for 50 years and is habitat. She pointed out that projects that required significant excavation take longer because of the process. Some projects take years, which is an impact to the neighbor who lives next to the hole in the ground. Commissioner Savage thought those concerns could be addressed through bonding, obligations, and other requirements. He believed that at some level they need to support people's ability to make choices about how they want to develop their property as long as it fits within the guidelines. Commissioner Savage remarked that people should be able to work to the maximum within the LMC, without

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feeling that they are getting more than they should get. The maximum should be what they are allowed to do.

Commissioner Wintzer remarked that the real issue is not how much is being excavated, but how many cars and people it takes to maintain the structure for the rest of its life. He noted that several structures on Deer Valley Drive have 15 cars parked in front for a weekend because it is allowed, but it completely impacts how he gets to his house and how people get around town. The owner built what the LMC said they could build, and the end result was a party house with two parking spaces. Commissioner Wintzer stated that in addition to regulating mass and scale, their job is also to regulate and protect the neighborhood and the integrity of the neighborhood. He commented on a house that he believed had excavated 100 feet and has window wells that are probably 12-14 feet high and have bedrooms behind the garage.

Vice-Chair Thomas remarked that window wells could allow someone to create a building area and usable space or living space below grade. He felt it was important to consider the impact of window wells and the intention for having a window well. If the intent is to create natural light and egress for a bedroom, that would be the wrong intention and he would not encourage that type of space.

Commissioner Hontz stated that it is difficult to police and enforce use. By allowing 14% and building to the maximums, she thought they needed to look at whether the maximums are too big. People do not always make good decisions on their use and they tend to do things that are illegal. It generates additional traffic and other things that are not allowed in the community. Commissioner Hontz believed they needed regulations that are easy for everyone to build to and live to so they are not in a constant police state trying to stop people from doing what they are not allowed to do.

Commissioner Savage stated that the Planning Commission has a specific role. A City Councilman attends their meetings and several other organizations within the Park City Municipality have responsibilities for the enactment of legislation and maintenance of that legislature. There are ways to cause people to be appropriately penalized when they abuse the privileges. Commissioner Savage remarked that there was nothing the Planning Commission could do within the Land Management Code to fix the problems that occur in larger homes in terms of overnight rentals and huge parties. However, the City can implement the appropriate Codes and Regulations and taxation rules to ensure that the problem gets minimized and is forced into a more acceptable position. Commissioner Savage felt it was important to make sure they were using the right tools to fix the right problem. He noted that the Planning Commission is not mandated to be the panacea for

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all the issues inside Park City. He thought the Planning Commission should focus on their job instead of trying to fix problems outside of their purview.

Commissioner Hontz disagreed. She believed it was 100% design related. Commissioner Wintzer concurred. It is the job of the Planning Commission to find whether something is compatible and fits the Land Management Code. It is also their job to look at neighborhoods and the bigger picture. Commissioner Savage believed it was their job to decide whether an application was compliant with the Land Management Code. Commissioner Wintzer replied that compatibility is addressed in the Land Management Code and the purposes statements talk about compatibility.

Vice-Chair Thomas remarked that the intent of the proposed amendment was to allow flexibility within the footprint of the house for stepping. He thought the general direction they were going with the 35' step was appropriate. Vice-Chair Thomas believed the Planning Commission was willing to consider a maximum slope as a transition slope to a driveway to access the house. In his opinion, it did not make sense to have a 14% grade right from the street curb to the finished floor of the garage. It is not practical and it does not work. It is difficult to get a normal car into a driveway that has a 14% slope without a transition.

Vice-Chair Thomas remarked that the Commissioners had concerns about flat roofs and how they would be planted. He believed they were comfortable with the diagram showing that the height of the roof would come down if it fits within the 7:12 triangle. Commissioner Wintzer asked Planner Astorga do prepare a better diagram for the next meeting.

Vice-Chair Thomas wanted to address the window well. The City Council had opened the window well as a modification to the initial ideas for steep slope. However, it is an issue that that should be looked at again because it creates an unsafe situation as well as other impacts. Commissioner Wintzer thought one alternative would be to define a window well with a specific height requirement.

Planner Astorga pointed out that the Code did not specify a maximum height of a window well. Vice-Chair Thomas agreed and felt it was open to interpretation. He requested clarification regarding window wells.

Planner Astorga understood that Commissioner Wintzer had requested a diagram of the flat roof/green roof and how it fits into a gable roof. Vice-Chair Thomas clarified that the Planning Commission was referring to green roofs and not flat roofs.

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Commissioner Hontz referred to the redlined language on page 68 of the Staff report regarding building height. In addition to the items Commissioner Thomas had identified, she asked the Planning Commission to consider removing the language, "finished lowest floor plane." She was concerned that someone could leave the garage floor dirt so it would not be considered a finished floor plan. Commissioner Hontz did not believe the word "finished" made the definition stronger.

Vice-Chair Thomas thought "finished floor" was the elevation of the earth. After further discussion the Commissioners agreed to remove the word "finished" from the sentence. Commissioner Hontz referred to the same paragraph, last sentence, and asked why they were talking about attics as a story. The Commissioners agreed to remove the last sentence.

Commissioner Hontz referred to the second redlined paragraph on page 68 of the Staff report and revised the paragraph to read, "A ten foot minimum horizontal step in the downhill façade is required to take place at a maximum height of 23' from where elevation meets existing grade. An exception is for when the first story is located completely under the finished grade on all sides of the structure. Commissioner Hontz felt it was better to separate what is allowed and what is prohibited for clarity. The Commissioners discussed the revised language and asked Planner Astorga to re-write the language for the next meeting to address some of the issues that were raised. Commissioner Savage requested a visual to help clarify the language.

Vice-Chair Thomas noted that at some point the Planning Commission would have to address separate structures. He believed there would be a tendency for people to pull two buildings apart and have a garage and something else and another structure uphill. The result is the impact of seeing a very tall, large massive structure on lots that are not compatible with the historic adjacent properties. He asked the Commissioner to begin thinking about how they could approach the issue. He asked the Staff to factor in language that addresses new construction without historic buildings and stops the cascading down the mountainside, regardless of whether the structures are connected.

Planning Manager Sintz stated that in the discussion of whether to define primary roof form and how it is calculated, and because the green roof definition is tied to the primary roof form, she suggested that the Planning Commission direct Staff on how to marry the two together. She offered suggestions on how it could potentially be done. Vice-Chair Thomas was uncomfortable with using a percentage because it becomes mathematical without considering the aesthetics. He suggested that the Staff Architect review primary roof forms and green roofs in terms of their compatibility. Planner Astorga asked if the Commissioners were comfortable with the language as proposed, which added the word

EXHIBIT G

Approved 06.03.2024



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TECHNICAL MEMORANDUM

To: Gretchen Milliken, Planning Director
Park City Municipal Corporation, Planning Department
445 Marsac Avenue
Park City, Utah 84060

From: Anne Oliver, Principal Architectural Historian, and Christina Olson, Lead Architectural Historian, SWCA Environmental Consultants

Date: April 26, 2023

Re: **Historic District Design Review for 220 King Road**

OVERVIEW

Historic character is one of four core values outlined in the *Park City General Plan* (Park City Planning Department 2014). Park City's historic character derives from more than 400 historic sites, including two National Register Historic Districts (Park City Planning Department 2023). The Main Street Historic District was listed in the National Register of Historic Places in 1979, and the Mining Boom Era Residences Thematic District, which comprises historically significant residential structures built during the mining boom period of 1872 to 1929, was listed in 1984 (Park City Planning Department 2023).

Park City Municipal Corporation has pursued protection of the City's historic resources through local designations on its Historic Site Inventory and through application of the Design Guidelines for Historic Districts and Historic Sites (Design Guidelines), initially adopted in 1983. In 2009, Park City completed a total update of the regulating documents for the historic districts, including an updated Historic Site Inventory, new Design Guidelines, and amendments to the Land Management Code (LMC). The Design Guidelines were updated again and adopted by Ordinance 2019-06 into the LMC in 2019 and are intended to fulfill policy directives provided in the LMC (Park City Planning Department 2023).

As requested by the Park City Planning Department, SWCA Environmental Consultants has prepared this memorandum to assist the City's Design Review Team in evaluating the proposed new residence at 220 King Road, in the Historic Residential (HR-1) zone, for compliance with the Design Guidelines (Figures A-1 and A-2). Specific LMC requirements associated with building height (LMC 15-2.2-5) and development on steep slopes (LMC 15-2.1-6) relevant to the HR-1 district and the proposed residence at 220 King Road, are outside the purview of the Design Guidelines and are being addressed separately by the Planning Department.

HISTORIC DISTRICT DESIGN GUIDELINES REVIEW

Park City's Design Guidelines are intended to protect the historic character of Park City. As identified in LMC 15-2.2-1, the purpose of the HR-1 zone regarding residential infill is to:

- preserve present land uses and character of the Historic Residential Areas of Park City;

- encourage construction of Historically Compatible Structures that contribute to the character and scale of the Historic District and maintain existing residential neighborhoods;
- encourage single family Development on combinations of 25' x 75' Historic Lots;
- define Development parameters that are consistent with the General Plan policies for the Historic core; and
- establish Development review criteria for new Development on Steep Slopes which mitigate impacts to mass and scale and the environment. (Park City 2000)

Concerns with the proposed residence at 220 King Road relate primarily to the “construction of Historically Compatible Structures that contribute to the character and scale of the Historic District,” particularly the scale of the residence and its component elements. While the Design Guidelines support the proposed industrial design aesthetic inspired by the Silver King Mine buildings, the guidelines are clear regarding requirements for residential scale and do not support the construction of industrial-scale residential buildings within residential districts. The compliance of proposed massing and glazing patterns with the Design Guidelines is an additional concern. Each Design Guideline pertinent to these concerns is provided below, followed by an analysis of the design compatibility of 220 King Road.

15-13-8 Design Guidelines for New Residential Infill Construction in Historic Districts

A. Universal Guidelines

15-13-8 A-4: New infill residential buildings shall differentiate from historic structures but be compatible with historic structures in materials, features, size, scale and proportion, and massing to protect the integrity of the Historic District as a whole. The massing of the new infill residential buildings shall be further broken up into volumes that reflect the original massing of historic buildings; larger masses shall be located at the rear of the lot.

The proposed materials and features of the residence at 220 King Road are compatible with industrial designs in and around Park City. However, the size, scale, and proportions of the residence and its component elements, including the shed roof and cantilevered flat roof, are reminiscent of a large-scale industrial building rather than a residential building, which is not compatible with the HR-1 zone. While projecting portions of the building on the downslope elevation provide some modulation of mass, additional size reduction or modulation of the building mass itself (as well as its roofs) is required to reflect the size and massing of historic residential buildings, which were typically built on 25-foot-wide lots in this zone (see Figures A-1 and A-2).

15-13-8 A-6: Exterior elements – roofs, entrances, eaves, chimneys, porches, windows, doors, steps, garages, etc. – of the new infill residential building shall be of human scale and shall be compatible with neighboring Historic Structures.

The proposed residence at 220 King Road will span multiple lots, with a single shed roof also spanning multiple lots. While the use of an industrial mining aesthetic is encouraged, the scale of the roof and eaves should be compatible to the scale of historic residences in the HR-1 zone, not to an industrial mining building. To comply with this guideline, the wide shed roof would need to be divided into three to five modules to achieve the appropriate residential scale and the cantilevered flat roof would need to be reduced in size.

15-13-8 A-7: Scale and height of new infill residential buildings shall follow the predominant pattern and respect the architecture of the Streetscape or character area with special consideration given to Historic Sites.

The proposed infill references the industrial buildings of the Silver King Mine but the guidelines require that infill residential buildings maintain a historic residential scale appropriate to the historic district or zone in which they are being constructed. The proposed residence at 220 King Road will be on a relatively isolated site and will not be directly adjacent to any Historic Sites. In the absence of a streetscape lined by other buildings, the predominant pattern of the historic district or residential zone applies. The proposed design does not comply with this guideline.

15-13-8 A-8: Size and mass of a structure shall be compatible with the size of the site so that lot coverage, building bulk, and mass are compatible with Historic Sites within the Streetscape or character area.

The proposed residential building at 220 King Road will span multiple lots and, while its size is compatible with the size of the lot, its building bulk and mass are not compatible with Historic Sites just downslope in the HR-1 zone. Further reduction or modulation of massing, both of the residence and its shed and cantilevered flat roofs, is required to be compatible with the building bulk and mass of historic residences in the HR-1 zone.

15-13-8 A-10: New infill residential buildings shall reinforce visual unity within the context of the Streetscape or character area. The specific context of each Streetscape or character area is an important feature of the Historic District. The context of each Streetscape or character area shall be considered in its entirety, as one would see it when standing on the street viewing both sides of the street for the entire length of the Streetscape or character area. Special consideration should be given to adjacent and neighboring Historic Sites in order to reinforce existing rhythms and patterns.

The proposed residence sits on the hillside above much of the HR-1 zone, in a setting where industrial buildings were once common. An industrial design aesthetic is appropriate in this area; however, this and many other Design Guidelines explicitly require that new infill residential buildings be compatible in mass and scale with historic residential buildings to reinforce visual unity in the historic district and/or residential zone. The prominent and highly visible location of 220 King Road only increases the importance of complying with this and other guidelines to reinforce visual unity and maintain existing rhythms and patterns of the nearby streetscapes. Because the guidelines are so clear on this point, a variance from the Board of Adjustment would be required to permit the design as proposed.

B. Specific Guidelines (Primary Structures)

Mass, Scale, and Height

15-13-8 B-2a (1): The size and mass of a new residential infill building in relation to open spaces, shall be visually compatible with adjacent historic buildings and historic structures in the surrounding Streetscape or character area.

The proposed residence at 220 King Road is sited on an open slope above much of the HR-1 zone. This provides some flexibility in allowing greater size because of the building's relation to more open space. However, the size of the building and its component elements must be broken into distinct masses more reminiscent of the size and mass of historic buildings in the zone to achieve visual compatibility.

15-13-8 B-2a (3): Historic height, width, and depth proportions that are important in creating compatible infill and maintaining the historic mass and scale of the Streetscape or character area.

The height, width, and depth of the proposed residence at 220 King Road are of an industrial scale and not compatible with the residential streetscapes in Park City's historic districts. As noted above, while the large lot and open hillside allow for greater building size, it is necessary to break up the massing and roof forms to be more similar to historical residential massing and scale to achieve compatible infill.

15-13-8 B-2a (5): The perceived scale of new buildings shall respect the scale established by historic buildings in the character zone. Abrupt change of scale in the character zone is inappropriate, especially when a new, larger building would directly abut smaller historic buildings.

Both the actual and perceived scale of the proposed residence is significantly greater than a typical historic residence in the HR-1 zone and there are no historic large-scale industrial buildings nearby or anywhere in the zone that establish a precedent for large-scale infill. As stated above, the reference to the industrial aesthetic of the Silver King Mine buildings is encouraged in the design of the structure, but those historic mining buildings are neither in the HR-1 zone nor visible from it. For these reasons, the perceived scale should reflect that of a historic residential building rather than a historic industrial building. Because the proposed residence does not directly abut any historic buildings, and because it is sited on a large lot surrounded by open space, its greater size can be accommodated within the HR-1 zone. However, to comply with other guidelines, the perception of that size must be managed by dividing the building into modules that reflect the massing of a typical historic residence on a 25-foot-wide lot. Breaking up the roof form in a similar fashion would also be necessary.

15-13-8 B-2a (6): A larger building shall be divided into 'modules' that reflect the mass, scale, proportions, and size of historic buildings within the Streetscape or character area. Modules shall be clearly expressed throughout the entire building and a single form shall remain the dominant element so the overall mass does not become too fragmented. To minimize the scale perceived from the primary public right-of-way, stepping down the mass of a larger building shall be considered.

See above discussion under multiple guidelines about using modules to break up large masses and manage the perception of scale for residences larger than seen historically. Stepping the mass of these modules back into the hillside, rather than projecting their mass forward from a recessed basement level as currently proposed, can also help manage the perception of scale.

15-13-8 B-2a (7): Larger-scaled projects shall also include variations in roof height in order to break up the form, mass and scale of the overall structure.

The proposed design for the residence at 220 King Road incorporates two flat roofs (one that serves as a deck and one that is cantilevered over that deck) and one expansive shed roof. While these roofs vary in height, which helps to break up the form, mass, and scale of the residence, the modules they create are still over-scaled relative to historic residences in the HR-1 zone. Further reduction or modulation of massing, of both the residence and its shed and cantilevered flat roofs, is required to meet this guideline.

15-13-8 B-2a (8): Buildings constructed on lots greater than 25 feet wide shall be designed so that the facades visible from the primary public right-of-way reinforce the rhythm along the street in terms of traditional building width, depth, and patterns within the façade.

No renderings of the proposed residence as viewed from the primary public right-of-way (King Road) have been provided for this review. It is expected, however, that the modules created to address mass and scale on the downslope (rear) side of the residence will carry through to the opposite (front) side and vice versa.

15-13-8 B-2a (9): Regardless of lot frontage, the primary façade shall be compatible with the width of surrounding historic buildings. The greater width of a building shall be set back significantly from the plane of the primary façade. The width of a new building shall not appear to be visibly greater than historic buildings in the Streetscape or character area. Modules on a primary façade should generally not exceed eleven (11) feet to twenty-five (25) feet in width.

No renderings of the proposed residence as viewed from the primary public right-of-way (King Road) have been provided for this review. It is expected, however, that historically sized modules of approximately 11' to 25' in width, with attendant setbacks from the primary wall plane of the façade, will be created on the uphill (front) side of the residence and carried through to the downslope (rear) side.

15-13-8 B-2a (10): When the overall length of a new structure is greater than seen historically, the design shall employ methods—changes in wall plane, roof heights, use of modules, etc. to diminish the visual impact of the overall building mass, form and scale.

The proposed residence at 220 King Road will span multiple lots and its overall length is much greater than seen historically. Therefore, further variation in wall planes and roof heights to create more historically sized modules is required to diminish the visual impact of the overall building mass, form, and scale.

Windows

15-13-8 B-2d (1): Ratios of solid-to-void that are compatible with surrounding historic buildings shall be used. Large expanses of glazing are inappropriate on residential structures. Large glass surfaces shall be divided into smaller windows that are in scale with those seen historically. To maximize views, non-historic window patterns may be considered on tertiary facades; however, the overall ratio of solid-to-glass shall still be respected.

The large, multi-pane windows and fenestration patterns of the proposed design reference historic mine buildings, which incorporated significant amounts of glazing to maximize natural light and illuminate interior workspaces (Figures A-3 and A-4). Typically, long, nearly continuous, relatively narrow bands of windows were present in clerestories that were separated by pitched roofs; glazing in the exterior corrugated-metal walls was also extensive. Hence, the use of an industrial mining aesthetic allows for a greater proportion of void to solid in the proposed residence than would be appropriate with a more traditional residential design. However, glazing in historic exterior walls always had a base of solid wall and never consisted of floor to ceiling windows. In the proposed design, the metal panels at some window bases recreate this pattern, but the floor-to-ceiling windows present elsewhere are inconsistent with industrial patterns and create an incompatible solid-to-void ratio.

15-13-8 B-2d (2): Windows shall be historic size and shall relate to the human scale of the Historic District. Windows shall be proportional to the scale and style of the building and shall be compatible with the historical buildings in the Historic District.

See above analysis. With the exception of the floor-to-ceiling windows, the larger-scaled windows are appropriate to the scale and style of the building.

15-13-8 B-2d (3): The placement and grouping of windows shall be similar to those seen historically.

See above analysis. With the exception of the floor-to-ceiling windows, the placement and grouping of windows is similar to that seen on historic mining buildings in Park City.

Roofs

15-13-8 B-1e (1): Roofs of new residential infill buildings shall be visually compatible with roof shapes and orientation of surrounding Historic Sites and adjacent buildings that contribute to the character of the Historic District. Sloping of roof forms, such as gable, hip, and shed, should be the dominant roof shapes. Roofs composed of a combination of roof planes, but simple in form, are also encouraged. Roofs shall be in scale with those on historic structures.

The roof shapes (flat and shed) and their orientations are generally compatible with surrounding Historic Sites, as are their simple forms. However, the guidelines are clear that the perceived scale of larger residential buildings (on lots wider than 25') should be managed by breaking them into smaller masses or modules that reflect historic residential massing, including their roofs. There is no precedent for exceptions when an industrial aesthetic is used for a residence, or for residences that may be in historically industrial areas. To comply with the guidelines, the roof could be broken into a horizontally stepped series of shed roofs (3 to 5 of them, with differences in roof height of a few feet or more to create shadow lines) that shelter their corresponding modules, or a mix of shed and flat. The cantilevered flat roof would also need to be reduced in scale.

CONCLUSION

In summary, while the Design Guidelines support the industrial aesthetic of the proposed residence at 220 King Road, which was inspired by the Silver King Mine buildings, the guidelines are clear regarding requirements for residential massing and scale, and the proposed design does not comply. The proposed floor-to-ceiling windows are also out of compliance. Recommendations for revisions to achieve a design more compatible with the guidelines are incorporated in the above analyses.

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Historic American Engineering Record (HAER)

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Park City Planning Department

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ATTACHMENT A

Figures

Approved 06.03.2024



Figure A-1. Rendering of proposed residence at 220 King Road, downslope (rear) elevation, dated April 18, 2023.

Approved 06.24



Figure A-2. Rendering of proposed residence at 220 King Road, oblique view (left side and rear elevations), dated April 18, 2023.

Approved 06.09.24

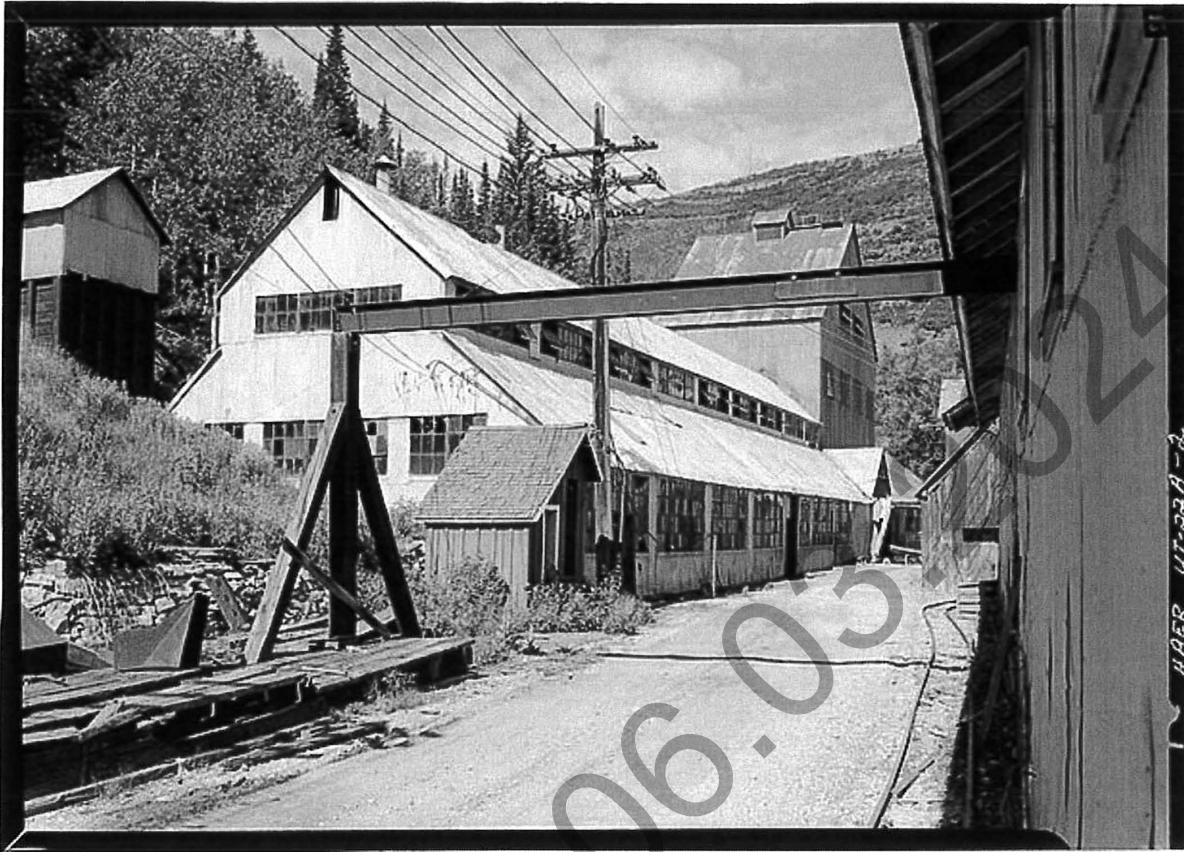
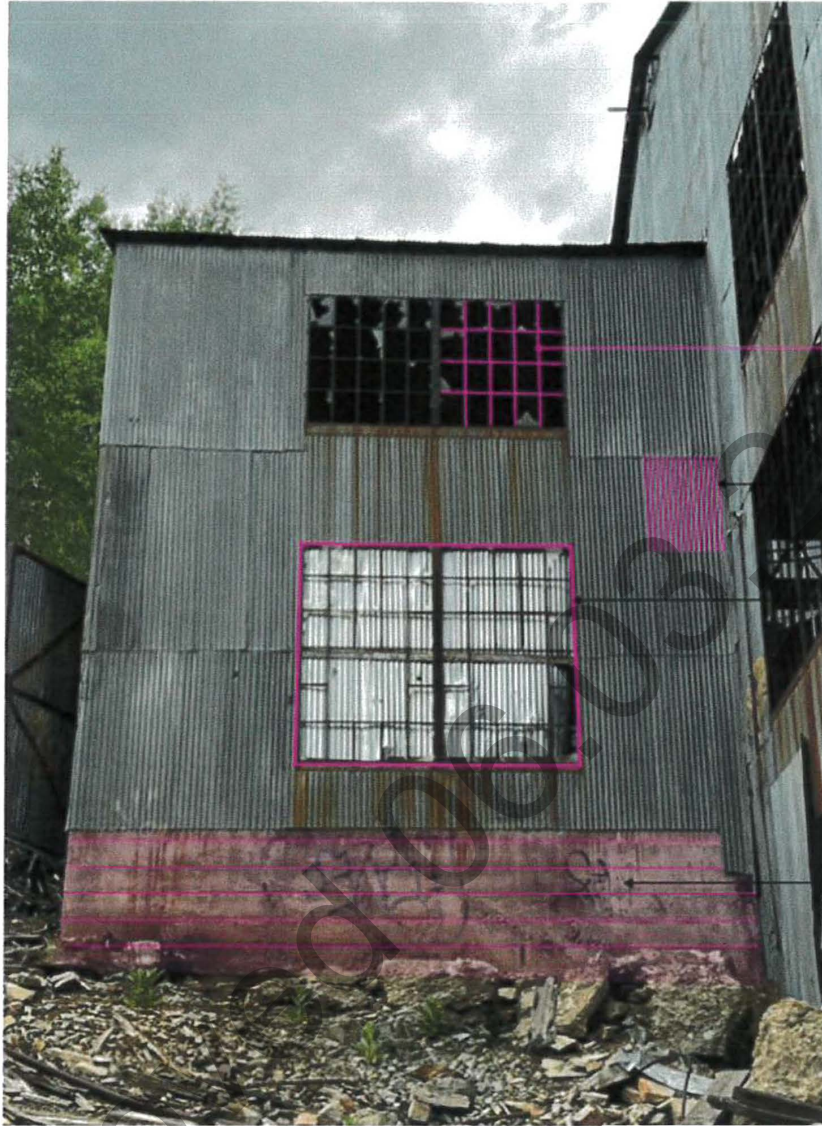


Figure A-3. Silver King Mine Hoist House (view from west), Woodside Gulch, Park City, Summit County, UT (HAER 1971). Note the complex massing of the building and its stepped and varied roofs over the component masses, as well as the multi-pane steel windows, window heights, proportion of solid wall to window openings.



Silver King Mill

Figure A-4. Example of industrial glazing pattern, Silver King Mine building. Note multi-pane steel windows, window heights, and proportion of solid wall to window openings.

VEHICLE RAMP BUILT IN TO
THE HILL

LOOKS ON ACCORD
VEHICLE RAMP

NEW ROCK WALL
HEIGHT 8'-0" LF
LENGTH 44 LF

NEW ROCK WALL
HEIGHT 8'-0" LF
LENGTH 130 LF

NEW ROCK WALL
HEIGHT 8'-0" LF
LENGTH 44 LF

NEW CONCRETE
RETAINING WALL
HEIGHT 8'-0" LF
LENGTH 38 LF

NEW ROCK WALL
HEIGHT 8'-0" LF
LENGTH 80 LF

SHEET
2
OF
8

Approved 06.03.2024

422 P.3d 803
Supreme Court of Utah.

Jeanette **POTTER**, et al.,¹ Appellants,
v.
SOUTH SALT LAKE CITY, Appellee.

No. 20150931

I
Filed June 5, 2018

Synopsis

Background: Objectors sought judicial review of city council's decision to close a portion of two city streets. The Third District Court, Salt Lake, Paul G. Maughan, J., dismissed objectors' claim, and they appealed.

Holdings: The Supreme Court, Lee, J., held that:

automobile dealership's petition to vacate portions of two public streets was not defective on the basis it failed to include the names and addresses of all property owners whose land was adjacent to the public streets being vacated;

there was no reasonable likelihood that alleged defects in petition to vacate had any effect on city's decision to vacate portions of two public streets, and thus, objectors failed to demonstrate prejudice, as required to overturn city's land use decision; and

a party challenging a land use decision is not required to prove that the city's decision "would have been different" absent the violation of city law, but instead, it is enough for the challenging party to show that there is a reasonable likelihood that the legal defect in the city's process changed the outcome of the proceeding, modifying *Springville Citizens*, 979 P.2d 332.

Affirmed.

Procedural Posture(s): On Appeal; Motion for Summary Judgment; Review of Administrative Decision.

*804 Third District, Salt Lake, The Honorable Paul G. Maughan, No. 140908636

Attorneys and Law Firms

Craig S. Cook, Salt Lake City, for appellants

Jody K. Burnett, Robert C. Keller, Salt Lake City, for appellee

Associate Chief Justice Lee Authored the Opinion of the Court, in which Chief Justice Durrant, Justice Himonas, Justice Pearce, and Justice Petersen joined.

On Direct Appeal

Associate Chief Justice Lee, opinion of the Court:

¶ 1 Jeanette **Potter** and others filed suit challenging a decision of the South Salt Lake City Council to close a portion of Truman and Burton Avenues. The district court dismissed **Potter's** claims on summary judgment. We affirm. In so doing we conclude that the petition to vacate was valid under Utah Code section 10-9a-609.5, that **Potter** has not identified any prejudice resulting from any alleged deficiency in the petition, and that notice of the city council meetings was sufficient under Utah Code section 10-9a-208.

¶ 2 In holding that **Potter** failed to prove prejudice we revise and clarify the standard set forth in *Springville Citizens for a Better Community v. City of Springville*, 1999 UT 25, 979 P.2d 332. We hold that a party alleging error by a land use authority is no longer required to show that the "decision would have been different" but for the error. *Id.* ¶ 31. Instead we conclude that a party can establish prejudice by showing a *reasonable likelihood* that the error changed the land use authority's decision.

I

¶ 3 In 2008 the South Salt Lake City Council voted to close a portion of Truman and Burton Avenues in response to a petition by RIM Enterprises. RIM owned a Chrysler dealership on State Street that occupied three separate blocks divided only by Truman and Burton Avenues. And the car dealership sought to expand its operation by consolidating the three properties, thereby complying with Chrysler Corporation's acreage requirement.

¶ 4 The city council conditioned its decision to vacate both streets on the dealership's buying the four parcels on Truman

Avenue that abutted a portion of Truman that RIM Enterprises wanted vacated. A plat map reflecting this decision was placed with the city recorder in 2008—to be recorded only upon a showing that the dealership had met the condition. The dealership never purchased the parcels, however, so the two streets were never vacated.

¶ 5 Years passed and RIM Enterprises sold the dealership to Salt Lake Valley Chrysler Dodge in 2014. In May 2014 the dealership filed another petition with the South Salt Lake City Council. This new petition sought to vacate only the portion of the streets adjacent to land the dealership already owned, thus avoiding the need to purchase the four properties on Truman Avenue. After notice and a public hearing the city council denied the petition.

¶ 6 In October 2014 the dealership submitted a revised petition to vacate. The revised petition included mitigation measures aimed at addressing the concerns residents raised during the earlier public hearing. The city sent notices out to residents in the area apprising them of the petition and the public meeting to be held on December 3, 2014. The city also placed large signs with similar language along Truman and Burton Avenues, as required by Utah Code section 10–9a–208(2)(c).

*805 ¶ 7 Residents overwhelmingly opposed the action at the December 3 meeting. Only the dealership's attorney spoke in favor during the public comment portion. After taking public comment the council elected to table the discussion until the following meeting, placing the item on the unfinished-business agenda for December 10, 2014.

¶ 8 When the city council turned to the issue at its December 10 meeting, the city attorney addressed the council regarding his legal opinions. He noted that “the decision has already been made to close the streets”—referring to the council's conditional approval of the 2008 petition—“so the real issue here” is whether “the City [is] happy with the additional mitigation measures.” Following the city attorney's presentation, several residents, including **Potter's** current legal counsel, addressed the city council and took issue with the city attorney's comments. One resident remarked, “If the decision has already been made and it doesn't matter, then why are we here?”

¶ 9 The city attorney later addressed the council again and explained that the conditions in the 2008 ordinance did not contain a sunset clause. He noted that if the city council

rejected the dealership's 2014 petition “then the previous action remains in place, and at whatever time the conditions of the previous action are met, the streets will be closed but they'll be closed without the mitigation measures that have arisen out of this most recent activity.”

¶ 10 These comments seemed to surprise at least some of the members of the city council. One councilwoman expressed frustration with the process and with the attorney's legal advice. She noted the lack of understanding among the councilmembers that the closure “is happening in one form or another” because the 2008 ordinance remained valid and could be invoked whenever the dealership met the conditions.

¶ 11 Following some debate, the South Salt Lake City Council voted five to two to vacate a portion of Truman and Burton Avenues. The council found, as required by statute, that “good cause exist[ed] for the vacation” and that “neither the public interest nor any person w[ould] be materially injured by the vacation.” See UTAH CODE § 10–9a–609.5(3).

¶ 12 **Potter** sought review of the action in district court. She asked the district court to set aside the decision under Utah Code section 10–9a–801 on the grounds that the decision was illegal.

¶ 13 **Potter** specified two principal grounds for challenging the city council's decision. First, she asserted that the council's decision was illegal because the dealership's petition to vacate failed to list the name and address of each owner whose property was “adjacent to the public street” being vacated, as required by Utah Code section 10–9a–609.5(1)(a)(i). Second, she challenged the sufficiency of the notice of the city council meeting in which the streets in question were vacated. Here **Potter** noted the city attorney's comments in the December 10 meeting—comments indicating the attorney's view that the council had already decided to close the streets under the first petition to vacate, and that the “real issue” was whether to endorse the “additional mitigation measures” in the revised petition. And **Potter** claimed that those comments deprived the public of a meaningful opportunity to be heard on the proposed action.

¶ 14 Both parties filed motions for summary judgment. The district court granted the city's motion. It held first that the dealership's petition satisfied the requirements of Utah Code section 10–9a–609.5(1)(a). In so doing the court interpreted the requirement of naming each owner whose property was “adjacent to the public street” being vacated to apply only to

owners of property abutting the *portion of the street* being vacated. And because the dealership owned all the property abutting the portion of the streets being vacated, the court concluded that the dealership was not required to name any property owners in its petition.

¶ 15 The district court also upheld the validity of the notice of the city council meeting. It concluded that the city attorney's "comments did not render the proceedings defective or illegal in any way." And it held that no further notice was required despite the city attorney's apparent reframing of the issue.

*806 ¶ 16 **Potter** filed this appeal. We review the district court's decision on summary judgment *de novo*.² See *Bahr v. Imus*, 2011 UT 19, ¶ 16, 250 P.3d 56.

II

¶ 17 **Potter** raises two sets of issues on appeal. She challenges the sufficiency of the dealership's petition to vacate under Utah Code section 10-9a-609.5(1)(a). And she also asserts that the public was not given adequate notice of the nature of the city council's meeting. We disagree and affirm.

A

¶ 18 **Potter** makes two sets of arguments in challenging the sufficiency of the petition to vacate. She first asserts that the petition was defective because it failed to include the names and addresses of all property owners whose land was "adjacent to the public street" being vacated, as required by Utah Code section 10-9a-609.5(1)(a)(i). And she also insists that this defect is sufficient to sustain reversal regardless of the fact that it had no effect on the city council's decision. We reject both sets of arguments.

I

¶ 19 Utah Code section 10-9a-609.5(1) requires a party seeking "to vacate some or all of a public street" to file a petition that includes "(a) the name and address of each owner of record of land that is: (i) adjacent to the public street, right-of-way, or easement; or (ii) accessed exclusively by or within 300 feet of the public street, right-of-way, or easement." The threshold question is what it means to be "adjacent to the

public street." There is some ambiguity in that clause. It could be a reference to the portion of the street being vacated—to section 609.5(1)'s introductory clause, which refers to "some or all of [the] public street" sought to be vacated. UTAH CODE § 10-9a-609.5(1). Or, alternatively, the referenced "public street" could be taken literally; it could mean the entire length of the street that bears that name—here, Truman and Burton Avenues from start to finish (where they begin at State Street until they end many blocks to the east).


¶ 20 Either of these readings is semantically possible if we view the term "public street" in isolation—divorced from its statutory context. But we must consider the statutory context. See *Olsen v. Eagle Mountain City*, 2011 UT 10, ¶ 12 n.5, 248 P.3d 465 ("[T]he meaning of statutory language, plain or not, depends on context." (alteration in original) (citation omitted)). And the context strongly favors the former reading over the latter.


¶ 21 This statute prescribes the required elements of a petition seeking to vacate "some or all of a public street." UTAH CODE § 10-9a-609.5(1). And in context, the use of the phrase "public street" is easily understood as a reference back to the subject of the petition—to the portion of the street ("some or all" of it) sought to be vacated. The alternative reading (that "public street" means the entirety of the street from beginning to end), moreover, seems difficult to reconcile with the apparent purpose of the statute (another element of context). A public street may extend many blocks—or even many miles—from start to finish. And it is hard to think of a reason why the legislature would want to require a petition to list owners whose property is situated many miles away from the portion of the street being vacated. With this in mind, it is more natural to read the term "public street" as a reference back to the subject of the petition—to the portion of the street being vacated.


¶ 22 **Potter** acknowledges the difficulty of the more expansive reading of "public *807 street." And she accordingly offers a third possibility. In **Potter's** view the referenced "public street" could be viewed as ending at the next cross street—for Truman and Burton Avenues, at 200 East. We reject that reading, however, as we find no basis for it in the statutory text. The reference to "public street" could mean all of Truman or Burton Avenue. Or, in the context of this statute, it could mean the portions of those streets being vacated. There is no natural reading of "public street," however, that extends beyond the portion being vacated and arbitrarily ends at the next cross street.


¶ 23 We reject **Potter's** challenge to the car dealership's petition on this basis. We conclude that the petition complied with Utah Code section 10-9a-609.5(1)(a) because there were no other owners of property adjacent to the portions of the public streets being vacated. And we affirm the district court's decision on summary judgment on this basis.



2

¶ 24 We have long held that parties challenging a land use decision “must establish that they were prejudiced by the City's noncompliance with its ordinances.”  *Springville Citizens for a Better Cmty. v. City of Springville*, 1999 UT 25, ¶ 31, 979 P.2d 332. Here there is an admitted lack of prejudice—**Potter** concedes that the alleged defect in the car dealership's petition had no effect on the city council's decision. And that is an alternative basis for affirming the district court's decision on summary judgment.

¶ 25 **Potter** seeks to avoid this result by asking us to adopt a prejudice standard that differs from the one we prescribed in  *Springville Citizens*. Her argument proceeds in two steps.

¶ 26 **Potter** first asks us to revise our formulation of the standard of prejudice in  *Springville Citizens*—a standard requiring a party challenging a land use decision to establish that “the City's decision would have been different” but for its noncompliance with its ordinances or governing statutes.


 *Id.* In support of this argument, **Potter** cites our court of appeals' observation that this formulation “imposes a difficult—if not impossible—burden on a citizen who seeks to challenge the procedural legality of a city's land use decision.”




 *Gardner v. Perry City*, 2000 UT App 1, ¶ 20 n.7, 994 P.2d 811. And **Potter** asks us to reformulate the prejudice standard in a manner that will avoid the difficulties of the  *Springville Citizens* regime.

¶ 27 **Potter's** second point is more comprehensive. Citing eminent domain cases, **Potter** asserts that there should be no requirement of proof of prejudice in a case challenging a decision to vacate a public street. The point here is that this is no ordinary land use decision. In **Potter's** view the decision to vacate a street is more like a city's decision to condemn land. And because in **Potter's** view there is no requirement of proof of prejudice in an action challenging an eminent domain

proceeding,³ **Potter** asks us to eliminate the requirement of proof of prejudice in a case like this one.

¶ 28 We find no basis for this latter invitation. We can assume for the sake of argument that prejudice is not an element of an action challenging an exercise of the eminent domain power. But **Potter** is not challenging an exercise of the eminent domain power. Eminent domain involves the exercise of government power in taking *private* property rights. And **Potter** is challenging a decision to revoke *public* access and control of a street—the petition at issue here is one seeking “to vacate some or all of a *public* street.” UTAH CODE § 10-9a-609.5(1) (emphasis added). So the city's action in vacating a street has no effect on private easements over the roadway—it “may not be construed to impair ... any right-of-way or easement of any lot owner.”⁴ *Id.* § 10-9a-609.5(5)(b). For that *808 reason this is not a challenge to the exercise of the eminent domain power. It is a challenge to a land use decision. And the general principles of judicial review apply.

¶ 29 A core element of these principles is the requirement of proof of prejudice. As a general rule we do not overturn a decision of a lower court or administrative body upon a mere showing of error; proof of prejudice is typically required. See UTAH R. CIV. P. 61 (“The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.”);  *State v. Goins*, 2017 UT 61, ¶ 48, 423 P.3d 1236 (noting, in the context of a criminal case, that an error warrants reversal only if it results in prejudice).

¶ 30 This requirement has long been extended to judicial review of land use decisions. See, e.g.,  *Springville Citizens*, 1999 UT 25, ¶ 31, 979 P.2d 332 (holding that a party challenging a land use decision must establish prejudice). And this application is likewise reflected in settled case law in other jurisdictions. See, e.g.,  *In re Eastview at Middlebury, Inc.*, 187 Vt. 208, 992 A.2d 1014, 1022–23 (2009) (“It is a well established rule that the party who alleges error has the burden of showing that he has been prejudiced thereby.” (citation omitted));  *Quality Rock Prods., Inc. v. Thurston Cty.*, 126 Wash.App. 250, 108 P.3d 805, 813 (2005) (noting that “a defect in the caption of a land use petition's summons” did not warrant reversal “absent demonstrated prejudice”).

¶ 31 For these reasons we decline the request that we abandon the element of prejudice in a case like this one. But we do acknowledge a threshold concern about the viability of the precise formulation of the standard of proof of prejudice in *Springville Citizens*. A requirement of proof that a city's land use decision "would have been different," *Springville Citizens*, 1999 UT 25, ¶ 31, 979 P.2d 332, is a high bar. On reflection, in fact, we think this comes close to an insurmountable barrier. See *Gardner*, 2000 UT App 1, ¶ 20 n.7, 994 P.2d 811 (suggesting that the standard may be "impossible" to meet). And that is untenable.

¶ 32 This concern has led us to reconsider the standard in *Springville Citizens*. In response to the briefing in this case we have reevaluated the *Springville Citizens* standard. And we have concluded that the time has come to revise the standard set forth in *Springville Citizens*.⁵

¶ 33 Proof of prejudice is required. But the required standard of prejudice should not be insurmountable. With that in mind, we hold that a party challenging a land use decision is not required to prove that the city's decision "would have been different" absent the violation of city law. See *Sierra Club v. D.R. Horton-Schuler Homes, LLC*, 136 Hawai'i 505, 364 P.3d 213, 233 (2015) (harmlessness inquiry "'does not require proof that the errors necessarily changed the result of the proceeding below'" (citation omitted)). Instead, it is enough for the challenging party to show that there is a reasonable likelihood that the legal defect in the city's process changed the outcome of the proceeding.

¶ 34 We affirm, however, on the ground that **Potter** cannot establish prejudice even under this more permissive standard. **Potter** herself concedes that the alleged defects in the car dealership's petition had no effect on the outcome of the city council's decision. And the city was entitled to summary judgment because there is no reasonable likelihood that the alleged defect in the petition had any effect on the outcome of the proceedings.

B

¶ 35 **Potter** also challenges the sufficiency of the public notice of the city council *809 meeting in question. The governing statute requires a "public hearing" for "any proposal to vacate some or all of a public street." UTAH CODE § 10-9a-208(1)

(a). It also requires the city to "give notice of the date, place, and time of the hearing." *Id.* § 10-9a-208(1)(b).

¶ 36 These requirements were fulfilled in advance of the city council meeting in question. The city gave notice of a hearing in which it planned to address the car dealership's petition to vacate portions of Truman and Burton Avenue. And that petition was in fact the subject of the city council's deliberations and decision.

¶ 37 **Potter** concedes these points. But she insists that the sufficiency of the city's notice was obviated by comments made by the city attorney during the hearing. In those comments the city attorney expressed his view that the question presented was not *whether* to vacate the streets in question but *how*. The attorney opined that the council's approval of the prior petition was still on the table, and thus that the question for the council was whether to accept the conditions in the new petition or revert to the decision approving the old one. And **Potter** contends that these comments somehow obviated the sufficiency of the city's notice.

¶ 38 **Potter's** argument goes to the subject matter of the noticed hearing. Because the city attorney reframed the debate for the council, **Potter** insists that the hearing was not really about whether to grant the car dealership's petition to vacate; it was about how best to vacate the streets in question. And in **Potter's** view that deprived the public of adequate notice of the true subject matter of the hearing.

¶ 39 **Potter's** frustration is understandable. She and other residents attended the public meeting believing they could persuade the city council not to close the streets. But this does not make the city's notice insufficient. The governing statute requires only that the public be given notice of the date, place, and time of the hearing on a given petition to vacate. That notice was given. And the subject of the hearing was in fact the car dealership's petition: That was the subject of the city council's deliberations; and the council's decision was, in fact, to grant that petition.

¶ 40 **Potter's** point, ultimately, is that the city attorney's advocacy affected the substance of the council's deliberations. But that is insufficient. Public hearings are unpredictable. City councilmembers and public commenters often try to reframe a debate in ways that favor their position. Yet that is not enough to obviate the sufficiency of the notice of a hearing. The public notice can never anticipate all of the twists and turns that

may occur in a city council meeting. And the public notice is sufficient “as long as the items actually considered at the meeting are reasonably related to the subject matter indicated by the notice.” [Suarez v. Grand Cty.](#), 2012 UT 72, ¶ 74, 296 P.3d 688 (citation omitted).

¶ 41 This standard is easily satisfied here. The hearing was specifically and extensively focused on the petition to vacate that was mentioned in the notice. And the city attorney's comments didn't change that. The city attorney was offering

views of relevance to the question presented to the council—of whether to grant the car dealership's latest petition. Because those views were “reasonably related” to the subject matter of the proceeding, there was no defect in the notice given by the city.

All Citations

422 P.3d 803, 866 Utah Adv. Rep. 52, 2018 UT 21

Footnotes

- 1 Other appellants are Darrel Roberts, Barbara Mackay, Carl Webster, June Jackson, William Eresuma, Heather Bernales, and Eugene Baierschmidt.
- 2 **Potter** appears to assume that our review is of *the city council's action* (not the district court's). That is perhaps understandable in light of potentially confusing language in [Fox v. Park City](#), where we said that “we act as if we [a]re reviewing [a] land use authority's decision directly” when we consider an appeal from a district court's decision reviewing “an order of a local land use authority.” [2008 UT 85](#), ¶ 11, 200 P.3d 182. But the “as if” formulation is just a reflection of the *de novo* nature of our review. We cannot ignore the district court's decision. That is the decision before us on appeal. See [Outfront Media, LLC v. Salt Lake City Corp.](#), 2017 UT 74, ¶ 12, 416 P.3d 389. And the appellant bears the burden of establishing a reversible error in the district court's decision.
- 3 **Potter** cites the following cases in support of her argument: [Salt Lake City Corp. v. Evans Dev. Grp., LLC](#), 2016 UT 15, 369 P.3d 1263; [Marion Energy, Inc. v. KFJ Ranch, P'ship](#), 2011 UT 50, ¶ 16, 267 P.3d 863; and [Town of Tremonton v. Johnson](#), 49 Utah 307, 164 P. 190, 191 (1917). We yield no opinion on the premise of **Potter's** argument. We see no reason to reach the question whether prejudice is required in an eminent domain setting because we conclude that this case does not sound in eminent domain.
- 4 This statutory scheme only affects public rights, so we do not decide the question whether these residents have a private easement under [Boskovich v. Midvale City Corp.](#), 121 Utah 445, 243 P.2d 435 (1952), that could warrant a separate proceeding for just compensation.
- 5 We do not reach this conclusion lightly. We afford a measure of deference to [Springville Citizens](#) under our doctrine of *stare decisis*. See [Eldridge v. Johndrow](#), 2015 UT 21, ¶ 21, 345 P.3d 553. But we find that the [Springville Citizens](#) formulation is ripe for reconsideration because it is unworkable in practice and incapable of being applied in accordance with its literal terms. See [id.](#) ¶ 40 (explaining that precedent is susceptible to being overruled when it's unworkable—or incapable of consistent application).



Eric R. Hermann <ehermann@fhinternational.com>

to me, Susan, Tatiana ▾

Wed, Aug 17, 2022, 2:33 PM



Dear Matthew & Tatiana,

It was such a pleasure to see you two and Katia. She is absolutely adorable! Next time we will manage your arrival so that the dogs are snuggly and not scary... And the wine was most thoughtful: we don't drink a lot of zinfandel and Turley is a terrific route to expanding our staid repertoire. Thank you!

Just so you have them in one place, our mobile numbers are:



The cistern idea is creative and interesting. We will run it by our very plant-friendly landscaper and get back to you.

We understand that you want to take soil samples before foundation work, but we worry that a vehicle could damage the wildflower and tree project that follows the stone pathway across 200 King. We had the earth roto-tilled, fertilized, put in irrigation, and planted perennial wildflowers which are beginning to flourish (and trees which the moose & deer find delicious) and we would hate to start over. Not sure how to handle that as we'd like to accommodate you, of course. We recognize that construction is brutal for owners and to some extent those in the vicinity (& you all qualify on both fronts), but we will all get through it and we are delighted that you will be our next door neighbors.

As for 200 King, we have no plans to build and bought the property to prevent construction above us. We appreciate your generous offer (especially in light of today's real estate prices!), but for now would prefer to leave things as they are.

Above all, we look forward to seeing you again.

Warm wishes,

Eric & Susan

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Approved 06.03.2024