



**PARK CITY MUNICIPAL CORPORATION
APPEALS PANEL MEETING
SUMMIT COUNTY, UTAH
MARSAC MUNICIPAL BUILDING
JULY 15, 2024**

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

EX OFFICIO: Rebecca Ward, Planning Director; Mark Harrington, Senior City Attorney; Todd Godfrey, Legal Counsel

1. ROLL CALL

Chair Adam Strachan called the meeting to order at 5:00 PM.

2. MINUTES APPROVAL

A. Consideration to Approve the Appeal Panel Meeting Minutes from June 17, 2024.

Matthew Day moved to APPROVE the June 17, 2024, Appeal Panel Meeting Minutes as presented. Esteban Nunez seconded the motion. The motion passed with the unanimous consent of the Panel.

3. PUBLIC COMMUNICATIONS

There were no public comments.

4. STAFF AND BOARD COMMUNICATIONS AND DISCLOSURES

There were no Staff Communications or Disclosures. Chair Strachan commented that the disclosure he made the last time the appeal was brought before the Appeal Panel still applies.

5. REGULAR AGENDA

A. 220 King Road – Appeal – On April 30, 2024, the Appeal Panel conducted a Public Hearing and Voted to (a) Deny the Appeal of the Planning Commission’s Approval of the Conditional Use Permits and Steel Slope Conditional Use Permit for the Proposed Project at 220 King Road, and (b) Remanded three Questions to the Planning Commission Regarding the Sensitive Land Overlay. On June 26, 2024, the Planning Commission Conducted a Public Hearing and Issued their Determination to the Appeal Panel Regarding the Sensitive Land Overlay. The Appeal Panel will Review and Ratify the Final Action Letter Regarding the Appeal of 220 King Road. PL-24-06047.

Planning Director, Rebecca Ward, stated that questions posed by the Appeal Panel on April 30,

2024, went to the Planning Commission on June 26, 2024. Planning Commission Chair, Sarah Hall, reviewed and signed the Final Action Letter, indicating that it reflects the Planning Commission's determination regarding the Sensitive Land Overlay. The purpose of the meeting was for the Appeal Panel to review and ratify the Final Action Letter. No public hearing was scheduled. Director Ward noted that a letter submitted by the appellant's attorney was forwarded to the Appeal Panel immediately prior to the meeting.

Chair Strachan expressed his understanding that the Appeal Panel retains jurisdiction over the matter and asked Legal Counsel, Todd Godfrey to explain why the Appeal Panel must ratify the Planning Commission's Final Action Letter. Mr. Godfrey stated that the action was not limited to ratifying the Planning Commission's Final Action Letter. As the Appeal Panel now has the Planning Commission's decision on the remanded questions, it would be entering a Final Action Letter on the Appeal as presented to the Panel. The Panel could adopt the Planning Commission's findings by adopting its Final Action Letter as their own, or direct Staff to prepare a Final Action Letter consistent with the Panel's findings.

Chair Strachan asked for further clarification on whether they could override Chair Hall and change the Findings of Fact in their own letter, and which letter will take precedence in that case. Mr. Godfrey stated that in his opinion because it is the Appeal Panel's Final Action Letter, if they found that the Planning Commission's determinations were inaccurate based on the record and the evidence presented to them, they could make determinations that differ from the Planning Commission's. The Appeal Panel is not bound by determinations of the Planning Commission if they find that there is persuasive contrary evidence in the record but they must have evidence in the record for their determinations.

Referring to the letter from the appellant's attorney, Justin Keys, Chair Strachan asked for confirmation of the process. If the Panel listened to the meeting audio and determined that it supports different Findings of Fact then held a subsequent meeting to discuss the relevant sections of the audio and if that record then be sufficient to issue a Final Action Letter. Mr. Godfrey confirmed that they could approach it in that manner and emphasized the need for the Panel to ensure that they have created a record that is sufficient and supportive of their action.

Chair Strachan stated that other possible options include the Panel signing off on the Planning Commission's Final Action Letter and concluding the matter or continuing it to another meeting to discuss potential Findings of Fact on the record. Mr. Godfrey was not aware of a timeline that would require the Appeal Panel to make a final decision at that meeting. Chair Strachan added that it is a complicated issue and he had not yet fully reviewed the Planning Commission's decision.

Matthew Day indicated that the Appeals Panel only received the appellant's attorney's letter 20 minutes before the meeting. He listened to the Planning Commission Meeting but would prefer to listen to it again based on the appellant's objections. He asked if the Panel could rely on the report of what was allegedly said by the Commission or if they needed to re-listen to the meeting and take their own notes relative to the Staff Report. Mr. Godfrey stated that Appeal Panels typically rely on the record below but he could not say that that is always justified. If the record below includes inaccurate recitations of what happened before the Planning Commission, the Appeals Panel's decision may be based on those inaccuracies. Findings of Fact come before the Appeals Panel with a review standard that allows them to review them again, but they do not have an obligation to do so. On issues that have been determined below, there is a practical reliance.

Mr. Godfrey stated that the lateness of the letter was problematic and somewhat disruptive to the process. Mr. Day asked if Staff forwarded the letter immediately upon receipt. Director Ward indicated that it was received at 4:03 PM, and she forwarded it to the Appeal Panel at 4:31 PM. Mr. Godfrey reported that he has acted previously as a Hearing Officer. If he received a similar letter he would want to hear from the parties regarding their opinion on its importance and an explanation of the timing. He noted that legal counsel for all the parties was present at the meeting. The Appeals Panel members agreed that it would benefit to Panel to hear from the parties' counsel.

Chair Strachan did not want to open the meeting to the substantive issue and stated that comments should be kept to the speakers' opinion on what should be done procedurally in regard to the Final Action Letter and Mr. Keys' letter.

The appellant's attorney, Justin Keys apologized for the lateness of the letter, which was sent approximately one hour before the scheduled meeting. He reported that he received the Final Action Letter late the previous week and his response was delayed due to the process of reviewing the record, drafting the letter, and obtaining approval from the appellant. His primary concern was to ensure that he raised the issue and preserved it in writing for appeal purposes. He spoke with Senior City Attorney, Mark Harrington before the meeting and expressed that the process is new to him and he was unsure if he would have an opportunity to speak at the meeting. He noted that the appellant has limited standing. They are considered a member of the public, and, therefore, only had three minutes to speak before the Planning Commission. He stated that they did not receive the Staff Report, Findings of Fact, and Conclusions of Law early because they are not the applicant. He expressed his appreciation for the Appeal Panel's willingness to consider the letter. He noted that these would be the Appeal Panel's Findings of Fact and Conclusions of Law, which is why he wanted to raise the issue.

The applicant's attorney, Bruce Baird reported that he received the letter at approximately 4:55 PM after he was notified of it by a phone call from Applicant, Wade Budge. He did not receive notice that Mr. Keys would file a letter or had any issues with the findings. He asserted that Mr. Keys' implication that the applicant had seen a draft of the Staff Report was incorrect. Mr. Baird and Mr. Budge saw the Staff Report when it came out, and they believed it was correct. Mr. Baird's position was that the letter should be disregarded, the Planning Commission Chair and Staff's findings should stand, and the Appeal Panel should move forward with approval. If the Appeal Panel decided to take other action, he requested time to respond to the letter.

Director Ward clarified that the Appeal Panel packet was published on Wednesday, July 10, 2024, and it was forwarded to Mr. Keys and the applicant at the same time it was sent to the Appeal Panel members. Chair Strachan stated that he was not concerned with the timing, but rather what the Panel needed to do to ensure the Findings of Fact were correct.

Mr. Harrington addressed the procedural aspect from Staff's perspective. He stated that the process is new to everyone. The parties made one effort of cooperation in the entire process, which was to agree to a stipulated joint Finding Letter so one appeal period would run from the Appeals Panel without another bifurcation. All the parties worked through the process in good faith, and he hoped it wasn't undone by the last-minute objections. He did not believe that was their motive.

Mr. Harrington noted that the appellants were without the benefit of the adopted meeting minutes because the process moved forward too quickly. The City took the extra step of having Chair Hall review and sign the Final Action Letter so the appellant would have that manifestation of her approval of Finding of Fact 21, which holds the summary determinations by the Commission on the three

relevant issues. Staff reviewed the audio recording and verified that the draft minutes accurately reflect the decision. He did not believe the Panel should ignore the appellant's letter, although that was within their authority. Rather, they could accept it as preserving the appellant's basis for appeal on the three issues that they raised. He noted that the City did not agree with the appellant regarding the determination on vesting. He believed that the appellant's concerns would be preserved if the Appeal Panel accepted the letter, and he did not see a need for further review of the record.

Chair Strachan stated that if he understood Mr. Godfrey to say that the Appeal Panel should make sure that the record supports the Final Action Letter, it was then incumbent upon the Panel to review the Planning Commission's discussion and vote. Mr. Godfrey suggested that understanding the court appeal process from this action could help the Panel members see their role in a different light.

If an appeal is filed based on the Appeal Panel's determination, the City then has the obligation to prepare the Record on Appeal, which would include all the documents presented to the Appeal Panel and the minutes of their action. The Record on Appeal also includes a record of everything that happened in the body below the Appeal Panel, so the Planning Commission record would be part of the overall record that is submitted to the Court and becomes the basis for its review of the action. Mr. Godfrey noted that it is rare for evidence to be taken on an action like this in District Court; everything is based on the Record on Appeal. If a party believes relevant information was omitted, they have the right to make a motion to supplement the Record on Appeal.

When Mr. Godfrey suggested that it is the Appeal Panel's final action so they can adopt Findings of Fact and make determinations that they believe are consistent with the record, he did not intend to suggest that they were not able to rely on the Planning Commission's actions. What was presented to them during the appeal is part of the record. The Planning Commission's determinations and actions are also part of the record. It would be within their discretion to continue the matter so they could listen to the Planning Commission's proceedings, but it would also be within their discretion to make a decision based on the record before them. He did not believe either action would be legally improper or inappropriate.

Chair Strachan asked for the Appeal Panel members' input on how they should proceed.

Mr. Nunez was not opposed to reading the minutes and listening to the Planning Commission's decision but on this specific issue, his opinion was that they could take the Commission's Final Action Letter at its face value, trust Staff, and find that what is outlined in the Final Action Letter is an accurate reflection of the Planning Commission meeting. He believed they could decide on the matter at that meeting. He stated that it would have been helpful if the letter they received 30 minutes prior to the meeting included specific reference to the parts of the meeting recording that Mr. Keys was referring to, and indicated that the letter may be just an opinion and not an accurate reflection of what happened in the meeting.

Mr. Day agreed that the Staff Report is part of the record and a decision could be made based on the record in front of them. He stated that the appellant's letter was not detailed enough to alter any decision they would make based on the Staff Report. He indicated that the letter could be accepted into the record but he did not believe it should be considered.

Chair Strachan expressed concern that he would be signing the Final Action Letter and had not had time to review whether the Findings of Fact were supported in the record. He was confident that Staff's findings and the Planning Commission's Final Action Letter were correct but stated that it would be his preference to review the meeting minutes and audio recording prior to taking final action

so he could ensure that the evidence supports the Findings of Fact. Mr. Day stated that if the matter was continued, all three Panel members should review the record. Mr. Nunez agreed.

Chair Strachan indicated that the letter could be ratified via email and signed via DocuSign. If, after review of the record, the Panel determined that the Staff Report and Planning Commission's Final Action Letter accurately reflects the proceedings, the Panel members should communicate that via email, and the letter will be ratified remotely. Each Panel member's email will state either that they accept the Planning Commission's findings or they have concerns to discuss at a meeting. The emails will be sent to Director Ward, who will then distribute them to all concerned parties so they can ensure that there is a full record of the proceedings.

Mr. Harrington suggested that the Appeal Panel start with Chair Hall's summary and vote. He reminded the Panel that the final determination does not capture the debate, just the final decision encompassed by Commissioner Frontero's motion. Other points were raised in the record but were not part of the final decision, and that prior debate is not part of the motion. When the Planning Commission members vote, they vote on the specific motion. Chair Strachan noted that as a Planning Commissioner, he would sometimes argue on one side and then vote differently by the time the motion was made. He thanked Mr. Harrington for the reminder and noted that the Panel will keep that in mind as they review the record.

MOTION: Adam Strachan moved to CONTINUE the matter until Monday, July 22, 2024. If, upon review of the Planning Commission's proceedings, the Appeals Panel finds support of the Planning Commission's Findings of Fact, the Final Action Letter will be ratified, and the hearing will be vacated. Matthew Day seconded the motion. The motion passed with the unanimous consent of the Appeal Panel.

6. ADJOURNMENT

MOTION: Chair Strachan moved to ADJOURN.

The meeting adjourned at approximately 6:08 PM.