PARK CITY MUNICIPAL CORPORATION
PLANNING COMMISSION MEETING MINUTES
COUNCIL CHAMBERS
MARSAC MUNICIPAL BUILDING
NOVEMBER 13, 2019

COMMISSIONERS IN ATTENDANCE:

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

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

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ROLL CALL

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

APPROVAL OF MINUTES

<u>October 16, 2019</u>

MOTION: Commissioner Sletten moved to APPROVE the Minutes of October 16, 2019 as written. Commissioner Hall seconded the motion.

VOTE: The motion passed unanimously.

<u>October 23, 2019</u>

Commissioner Sletten referred to page 17 and the question from Commissioner Kenworthy regarding the Twisted Branch site visits. Commissioner Sletten asked if the Commissioners could individually schedule a site visit. Director Erickson replied that each Commissioner could communicate directly with Planner Ananth to schedule a site visit.

Commissioner Hall referred to Condition of Approval #3 which states, “The City Council to review and approve the encroachment agreement”. She recalled the discussion during the meeting that City Attorney Harrington had said the Planning Commission could direct the City Council to review the previous encroachment agreement. Commissioner Hall did not believe that direction was highlighted sufficiently in the condition as written. She thought the language was too standard to address the important issue that Commissioner Kenworthy had raised; and preferred that it be accentuated.

City Attorney Harrington noted that Condition of Approval #3 was redlined on page 17, pursuant to the motion. He had seen the draft outline where both issues are called out. One is the general review of all encroachments; as well as the specific particulars related to the new encroachment. It also addresses whether the Staff will make a separate recommendation on north versus south in advance of the City Council meeting. Mr. Harrington assured Commissioner Hall that her concern was being addressed.

Commissioner Hall was concerned that their discussion was clear in the Minutes, but it was not reflected in the Condition of Approval. Mr. Harrington believed it was clear because it was being done. The condition of approval should reflect what the Planning Commission had approved because an amendment was made subject to form. The Commissioners were welcome to add additional language to the Condition if they did not feel it captured their intent. Commissioner Hall clarified that Commissioner Kenworthy had made a very good point about the previous encroachment agreement, and she wanted to make sure that was captured. City Attorney Harrington emphasized that Planner Jackson has outlined that for the City Council meeting. He stated that the Staff would circulate the report to the Planning Commission in advance of the City Council meeting to make sure it reflects her concern.

MOTION: Commissioner Kenworthy moved to APPROVE the Minutes of October 23, 2019 as written. Commissioner Van Dine seconded the motion.

VOTE: The motion passed. Commissioner Thimm abstained from the vote since he was absent on October 23rd.

PUBLIC COMMUNICATIONS
There were no comments

STAFF/COMMISSIONER COMMUNICATIONS AND DISCLOSURES

Director Erickson reported that the City had reinstalled all the microphones in the back of the room to better record information from the public. He indicated two lights on the ceiling. The first blue light is the microphone that is used to broadcast live City Council and Planning Commission meetings. The small blue light indicates that the system is operating.

Director Erickson announced that the Planning Commission would only have one meeting in December, on December 11th. The agenda may be lighter than the one this evening, but he still anticipated a full agenda.

Chair Phillips disclosed that he would be recusing himself from the 901 Woodside Avenue item on the agenda this evening due to a conflict.

Commissioner Thimm disclosed that he would be recusing himself from the National Ability Center MPD ratification since his firm is engaged with that project.

Commissioner Van Dine disclosed that Bob Martin, a representative for the Lilac Hill Subdivision, is a close family friend. The item was being continued this evening and her association with Mr. Martin would not affect her opinion.

Commissioner Thimm disclosed that Bob Martin is also a close friend of his family. That friendship would have no bearing on any judgements he would make this evening.

Chair Phillips disclosed that he would also be recusing himself from 632 Deer Valley Road on the agenda this evening due to his involvement on that project. NOTE: Chair Phillips later rescinded his need to recuse. After relooking at the Staff report, he realized this was not the project he was working on.

CONTINUATIONS – (Public Hearing and Continue to date specified)

5A. <u>622, 652, 660 Rossie Hill Drive – Subdivision – Lilac Hill East Subdivision Proposes a Major Subdivision of One (1) Lot Containing Three (3) Historic Structures into Five (5) Lots of Record. Lot 1 Contains 4869 Square Feet, Lot 2 Contains 6,696 Square Feet, Lot 3 Contains 7,581 Square Feet, Lot 4 Contains 7,666 Square Feet, and Lot 5 Contains 5,947 Square Feet.</u>
(Application PL-19-04332)

Planner Caitlyn Barhorst clarified an issue with the addressing. She reported that the three historic houses on the parcel were historically addressed as 622, 652, 660 Rossi Hill. However, because houses currently have those actual addresses, the subdivision was proposing to re-address those lots in the subdivision. The changes will show in the next Staff report.

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

MOTION: Commissioner Suesser moved to CONTINUE 622, 652, 660 Rossie Hill Drive subdivision to December 11, 2019. Commissioner Kenworthy seconded the motion.

VOTE: The motion passed unanimously.

5.B. Portions of Parcel 17 and 18 – Zoning Map Amendment – Request for a zone change for Seven (7) Tracts of Bureau of Land Management (BLM) Owned Land in the Rossie Hill, Aerie and Marsac 100 Area to Recreation Open Space (ROS) In Order to Preserve the Undeveloped Lots as Open Space.
(Application PL-19-04356)

Planner Alexandra Ananth requested that the Planning Commission continue this item to December 11, 2019.

Chair Phillips opened the public hearing.

Bob Martin wanted to know what the zoning change would entail.

Planner Ananth stated that seven parcels are currently owned by the BLM and all seven are currently open space. The Staff was proposing to rezone those parcels to maintain open space in advance of an expected sale by the BLM.

Mr. Martin clarified that they were looking to make all seven pieces open space rather than low density, historic. Planner Ananth answered yes. She clarified that currently those parcels are all open space.

Chair Phillips informed Mr. Martin that this item was being continued this evening. He encouraged him to attend the meeting on December 11th when the Planning Commission would have a full discussion.

Chair Phillips closed the public hearing.

MOTION: Commissioner Suesser moved to CONTINUE portions of Parcels 17 and 18 Zoning Map Amendment, the Rossie Hill BLM owned land, to December 11, 2019. Commissioner Sletten seconded the motion.

VOTE: The motion passed unanimously.

CONSENT AGENDA

6.A. 1345 Lowell Avenue - Ratification of First Amendment of Development Agreement – The City and VR CPC Holdings, Inc., (the Developer) are Seeking to Amend the Development Agreement to incorporate the 2007 Annexed

Property consisting of 2800 acres leased by the Developer from TCFC LeaseCo into the Development Agreement, the Master Planned Area and the Mountain Upgrade Plan and the City land use process applicable thereto.
(Application PL-14-02600)

MOTION: Commissioner Thimm moved to APPROVE the entire Consent Agenda. Commissioner Kenworthy seconded the motion.

VOTE: The motion passed unanimously.

REGULAR AGENDA - DISCUSSION/PUBLIC HEARINGS/ POSSIBLE ACTION

8.A. 1000 Ability Way – Development Agreement – The Commission will consider ratifying the Development Agreement for the National Ability Center Master Planned Development. (Application PL-16-03096)

Commissioner Thimm recused himself and left the room.

Planner Rebecca Ward stated that this item was noticed for possible ratification of the Development Agreement. However, the Water Rights Dedication Agreement has not yet been finalized. Planner Ward requested that the Planning Commission continue the ratification of the Development Agreement to December 11th.

Planner Ward requested that the Planning Commission also review the Housing Mitigation Plan, which will be an exhibit to the final Development Agreement; and make a recommendation for the Housing Authority to consider on November 21st.

Michael Barille, John Serio, and Kevin Stickleman were present on behalf of the applicant.

Planner Ward reported that the Housing Mitigation Plan was a result of the Master Planned Development that the Planning Commission approved on March 27, 2019, which expands the campus with 52,000 square feet of camping areas, a community and programs building, and an equestrian center. As part of the March 27th approval, the Planning Commission required that the Housing Mitigation Plan be based on the total MPD affordable housing requirements in the Resolution. Planner Ward noted that there was approximately 8,000 square feet of affordable units. The Planning also requested that the deed restrictions require that the affordable units be used for those who are served by the NAC or by NAC employees, that nightly rentals be prohibited, and the rent is capped at 45% of Summit County AMI. Planner Ward pointed out that the proposed Housing Mitigation Plan ensures that certain tenants will be prioritized by the NAC mission, that the deed restrictions will prohibit nightly rentals, and that the rent would be capped at 45%. Planner Ward stated that the conditions of approval require the Planning Commission to review the Housing Mitigation Plan before any permits are issued for the lodging building; that the Plan be recorded with the Final Development Agreement; and that the NAC provide proof of compliance with the Plan. Planner Ward noted that these same items were also included in the Plan. The Plan would be attached to the final Development Agreement.

Planner Ward reported that the National Ability Center had requested two exceptions that were outlined in Housing Resolution 3-2017. The NAC would like a 50% reduction in the total requirements as a non-profit, that offers benefits to the community. She noted that in the General Plan, Goal 9 for Parks and Recreation, Objective 9A, the goal is to maintain recreation opportunities with a variety of options. The NAC was also requesting a reduction in the six-month affordable rental lease requirement. Planner Ward remarked that the Housing Resolution allows for an exception to this requirement as determined by the City Council.

Michael Barille gave a presentation to show the reasoning behind the request for the two exceptions. He clarified that these were follow up documentation to the Master Planned approval in March.

Mr. Barille stated that the Master Plan approved last Spring included requirements for completing the Housing, the Development Agreement, and a Water Agreement in a timely manner. All three had been submitted to the Staff for review, and they were working towards completion. Mr. Barille stated that with help from the Planning Department and Community Development, construction was started on the equestrian center expansion and the recreation center this year. They were finishing up those two projects to meet the needs of the participants.

Mr. Barille stated that the NAC went through the calculation with the Staff as required by ordinance; and determined that 8,000 square feet was needed. He explained that the lodge was designed to accommodate the needs of the participants and employees of the NAC. It was voluntarily in the MPD and slated for three stories and 35 units. Mr. Barille stated clarified that the intent to use all of that building for that purpose. Sliding income restrictions will be available for the rates people pay for those units. All will either be full-time or part-time employees, seasonal employees, interns, coaches or people who provide therapeutic services to participants in some of the cooperative programs run by the NAC. Mr. Barille remarked that a 900 square foot unit or a 6-month lease is not always the best match for many of those people. The goal is to maximize the flexibility for as many units as possible to meet the needs they were creating. He believed it was consistent with the City Council policy on rental units. The thought is that the developer, and not the City, should provide rental units. In this case, they were the developer asking to build more units than the ordinance requires. Mr. Barille noted that the NAC was requesting an exception to size the units and have the terms of the leases match the participant population they were trying to serve. Mr. Barille remarked that in addition to the population groups he mentioned, many of the Staff and participants have accessibility needs that are not often easy to meet in the normal market sector for rental housing. The NAC was trying to provide on-site, on-campus housing and make it available for a larger number than the ordinance requires.

Mr. Barille believed their request was also consistent with the General Plan Goals and the Goals of the Land Management Code. People in the user groups who they plan to house in this facility are the ones who are helping to raise the bar for what diversity and inclusion means in a community and what it means to be diverse and inclusive in terms of recreation in a mountain environment. They are a diverse group of people who contribute to the community in meaningful ways.

Mr. Barille reiterated NAC's request. Rather than restrict all of the units to 900 square feet or a six-month lease, they would like a 50% reduction from what the ordinance requires in terms of the number of units with that restriction. The rest of the units would be used for similar purposes. The units will be tracked accordingly and reported to the City.

Commissioner Sletten asked if the 90-day minimum provides enough flexibility, given the different kinds of participants and occupants. Mr. Barille stated that it would not be enough for every participant or population served, but if they could limit the restriction to three or four units, he thought they would be able to fill those units with longer term employees.

Commissioner Suesser asked Mr. Barille to clarify the number of units they were looking to put into the 90-day lease reduction. Mr. Barille replied that they would prefer to have less than a 6-month lease requirement for any of the units being restricted.

Chair Phillips opened the public hearing.

There were no comments.

Chair Phillips closed the public hearing.

Chair Phillips clarified that the Planning Commission would be voting on two motions; one for the recommendation on the Housing Mitigation Plan and the second for a Continuation.

Chair Phillips fully supported the request. Commissioner Suesser was in favor of the proposal, but she wanted to hear from the Housing Authority. Commissioner Sletten understood that the Planning Commission would make the recommendation; but it would come back to the Planning Commission after the Housing Authority review.

MOTION: Commissioner Van Dine moved to CONTINUE the ratification of the NAC Development Agreement to December 11, 2019. Commissioner Kenworthy seconded the motion.

VOTE: The motion passed unanimously. Commissioner Thimm was recused.

MOTION: Commissioner Sletten moved to forward a POSITIVE recommendation for the Housing Authority's consideration of the Housing Mitigation Plan by the National Ability Center. Commissioner Suesser seconded the motion.

VOTE: The motion passed unanimously. Commissioner Thimm was recused.

Mr. Barille asked about process. City Attorney Harrington explained that the Planning Commission forwarded a recommendation to the Housing Authority on the Housing Mitigation Plan. The City Council, as the Housing Authority, are schedule to review and vote on the Plan at the next City Council meeting. As of now, the Housing Mitigation Plan and the Development Agreement were scheduled to be ratified by the Planning Commission on December 11th.

Commissioner Thimm returned to the meeting.

8.B. <u>901 Woodside Avenue – Conditional Use Permit – The Applicant is Proposing the Construction of a Private Driveway Within a Platted, Un-built City Street. Item Continued from the September 25, 2019 Planning Commission Meeting.</u>
(Application PL-19-04152)

Chair Phillips recused himself and left the room. Vice-Chair Suesser assumed the Chair.

Planner Caitlyn Barhorst reported that the Planning Commission has reviewed this application several times. The last time was on September 25th. Since that meeting, the applicant had revised the plan. Planner Barhorst handed out an updated Exhibit A. She clarified that the handout and the Exhibit A on page 108 were the most recent versions. The second Exhibit A on page 121 of the Staff report still showed the previous plan.

Planner Barhorst stated that the Staff report was written in redline to highlight the additional analysis made per the Commissioners' comments. The three main items that were addressed with the redesign was 1) the landscaped partition between the driveway and the pedestrian access; 2) the front yard along the property line of 901 Woodside was reduced; 3) the meandering pathway on the uphill side of the driveway was added.

Vice-Chair Suesser wanted to know how much the front yard was reduced. Planner Barhorst explained that the previous proposal was reduced along the property line of 901 Woodside, resulting in no other front side yard outside of the property line.

Director Erickson understood that in the front of the house the driveway width went from x to 19'2" in order to make the turning movement. Planner Barhorst replied that he was correct. Director Erickson noted that the previous driveway width was 12' in the front yard, as shown on the previous exhibit. It was increased to ensure a turning movement. Therefore, the driveway turning movement width went from 12' and 16' to 19', which resulted in the front yard reduction. Director Erickson pointed to the expanded driveway width at 19'2". Chair Suesser clarified that the opening width of the driveway was expanded. Director Erickson clarified that the driveway itself had not changed. Planner Barhorst noted that the driveway was moved to provide the landscape partition, but it was still 12' in width.

Jonathan DeGray, the project architect, indicated the landscape buffer that was requested between the pedestrian path and the driveway opening. Walking down the street, the pedestrian pathway is now very clear.

Chair Suesser asked if there was separation between the sidewalk path and the driveway toward the rear of the lot. Mr. DeGray replied that it was only a vertical change. There is a 6" elevation change, as well as a change in the material, between the driveway and the heated sidewalk. That portion needs to be unobstructed by landscaping in order to make the turning radius. Planner Barhorst noted that the turning radius analysis was also included in the updated Exhibit A.

Commissioner Hall understood that the pedestrian pathway is for public use and the driveway is not to have any parking. However, with the additional dirt path that ends on the driveway, and because of the curved differential between the sidewalk, she wanted to make sure that was very clear. She recalled from previous public comment that people currently bike down the public right-of-way. Even though people cannot park on the driveway, she wanted it known that they could essentially use it as a bike trail and bike out of the driveway. Planner Barhorst clarified that the right-of-way cannot be used for public parking and block the driveway. However, the driveway can be used for public use by pedestrians. Commissioner Hall clarified that it is public land and people could bike up and down the driveway to access the bike path. Based on that explanation, Vice-Chair Suesser understood that the applicant would not be permitted to park in the driveway. That fact was stated in several places in the Staff report; however, she wanted to make it a condition of approval if that was what was being proposed.

Mr. DeGray stated that it was already a condition of approval. Parking is prohibited in the right-of-way by the owner of 901 Woodside or the public. Mr. DeGray suggested additional signage to address Commissioner Hall's concern. Commissioner Hall did not want a proliferation of signs. She thought one clear sign reiterating the previous use and that it is for public use; and that the benefit is that the public can use the public right-of-way to bike up and down as they have done so; and that this private individual who was making a driveway out of the public right-of-way will not prevent public use. Mr. DeGray was willing to work with the Staff to come up with sign language.

Vice-Chair Suesser opened the public hearing.

George Goodman, a resident at 921 Norfolk, objected to this proposal. He noted that a number of other families in the neighborhood opposed this proposal, but they had just found out about it today and were not able to attend this evening. The neighbors would like to have this discussion extended because it sets a precedent for the small green spaces that are left in Old Town. These are hiking and biking accesses that enable movement between the streets and blocks in really tight neighborhoods. Mr. Goodman stated that a number of other families would like the opportunity to participate in this conversation. He pointed out that if it is allowed in this spot, people will want the same thing in a number of other places. From the standpoint of an Old Town resident, Mr. Goodman did not think this was a good idea.

Mary McNulty, a resident at 902 Norfolk, stated that Jon DeGray and Jerry Fiat do great work, and she has met with them to talk about this project. Her biggest concern is that the scope has gotten much bigger than when they first talked about it. What was originally a basic driveway is now driveway, stairs, pathway, stairs that go up to the top of Norfolk. Ms. McNulty agreed with Mr. Goodman about the precedent this would set. She questioned how a private homeowner could take public space out of public domain. Her kids use that space to sled, mountain bike, and walk to school. People and wildlife use this space all the time. There are not many of these spaces left in Old Town. Ms. McNulty stated that she wants to be a good neighbor and she does not want discord; but she very much wants to protect this space. If the City puts a greater weight on private interest than public open space, it is a bold statement and they should think long and hard about it. Ms. McNulty noted that there are very few full-time owners with children living in Old Town, but those who do have very little space where children can play and be safe. However, there are great greenspaces that both children and adults utilize. Ms. McNulty thought the City needed to be careful about the precedent they would be setting. Paving the space also sets a dangerous precedence.

Commissioner Suesser asked if Ms. McNulty had a sense of whether or not the majority of people in Old Town favor the staircase and creating the access way.

Ms. McNulty replied that the neighbors only heard about it in the last week or so. She had asked Planner Barhorst for the impetus of that, and she was still waiting for an answer. People utilize that area for many activities and it would be nice to have it remain open space. Ms. McNulty also thought it was peculiar to having the staircase connect Woodside and Norfolk and then end at that point. As a homeowner on Norfolk, she was not excited about people walking up and down that piece of land.

Vice-Chair Suesser understood that the City intends to extend the staircase all the way through.

Ms. McNulty was unsure whether anyone understood that the stairs were part of the discussion. She thought that needed to be talked about.

Vice-Chair Suesser closed the public hearing.

Commissioner Sletten thought it was a difficult decision. Per his previous comments, he felt the benefit in taking parking off the street and not doing anything to diminish the street front view of a historic property took precedence. However, he was swayed by the comments expressed by the neighbors this evening.

Vice-Chair Suesser noted that Commissioner Sletten referred to taking parking off the street; however, she pointed out that the driveway was also taking parking from the City Street. In removing a parking space from the street where the applicant used to park, they would also be removing one or possibly two additional parking spaces with a 12-1/2 foot driveway.

Mr. DeGray responded to some of the public comments. In terms of setting a precedent, Mr. DeGray pointed out that the City has already allowed accessing parking structures or garages for individual residential uses off of these undeveloped public rights-of-way in numerous places. The benefits discussed in prior meetings include development of the staircase, which the City planned to do anyway. It was only accelerated based on this application. Mr. DeGray stated that the pathways used by the neighborhood for recreational uses would continue. The applicant was allowing for the open space to be identified by the soft pathway, and Mr. DeGray was under the impression that the City would continue it all the way up to Norfolk. Mr. DeGray stated based on the fact that precedent on the use of this type of development has already been set, and that elements are being proposed to mitigate the impact and to allow for neighborhood and community use to remain, he hoped the Planning Commission would consider allowing this application to move forward with the improvements that were made since the last meeting.

Commissioner Kenworthy liked the improvements the applicant had made since the last meeting. However, he was still struggling with the private interest versus public open space; especially since the community has put in $100 million in the last two years for open space.

Commissioner Kenworthy asked Mr. DeGray to speak to the future taking. It is a temporary agreement and six months from now the City could decide to take back the right-of-way. Mr. DeGray replied that based on the agreement included in the Staff report, the applicant is aware that the City could take back the right-of-way at any time. Commissioner Kenworthy believed that was a slippery slope. If in 6 months or 60 years the City decides to take it back, the owner loses access to the garage. Mr. DeGray reiterated that it was part of the Agreement and that could very well be the case because the City has the ability to do that. Mr. DeGray believed that with the benefits being provided by this project, the only thing that could spur a take back would be development of the street. He recalled that the Acting City Engineer spoke to that at the last meeting regarding unfeasibility of that occurring due to the slopes between Woodside and Norfolk. Commissioner Kenworthy understood the impracticality, but the rights are still with the City and there could be another reason for the City to take it back.

Commissioner Kenworthy could foresee a major argument if that ever happened. He did not think the Agreement was a solution and could lead to massive lawsuits. Mr. DeGray reiterated that this has been done before and the Agreement was similar to the other agreements.

Jerry Fiat, the applicant, stated that this situation occurs frequently in all of Old Town, where the lots do not meet the actual improved right-of-way, and where private driveways cross the unimproved City right-of-way. He remarked that 9th Street is no different than any other unimproved right-of-way that exists in Park City. Mr. Fiat commented on other rights-of-ways where more than 50% of the right-of-way is unimproved. Every driveway on those streets cross unimproved public right-of-way. Mr. Fiat agreed that the City could take it away and that was a risk that the homeowner will take. If that occurs, the garage will be converted to habitable space and the owner will park on the street. Mr. Fiat stated that this premise started years ago based on the direction specifically given by the City. He has been working on this for many years and he has done everything the City has asked him to do with a Landmark house. The proposal to come in from an unimproved public right-of-way to the side of the house was what the City asked him to do. Now at the last minute there is some question as to whether he should be allowed to do it. Mr. Fiat recognized that the Planning Commission had that purview, but he wanted it clear that this proposal was a result of following the direction he was given. Mr. Fiat was not opposed if the City wanted to change the policy, but he has spent 10 years working on this through a number of applications. If they decide not to allow it, he would not do it or spend money on the improvements; but he felt it was disingenuous to send an applicant in one direction for 10 years and at the last minute decide it was not what they wanted.

Commissioner Van Dine felt the applicant took all the comments and direction from the last meeting and made the requested changed. She agreed that there is a precedent in town for this type of request, and the applicant demonstrated that at the last meeting. Commissioner Van Dine remarked that of all the places it has been done, she thought this was one of the better areas. The applicant did what was asked and they kept the area accessible and welcoming to the public to use the right-of-way. She agreed that it was a difficult decision. It would technically remain open space, but it would also be changed significantly. Commissioner Van Dine was unsure of the right answer, but she reiterated that the applicant had done what the Commissioners asked at the last meeting.

Commissioner Thimm appreciated the residents who spoke during the public hearing. However, for him, he did not hear anything new. The Planning Commission has already talked about public access and use of the current open space. He pointed out that the Planning Commission has seen this application several times and it was discussed at length. At the last meeting they weighed out the consequences and the gives and takes, as well as the advantages of allowing this to go forward. Commissioner Thimm noted that the Planning Commission did not approve the original proposal presented, and instead conditioned it in a way that makes it as useful as possible to the public. He believed that the stairway access, creating a safer bike path, and one less car on the street were positive advantages. Commissioner Thimm stated that the applicant has addressed the concerns of the Planning Commission, and the Commissioners are on the record saying what they thought was the best way to condition this proposal to allow it to go forward.

Commissioner Hall remarked that in a conditional use permit the conditions are laid out and she thought the applicant had done a good job meeting many of the other components. She appreciated the amount of time and effort the applicant spent responding to their comments with regards to signage, continued use for bikers, and other elements. However, she thought the proposal was inconsistent with the General Plan.

Vice-Chair Suesser stated that she lives in Old Town and she enjoys the rights-of-way and the buffers they provide. The Planning Commission is tasked with determining whether or not this application has met the conditional use permit criteria, and that is how she intends to respond to the application. Vice-Chair Suesser stated that she listed some of her concerns at the last meeting, but she did not the opportunity to voice all of them.

Vice-Chair Suesser referred to CUP Criteria #3, Utility Capacity, she did not believe the Staff report evaluated the utilities that exist within the ROW. She pointed out that the 9th Street ROW is unbuilt and unimproved, but it is not undeveloped. Both above and below ground utilities exist in the right-of-way. Chair Suesser noted that during a Planning Commission meeting and a subsequent Board of Adjustment meeting in the Spring of 2018 regarding improvements to a home that abuts the 11th Street right-of-way, the City Engineer, Matt Cassel, explained that any development in the right-of-way could impede the City's ability to construct and maintain utilities in the right-of-way. Vice-Chair Suesser stated that the City Engineer and Anya Grahn, a former Senior City Planner, described these right-of-way corridors in Old Town as critical City infrastructure that must be preserved for current and future City needs.

Vice-Chair Suesser reported that at a Planning Commission meeting on May 16, 2016, in a discussion regarding 844 Empire Avenue, the City Engineer, Matt Cassel, stated that since 2008 the City has tried to maintain a corridor to put stairs in the 9th Street right-of-way. During that meeting, Matt Cassel said that he did not believe the stairs would ever go in the 9th Street right-of-way because "so many utilities have been located in that corridor". Vice-Chair Suesser was concerned that the Staff had not addressed what utilities were in the 9th Street corridor, if and how they would be impacted, and whether allowing this encroachment would impede the City's ability to construct and maintain the utilities in the right-of-way; particularly in an emergency. She thought the analysis in the Staff report totally lacked addressing these issues.

They only know from the former City Engineer that the utilities are there. Vice-Chair Suesser pointed out that currently the City did not have a City Engineer who could weigh in on the matter. She had concerns that it had not been properly evaluated.

Commissioner Van Dine recalled an extensive discussion at a previous meeting about utilities. At that time the applicant offered to lay a conduit underneath the driveway. Mr. DeGray stated that the utilities were discussed with the City at the beginning of the application to make sure the proposal was viable. They identified sewer and water lines that run in the 9th Street easement. They spoke with the Snyderville Basin Sewer District about the line location, with the Water Department about the water line location. The utilities are approximately in the center of the right-of-way. Mr. DeGray noted that they also worked with Alliance Engineering on a proposal for the Sewer District in terms of alignments and clearances to meet their requirements. Mr. DeGray emphasized that the utilities were evaluated from the beginning to make sure it was workable.

Chair Suesser recalled from the previous meeting that the Planning Commission only discussed the utilities with respect to the historic home at 901 Woodside; and not the other utilities within the right-of-way.

Jerry Fiat clarified that the only utilities discussions related to the public utilities that run through the 9th Street right-of-way, which run through from Woodside to Norfolk. The discussions had nothing to do with the utilities for 901 Woodside. Mr. Fiat believed the utilities for 901 Woodside come off of Woodside and not from the 9th Street unimproved right-of-way.

Ryan Taylor, the acting City Engineer, stated that public utilities were discussed at the last meeting, which included water, sewer, and power. He noted that the Agreement is written such that if the City has future or emergency needs, the driveway can be dug up and the homeowner has the obligation to restore the driveway when the work is completed. Mr. Taylor remarked that at the last meeting they talked about placing conduits underground now in preparation for potentially putting power lines underground in the future to avoid having to dig up the driveway whenever that decision is made. They also discussed the need to put in two or three conduits for other dry utilities. Mr. Taylor stated that there is a water line and sewer line in the right-of-way and they worked with the Water Department and coordinated with Snyderville Sewer District on how those would work. As part of the Agreement that was discussed earlier, if the City has an emergency need, they can send in a backhoe and tear up the driveway. Mr. Taylor did not think future utilities are considered emergencies, but through that Agreement they have the ability to put in any future utilities. None were planned at this time, but plans can change.

Vice-Chair Suesser asked if Mr. Taylor had an understanding of what Matt Cassel spoke about in the Spring of 2018 with regard to preserving the corridors for critical city needs and not impeding within these rights-of-way. She thought there was inconsistency between what Mr. Taylor was willing to approve and what Mr. Cassel said a year ago.

Planner Barhorst commented on the 11th Street setback exception and noted that there is a criteria that allows for reduced setbacks on a corner lot. Since this corner lot requires 5', the applicant was requesting a 3' setback to accommodate a larger chimney overhang. Planner Barhorst pointed out that the chimney is considered a permanent fixture on the house, but the driveway could be removed. Vice-Chair Suesser understood that the issue was that the chimney would impede into the setback 1-foot. The former City Engineer felt that the one-foot encroachment into the 30' right-of-way would be such an impediment to City future needs and maintenance of the corridor, that he and Planner Anya Grahn thought it should be prohibited and not recommended for approval.

City Attorney Harrington believed the Staff was trying to make the point that there is a functional difference between a permanent setback variance to allow a structure that is not revocable versus flatwork and landscaping that is revocable. Mr. Harrington thought the question was more to the fact that the chimney was not revocable and it was an actual structure. He believed the facts were arguably different. Mr. Harrington clarified that the Planning Commission could still weigh whether or not that was relevant. However, that type of precedent is distinguishable in that it is a different type of application and a different type of structure reviewed against a different set of criteria. Mr. Harrington stated that the Planning Commission was applying the CUP criteria to this particular application. He wanted the Commissioners to understand that the precedent policy value was different.

Vice-Chair Suesser clarified that a chimney that comes one foot within the setback, which would be permanent, was reasonably different than this standard.

Vice-Chair Suesser asked about Matt Cassel's comment regarding the 844 Empire application when he said, he did not believe the stairs would ever go in to the 9th Street right-of-way because "so many utilities have been located in that corridor". She wanted to know that aligned with now paving over the right-of-way. Acting City Engineer Taylor was not able to speak to Mr. Cassel's thinking at the time. With respect to the number of utilities versus other corridors, Mr. Taylor stated that there are more utilities in smaller spaces with stairs on top in other areas. He emphasized that they evaluated the utilities that are there today and what they see coming in the future, as well as the need for the stairs; and at this time, it appears that it all fits. It is tight, but that is typical for most of

the utility corridors in Old Town. In terms of limiting the City's ability in the future, Mr. Taylor shared Mr. Cassel's thought of preserving the rights-of-way for existing and future utilities. In his time with the City, he has made recommendations on a number of applications to not permanently encroach upon the rights-of-way. Mr. Taylor clarified that the encroachment agreements clearly call out the encroachments as temporary and clearly explain that the City has the right to do whatever is necessary. He felt differently about this Agreement because it does not tie the City's hands if they do have a future utility; and it certainly does not tie their hands in the event of an emergency at any time.
Commissioner Sletten understood that if the City ever needs to tear up the driveway to reach any of the utilities, the owner has the responsibility of repairing the driveway to a condition that meets the City requirements.

Vice-Chair Suesser asked Mr. Taylor if she understood him correctly in saying that he was favor of preserving the other rights-of way, but he considered this driveway temporary. Mr. Taylor stated that the way the Agreements are Agreements, they are preserving this corridor for future utilities. In other examples, the City was requested to abandon the City right-of-way. He has spoken against those requests because once the City right-of-way is abandoned, the City no longer has access. He felt differently about this one because it remains under the City's jurisdiction.

Vice-Chair thought it was unrealistic to suggest that the City would ever revoke the encroachment. City Attorney Harrington explained that the rationale is that the City does not own this property. It is dedicated property for public transportation use. If the City does not preserve that right, it can be deemed abandoned and it reverts to the property owners who previously owned it. Mr. Harrington stated that even though the corridors serve a viable use as open space, they were not acquired for open space; nor can they be retained solely as open space. Therefore, the City must retain the ability for a long-term plan for a transportation corridor, utility corridor, or pedestrian corridor if they decide not to improve them as public streets long term. Mr. Harrington understood that the Planning Commission was struggling with balancing the competing interests. However, it was not so much a prioritization of private use over public use as it is preserving the public use by incremental private use. He noted that the City does the same thing with landscape improvements, which are much more common. Some are more compatible with the public use component, but some are very tiered and act as private gardens that obstruct the public access much more than what was being proposed by this applicant. Mr. Harrington stated that the City Council has done some things by policy to implement this conditional use permit. That policy has already been put in place and someone who meets the criteria can do this.

Mr. Harrington understood that the focus was on Criteria C & E in terms of utility conflict and the design components, and that was appropriate. However, the comments are best suited within the context of that criteria because that is where the policy decision was made to permit the use. Mr. Harrington emphasized that these are considered temporary because otherwise the City would be subject to an abandonment argument.

Commissioner Hall noted that based on public comment, this area was already being used as a pedestrian corridor. She asked if that would satisfy the requirement. Mr. Harrington replied that it did, which is why they were being asked to preserve that through design. He believed the Staff and the applicant responded to that issue at the last meeting by adding the meandering trail and the additional delineation of the staircase to be clear that it was still public. Commissioner Hall pointed out that even without the improvements, it was already being used as a pedestrian corridor and should satisfy the public right-of-way. Mr. Harrington answered yes, but the CUP criteria does not allow the Planning Commission to just say no without justification. A conditional use permit is a permitted use subject to mitigation. The Planning Commission needs to find that the impacts cannot be mitigated based on the criteria outlined in the LMC, because the City Council has decided to permit this if the conditions can be mitigated. Mr. Harrington stated that if the Planning Commission would like the City Council to revisit the policy, he will make sure that occurs; but the City Council cannot change the rules on a pending application.

Vice-Chair Suesser stated that based on the Staff report, she still did not believe the Staff had fully evaluated CUP Criteria #3 regarding utility capacity.

Vice-Chair Suesser referred to Criteria #5, Location and Amount of Off-Street Parking. She made the point earlier that the Staff report indicates that the application removes one car from on-street parking. However, it is possible that the prior owner parked in the brick car park in the front yard of the property and, therefore, they were not actually removing a car from the street. In addition, the 12-1/2' driveway actually removed two cars from on-street parking. Vice-Chair Suesser remarked that the City was not getting a parking benefit from this application and instead it was removing two on-street parking spots for the public.

Vice-Chair Suesser noted that Criteria #6 was Internal Vehicle Circulation System. She noted that the Staff report stated that this criteria is not applicable to this application. Vice-Chair Suesser pointed out that the applicant was proposing to use City property for a driveway to accommodate cars turning within the driveway to pull out front first on to the street. She believed there was applicability of this criteria to the application. Vice-Chair Suesser remarked that the City Engineer preference to accommodate the cars turning within the driveway so that they can pull out front first on the street maximizes the use of the City public right-of-way, and it is not appropriate. She thought that criteria had not been met or mitigated.

Vice-Chair Suesser referred to Criteria 7, Usable Open Space. She stated that the 9th Street right-of-way is usable open space; and paving over the open space significantly alters the natural buffer and the current use by the public for sledding, biking and public access. Vice-Chair Suesser did not believe that removing the open space was properly mitigated by this application.

Vice-Chair Suesser noted that Criteria 16 relates to the Park City General Plan. She stated that during a Board of Adjustment meeting on April 1,1996, the Planning and Zoning Administrator at the time, Pat Putt, said that the Planning Commission and the City Council shared the general philosophy that it did not make sense from a public benefit standpoint to give up any right-of-way because they were so difficult to obtain. Mr. Putt also said that as infill is occurring and infrastructure needs are becoming more substantial, the need to maintain rights-of-ways was even greater. Preserving City land for future community desires and needs greatly reduces the cost of acquiring rights-of-ways in the future. Vice-Chair Suesser thought that Mr. Putt articulated a general philosophy at the time that it does not make sense to give up these rights-of-ways. She believed the Staff had only evaluated the General Plan goals with respect to preserving the historic home; but did not take into consideration the top two priorities in the General Plan, which is keeping a small town feel and a preserving the natural setting of Old Town.

Vice-Chair Suesser noted that the applicant admitted this evening that if the Planning Commission did want to go in this direction, they would not do it. She thought the application as proposed failed to adequately mitigate a number of the criteria for a Conditional Use Permit.

Vice-Chair Suesser stated that the applicant purchased a historic home in Old Town without a garage. In her opinion, the property may abut a right-of-way, but the applicant should have never had the expectation to use the right-of-way to access this historic home. Vice-Chair Suesser pointed out that historic homes do not require parking and the Planning Commission is not required to provide the applicant this access to a garage. She noted that the Staff indicated that putting a garage under the historic home might not be approved, but the Planning Commission has not seen any evidence to support that it could not be approved. She believed a garage could go under this historic home, as has been done all over Old Town. Vice-Chair Suesser stated that in her opinion, the idea of almost doubling the size of the lot by adding a large turnaround driveway next to it and taking away the public green space was inappropriate; and that the application fails to meet the criteria of the CUP.

Commissioner Hall noted from the Minutes of September 25, 2019, Acting City Engineer Taylor mentioned that in the event of a water line break under the driveway, the City would still be able to dig a hole and quickly stop the leak. However, it would be expensive and time consuming to repair the driveway after it was dug up. She understood the applicant had talked about putting in large conduits for future improvements; however, there were also concerns about the existing utilities capacity.

Commissioner Sletten stated that a backhoe can knock a hole in anything in two seconds. He did not believe that digging through the driveway would slow down the process. Commissioner Thimm concurred. Commissioner Hall clarified that she understood that the homeowner would be responsible for repairing the driveway, but the City would still incur the cost for any measures to repair the water line, and it would be more expensive.

Commissioner Kenworthy reported on a recent substantial water break on Park Avenue above Main Street that flooded out a home and businesses. It took a long time to fix the water break. Commissioner Kenworthy stated that this is Old Town, and the purpose of these corridors is to accommodate emergencies. He appreciated the design and the improvements the applicant came back with this evening; however, he believed the design takes away from the Old Town feel. Commissioner Kenworthy noted that a similar situation on Park Avenue does not work, and he did not believe the design proposed with this application would work either. He thought the General Plan envisions more of the Old Town feel, and he did not think a driveway that serves as garage access complies with the Old Town feel.

MOTION: Commissioner Sletten moved to APPROVE the CUP for 901 Woodside Avenue for the construction of a private driveway within the unbuilt City street, based on the Findings of Fact, Conclusions of Law, and Conditions of Approval as outlined in the Staff report.

Vice-Chair Suesser asked if Commissioner Sletten was comfortable with the conditions of approval. If the Planning Commission voted to approve, she thought that there might be concerns with some of the conditions of approval. Vice-Chair Suesser did not think a lot of the ideas were included in the conditions of approval.

Commissioner Thimm noted that the Planning Commission had mentioned an additional condition for signage with respect to no parking on that right-of-way. Commissioner Sletten asked if that should be a condition or whether the Staff would address that during the permitting process.

City Attorney Harrington stated that it was referenced affirmatively in the Staff report, but the Planning Commission could add it to Condition #9 for clarification. Commissioner Sletten was not opposed to adding language to Condition #9.

Commissioner Van Dine read from Condition #10, “Proposal includes a sign noting the pathway is for public access, as well as a sign for no parking on the driveway. Planner Barhorst clarified that the language Commissioner Van Dine read was under the CUP Review Criteria 10, regarding signs and lighting. The language was not a condition of approval.

Commissioner Hall requested to make a quickly summarize her previous comments before voting on the motion. She had an issue with Criteria 3 – Utility Capacity. She had an issue with Criteria 5 – Parking, because they were removing off-street parking in exchange for one driveway parking. Planner Hall also had issues with circulation; Criteria 9 – Usable open space; Criteria 11 – Design; and Criteria 16 – The General Plan.

Commissioner Thimm seconded the motion made by Commissioner Sletten.

VOTE: The motion failed on a 3-3 split. Commissioners Sletten, Van Dine, and Thimm voted in favor of the motion. Commissioners Suesser, Kenworthy and Hall voted against the motion.

City Attorney Harrington stated that the Planning Commission could continue to deliberate, they could change the motion, or motion to continue this item and provide direction on what additional clarity the Planning Commission may need to vote.

Commissioner Sletten asked if changes to the conditions of approval would change any of the Commissioner’s vote.

Commissioner Kenworthy stated that he was prepared to CONTINUE the CUP for 901 Woodside; with direction to the City Engineer to delve more into the capacity and the utility issue. He understood that utilities are tight everywhere in Old Town, but based on his experience, he believed repair work would be more difficult that what was implied. Commissioner Kenworthy stated that having gone through the water break on Park Avenue, the cost to the City was significant and that is a public issue that needs to be considered. Commissioner Kenworthy remarked that the General Plan issue was also difficult because they do want to keep an Old Town feel. He again referred to the similar project on Park Avenue that was not successful.

Mr. DeGray agreed with Commissioner Kenworthy on the Park Avenue project, but he could also point to several others that were very successful. One is on the 600 block of Woodside.

MOTION: Commissioner Kenworthy moved to CONTINUE the CUP at 901 Woodside Avenue with direction to the City Engineer to address the utility concerns; and for additional information with respect to the General Plan.

City Attorney Harrington stated that if the Planning Commission was truly deadlocked and there was no chance that one person would change their mind, the applicant has the ability to consider that a denial and pursue their appeal rights; rather than to have the item continued. They cannot keep the applicant in a continuance in perpetuity because the Commissioners are deadlocked at 3-3. City Attorney Harrington stated that if the Planning Commission directs the Staff to return with additional information, it is important that in good faith they have the ability to be swayed one way or the other after hearing the information. He suggested that it would be helpful for the Planning Commission be clear on what they want the Staff to come back with relative to the Criteria and meeting those standards. He clarified that the standard is to mitigate the impacts; not eliminate.

Commissioner Sletten stated that before he could support a continuance, he asked if Commissioner Kenworthy would be satisfied if the Staff came back with additional information regarding compliance with the General Plan; or whether those concerns would still be a factor for approval.

Commissioner Hall noted that Criteria 5, the location and amount of off-street parking, would not change unless the design is completely overhauled. She did not believe there was any reason to delve deeper into that issue. She felt the same about some of the other Criteria and thought it would be a waste of time to discuss those further.

Vice-Chair Suesser did not believe the open space criteria could be mitigated to her satisfaction.

Commissioner Thimm asked the applicant for his preference in terms of accepting a denial and moving to appeal; or moving for a continuance.

Jerry Fiat referred to the comments about millions of dollars for a flood. He stated that if the utility breaks the incremental cost of going through concrete or any type of delay is minuscule and insignificant and would not be an issue. Mr. Fiat stated that if there is a flood or the utilities are too close together, a concrete driveway would not change that fact because it exists that way now. Mr. Fiat agreed that a flood could cost millions of dollars in damage, but that is completely separate and unrelated to the driveway.

Mr. Fiat stated that he has spent time and money going back again and again making requested corrections and being steered in a direction that they are now being told is unacceptable. If that is what the Planning Commission has decided, he would take a denial and appeal it to the City Council. Mr. Fiat believed the plan meets the direction he was given. In response to an earlier comment that he knew he was purchasing a house without a garage, Mr. Fiat wanted it clear that he spoke with the City Engineer and the Planning Staff before he bought the house and the discussion about coming in from the side existed from the very beginning. He recognized that it was only a discussion and it had not yet gone through the proper channels, but he objected to the notion of someone speculating on what he did or did not do when he purchased the house. He understood the risk he was taking, but at the time, that was the favored approach to renovating this house.

Mr. Fiat reiterated his preference for a denial. Based on Mr. Fiat's comments, Commissioner Thimm did not support a continuance.

Commissioner Kenworthy withdrew his motion to Continue.

City Attorney Harrington stated that the Staff would compile a record of the deadlock with the basis of the 3-3 vote as the written Findings, but it will not be an affirmative vote unless one of the Commissioners intend to change their vote. The written basis of the deadlock will function as the written decision for the denial that the appeal authority will review.

Commissioner Suesser asked if the Planning Commission would have the opportunity to review the written record. City Attorney Harrington believed the record would be framed in the Minutes. This was the first time this situation has occurred and he needed to make sure it was being done correctly. Mr. Harrington stated that at a minimum, the Planning Commission would see the comments in the Minutes. He would propose it in the Minutes to make sure the basis for denial is reflected in the individual comments; and visa-versa for those who voted to approve. The Minutes should be more detailed in that regard and they will make sure the execution of the Minutes constitutes the written record for the appeal record. The Staff will work with the applicant to stipulate to that as well.

Commissioner Thimm understood that the Minutes would be made part of the written document for the Appeal. Mr. Harrington replied that the Minutes would be the written document.

Director Erickson clarified that no action was required. This item will be resolved in the Minutes and the applicant will use the Minutes as the appeal basis.

Vice-Chair Suesser asked if the appeal goes to the Board of Adjustment or the City Council. City Attorney Harrington believed that CUP appeals still go to the City Council; however, he would verify to make sure that was correct.

Chair Phillips returned to the meeting and resumed the Chair.

8.C. <u>57 and 59 Prospect Avenue – Subdivision – Little Maggie Subdivision Proposes a Minor Subdivision of Three (3) Parcels Containing Two (2) Historic Structures into Two (2) Lots of Record. Lot 1 Contains 1,989 Square Feet and Lot 2 Contains 4,822 Square Feet.</u>
(Application PL-19-04338)

Planner Barhorst reviewed the application of a minor subdivision of three metes and bounds parcels that the applicant was proposing to subdivide into two lots. A Landmark historic site exists on each lot. The subdivision is a process to further develop the property at a later date.

The Staff recommended that the Planning Commission conduct a public hearing and consider forwarding a positive recommendation to the City Council based on the findings of fact, conclusions of law, and conditions of approval contained in the Staff report.

Chair Phillips opened the public hearing.

There were no comments.

Chair Phillips closed the public hearing.

Commissioner Sletten thought Condition of Approval #8 on page 34 of the Staff report was confusing as written. He asked for clarification regarding the fence limitation. Planner Barhorst stated that the LMC identifies certain heights for fences and retaining walls. In this application, the existing retaining wall exceeds the allowed 4-feet. Therefore, additional approvals would be necessary to allow that to continue if future development occurs on that site.

Director Erickson thought it was confusing because three conditions are contained in Condition #8. He clarified that a new retaining wall in the front setback can be no taller than 4'. Existing retaining walls may exceed 4' feet subject to a determination by the Planning Director and City Engineer. An existing retaining wall may exceed 6' in height subject to approval of an Administrative CUP.

MOTION: Commissioner Thimm moved to forward a POSITIVE recommendation to the City Council for the Little Maggie Subdivision located at 57 and 59 Prospect Avenue, based on the Findings of Fact, Conclusions of Law, and Conditions of Approval as found in the draft ordinance. Commissioner Kenworthy seconded the motion.

VOTE: The motion passed unanimously.

Findings of Fact – 57 and 59 Prospect Avenue

1. The subject property is located at 57 and 59 Prospect Avenue.
2. The Subdivision Plat application is a request to turn three (3) metes and bounds Parcels into two (2) Lots of record.
3. The property is in the Historic Residential (HR-1) District.
4. 57 and 59 Prospect Avenue are both individually listed as "Landmark" on the City's Historic Sites Inventory.
5. 57 Prospect Avenue (Parcel 1, PC-226) contains 1,989 square feet.
6. 59 Prospect Avenue (Parcel 2, PC-227) contains 4,071 square feet.
7. Parcel 3 (PC-S-46-B-3) contains 751 square feet.
8. The proposed Subdivision Plat combines the property into two (2) Lots: Lot 1 which includes Parcel 1 (57 Prospect Avenue) contains 1,989 square feet. Lot 2 which combines Parcel 2 (59 Prospect Avenue) and Parcel 3 contains 4,822 square feet.
9. The minimum Lot area for a single-family dwelling is 1,875 square feet in the HR-1 zone. The proposed Lots meet the minimum lot area for single-family dwellings.
10.A single-family dwelling is an allowed use in the District.
11.The minimum width of a Lot is 25 feet measured 15 feet back from the Front Lot Line. Lot 1 is 26'-3" and Lot 2 is 54'-1".The proposed Lot widths meet the minimum width.
12.LMC § 15-2.2-4 states historic structures that do not comply with building Setbacks are valid complying structures.
13.The minimum Front/Rear Setbacks are 10 feet (10'); the minimum total Front plus Rear Setbacks are twenty feet (20'). Lot 1 (57 Prospect Avenue) of the proposed Subdivision Plat has a Front Setback of 16 feet and a Rear Setback of 30 feet. Lot 2 (59 Prospect Avenue) has a Front Setback of 11'-6" (with a 6'-10" wide bay window projecting 2'-2" into the Setback) and a Rear Setback of 11'-6".
14.The minimum Side Setback for proposed Lot 1 is 3 feet for a total of 6 feet.

15.The minimum Side Setback for proposed Lot 2 is 5 feet for a total of 14 feet.
16.On proposed Lot 1, there is a gravel parking area in the Front Setback. The stone retaining wall in the Front Setback encroaches into the City Right-of-Way. On the north, there are railroad tie retaining walls and a wood walkway that encroach into the neighboring property of 51 Prospect Avenue. The south Side of the Historic Structure encroaches into the Side Setback, as well as the wood deck off the Front entrance that is more than 30" above grade.
17.On the Front corner of proposed Lot 1 and Lot 2 there is a stone retaining wall that crosses over property lines and encroaches into the City Right-of-Way.
18.On proposed Lot 2, there is an asphalt and gravel parking area that encroaches into the south property line into the City Right-of-Way. The gravel parking area also encroaches into the property to the south. The stone retaining wall that borders the west (Front) property line and south (Side) of the Historic Structure are taller than 4' height in the Front Setback.
19.All gravel parking areas do not comply with LMC § 15-3-3(B) as they are not hard surfaced.
20.All findings within the Analysis section and the recitals above are incorporated herein as findings of fact.

Conclusions of Law 57 and 59 Prospect Avenue

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

Conditions of Approval – 57 and 59 Prospect Avenue

1. The City Planner, City Attorney, and City Engineer will review and approve the final form and content of the Plat for compliance with State law, the Land Management Code, and the conditions of approval, prior to recordation of the Plat.
2. The applicant will record the Subdivision Plat at the County within one year from the date of City Council approval. If recordation has not occurred within one (1) years' time, this approval for the Plat will be void, unless a request for an extension is made in writing prior to the expiration date and an extension is granted by the City Council.
3. The existing gravel parking area at 57 Prospect Avenue shall be removed prior to recordation of this Subdivision Plat.
4. The applicant shall resolve the existing retaining wall encroachment within the Front

Setback at 57 Prospect Avenue prior to recordation of this Subdivision Plat by removing the retaining walls, relocating them within property lines or by entering into an encroachment agreement with the City.
5. The encroachment of the existing railroad tie retaining walls and wood walkway must be resolved with the neighboring property at 51 Prospect Avenue as the retaining walls and wood walkway encroach over the north property line into their property. The encroachment shall be resolved by removing the retaining walls and wood walkway, relocating them within property lines, or by entering into an encroachment agreement with the affected property owner(s).
6. The existing asphalt and gravel parking areas at 59 Prospect Avenue encroach into the Right-of-Way and encroach to the south into the Prospect Heights Subdivision. The applicant shall remove these parking areas.
7. Per LMC § 15-3-3(B) Parking Areas and driveways must be Hard-Surfaced, impervious, maintained in good condition, and clear of obstructions at all times. All gravel parking areas shall be removed prior to recordation of this Subdivision Plat.
8. Per LMC § 15-4-2(A) Fences and retaining walls within any Front Setback shall not exceed four feet (4') from final grade. If the existing retaining walls are removed or improved, the height may exceed four feet (4') from final grade, subject to approval by the Planning Director and City Engineer, and may exceed six feet (6') in height subject to approval of an Administrative Conditional Use permit.

8.D. <u>875 Main Street - The Lift Lodge at Town Lift, Second Amended Condominium Plat</u>. (Application PL-19-04341)

Planner Rebecca Ward presented this item on behalf of Hannah Tyler, the project architect.

Planner Ward reviewed the application for a condominium plat amendment. The applicant was proposing to alter ownership of the common areas, and to change three residential units and one commercial unit within the condo. Planner Ward presented a slide showing three main changes to the condominium that was being proposed. The proposal would convert 99 square feet from the common area to the private Unit 202; 141 square feet from the common area to the private Unit 302; and Unit 206 would be reduced to allocate square footage to Unit C. The Unit 206 balcony will be limited to limited common area.

Planner Ward stated that the Staff analysis determined that the parking requirements would not change with this application because the building currently has an excess of four spaces.

The Staff recommended that the Planning Commission conduct a public hearing and consider forwarding a positive recommendation to the City Council.

Commissioner Sletten referred to page 170 of the Staff report and noted that "Amenity Room" was a defined term. He asked if that was part of the common area Planner Ward had mentioned earlier. Planner Ward answered yes. Commissioner Sletten asked if it was an Amenity Room or extra space. Director Erickson replied that currently it is a workout room.

Chair Phillips opened the public hearing.

There were no comments.

Chair Phillips closed the public hearing.

MOTION: Commissioner Thimm moved to forward a POSITIVE recommendation to the City Council for the Lift Lodge at Town Lift, Second Amended Condominium Plat, based on the Findings of Fact, Conclusions of Law, and Conditions of Approval as found in the draft ordinance. Commissioner Hall seconded the motion.

VOTE: The motion passed unanimously.

Findings of Fact – 875 Main Street

1. In 1991, the Planning Commission and City Council approved a concept plan for the Town Lift Project which included the Lift Lodge Condominium project currently under review.
2. On June 11, 1997, the Planning Commission approved a CUP to allow a mixed use structure at this location. This CUP was subsequently modified on May 26, 1999. The existing building was constructed in 1998.
3. The Parking Management Plan for this location was approved by the Planning Commission on July 8, 1998.
4. The subject property falls under the 1982 Huntsman-Christensen Agreement which specified HCB zoning for the site and established an artificial natural grade for height measurements.
5. The 1982 Agreement was amended on April 16, 1992 to redefine artificial natural grade.
6. The Lift Lodge at Town Lift condominium conversion plat was approved by City Council on March 4, 1998 and recorded on August 3, 1999.
7. On August 30, 2018, the City Council approved the Lift Lodge at Town Lift, First Amended Condominium Plat which created new roof top common area.

8. On October 9, 2019, the City deemed the proposed Condominium Plat Amendment complete.
9. The proposed Condominium Plat Amendment alters ownership of common areas, three (3) residential units, and one (1) commercial unit. Units affected include: Unit C, Unit 206, Unit 202, and Unit 302.
10.The original Conditional Use Permit approval for the subject Lift Lodge building was for the construction of a mixed-use building with a total building floor area of 37,001 square feet. This was approved with 13 condominium units averaging 950 square feet in area (and 12,381 net square feet), 842 square feet of support commercial uses, and 3,554 square feet of net leasable commercial space (4,442 gross square feet of commercial space). This approval included 8,654 square feet of parking and storage, as approved with the Parking Management Plan.
11.The Lift Lodge was ultimately constructed with 16 residential units after a previous modification to the CUP. The units averaged less than 1,000 square feet and ranged in floor area from 681 square feet to 1,455 square feet. There were approximately 2,515 square feet of commercial uses (reduced from 5,100 square feet) and located at the south end of the building.
12.The proposed changes do not alter the number of units, and the size of the units still average less than 1,000 square feet (980 square feet). The units now range in size from 363 square feet to 1,457 square feet. The size of the commercial space has also increased to 451 square feet. These changes do
13.The subject property falls within the HRC zone, but uses the HCB regulations according to the 1982 Agreement amended in 1992.
14.All parking associated with the building is accommodated within the common parking structure the Lift Lodge shares with the Town Lift development.
15.The parking structure beneath the Lift Lodge provides a total of 28 code compliant spaces, which is sufficient for the proposed change in use. A total of 24 spaces are required for the 16 residential units and retail space.
16.Access to the underground parking structure is off Ninth Street. Secondary access is provided from the adjacent parking structure which has access to Park Avenue.
17.The applicant has not violated any terms of the original CUP approval.
18. On October 30, 2019, the property was posted and notice was mailed to affected property owners within 300 feet. Legal notice was also published in the Park Record on October 26, 2019.
19.As of this date, no public input has been received by Staff.
20.The Findings in the Analysis Section are incorporated herein

<u>Conclusions of Law – 875 Main Street</u>

1. There is good cause for this Plat Amendment.
2. The Plat Amendment is consistent with the Park City Land Management Code,

including 15-4-12, 15-7.1-3(C), 15-12-15(B)(9), and applicable State law regarding condominium plat amendments.
3. Neither the public nor any person will be materially injured by the proposed Plat Amendment.
4. 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.

Conditions of Approval – 875 Main Street

1. All Conditions of Approval of the original Lift Lodge at Town Lift condominium plat and any subsequent modifications continue to apply.
2. The City Planner, City Attorney, and City Engineer will review and approve the final form and content of the plat for compliance with State law, the Land Management Code, and the conditions of approval, prior to recordation of the plat.
3. The applicant will record the plat at the County within one year from the date of City Council approval. If recordation has not occurred within one (1) years' time, this approval for the plat will be void, unless a request for an extension is made in writing prior to the expiration date and an extension is granted by the City Council.
4. Residential fire sprinklers will be required for all new construction per requirements of the Chief Building Official.

8.E 1271 Lowell Avenue – Condominium Plat – The King's Crown Condominium Plat Consists of 26 Market Rate Units and 1 Affordable Housing Unit. (Application PL-19-0415)

Planner Ward presented this item on behalf of Laura Kurhmeyer, the project planner.

Planner Ward reported that this item was the condominium plat for Lot 2 within the King's Crown re-subdivision that was previously approved. The Planning Commission approved this plat on May 22, 2019; however, changes have been proposed since that approval.

Planner Ward stated that one of the proposed changes was to remove 545 square feet from Unit B-401. Another change was to remove the pool from inside Building B to the rear of Building B. The applicant was also proposing to remove approximately 7,000 square feet from the bottom two floors of Building B. Planner Ward noted that originally the affordable housing unit was showing as common area on the plat; and the applicant was now proposing to show the affordable unit as a private unit. The unit would still remain under the same affordable housing deed restrictions. The unit could eventually be sold as an affordable housing unit and those deed restrictions would remain in place. Planner Ward stated that originally the Penthouse in Building D was proposed for one owner; however, since the May 22nd approval, the applicant was proposing to divide that unit into two units.

Planner Ward reported on an email from the neighbors at 1240 Lowell that was received after the Staff report was published. The email was forwarded to all the Commissioners. Planner Ward stated that the residents at 1240 Lowell are located across the street from Building D and they wanted to ensure that the staggered design, the landscaping, and pedestrian access stairs would not change. Planner Ward clarified that at this time, the location of Building D and the stairs are proposed to remain as they were in the plat that was approved on May 22nd.

Rory Murphy, representing the applicant, reiterated the neighbor's concerns and he assured everyone that Building D would not move.

Chair Phillips opened the public hearing.

There were no comments.

Chair Phillips closed the public hearing.

Chair Phillips noted that the original plan was to dig into the hillside, which required a significant amount of truck traffic for hauling. He believed the proposal to remove 7,000 square feet was a positive change to the plan and he supported the request.

MOTION: Commissioner Thimm moved to forward a POSITIVE recommendation to the City Council for the King's Crown Condominium plat located at 1271 Lowell Avenue, based on the Findings of Fact, Conclusions of Law, and Conditions of Approval as found in the draft ordinance. Commissioner Sletten seconded the motion.

VOTE: The motion passed unanimously.

Planner Ward indicated a minor change to Finding of Fact #17, to reflect the change in the square footage of the private units.

Commissioner Thimm accepted the change to Finding of Fact #17 in his motion.

Findings of Fact – 1271 Lowell Avenue

1. The site is located at 1271 Lowell Avenue, Lot 2 of the King's Crown Re-Subdivision.
2. The site is located within the Recreation Commercial District.
3. On January 10, 2018 the Park City Planning Commission approved the King's

Crown Master Planned Development and a Conditional Use Permit for Multi-Unit Dwellings throughout the development for market rate and affordable housing units.

4. On February 1, 2018 the Park City Council approved the King's Crown ReSubdivision Plat per Ordinance No. 2018-05.
5. On June 13, 2018 the Park City Planning Commission ratified the Development Agreement required by the approved Master Planned Development.
6. On June 14, 2018 Summit County recorded the Development Agreement -entry no. 01093392.
7. On May 16, 2018 Summit County recorded the King's Crown Re-Subdivision Plat – entry no. 1091847.
8. On August 30, 2018 the Park City Housing Authority approved the King's Crown Affordable Housing Mitigation Plan.
9. On March 19, 2019 the Park City Planning Department received a complete Condominium Plat.
10. On May 22, 2019 the Planning Commission amended the MPD and CUP.
11. On August 14, 2019, the Planning Department received a complete application for this Condominium Plat.
12. On September 22, 2019, the Planning Commission reviewed the King's Crown Resubdivision First Amended Plat and forwarded a unanimous positive recommendation to Council.
13. On October 10, 2019, the City Council reviewed and approved the King's Crown Resubdivision First Amended Plat, but removed the additional internal Lot Line splitting Lot 2 into Lot 2A and Lot 2B.
14. The proposed Condominium Plat memorializes common, limited common, and private areas that would that allows the units to be sold individually.
15. The proposed Condominium Plat consists of twenty-six (26) market rate units, and one (1) Affordable unit within the King's Crown Building B, C, and D, to be platted as King's Crown Condominiums.
16. The unit boundaries of each private unit would be set forth on the recorded plat.
17. The size of the private units within the multi-unit dwelling ranges from 756 – 3,121 square feet.
18. Common areas include mechanical spaces, internal circulation, parking garage and circulation, swimming pool, spa, gym area, entertainment area, exterior walls and internal bearing walls/columns, footing and foundation, roof, etc.
19. Limited common areas include several exterior decks throughout the three (3) buildings.
20. The recordation of this Condominium Plat would allow the applicant to sell each unit.
21. There is Good Cause for this Condominium Plat as it reflects compliance with the amended Master Plan Development and Conditional Use Permit, approved ReSubdivision Plat, and amended Affordable Housing Mitigation Plan.
22. The analysis section of the staff report is incorporated herein.

Conclusions of Law – 1271 Lowell Avenue

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

Conditions of Approval – 1271 Lowell Avenue

1. The City Planner, City Attorney, and City Engineer will review and approve the final form and content of the plat and CCRs for compliance with State law, the Land Management Code, and the conditions of approval, prior to recordation of the plat.
2. The applicant shall record the Plat at the County within one year from the date of City Council approval. If recordation has not occurred within one (1) years' time, this approval for the plat will be void, unless a request for an extension is made in writing prior to the expiration date and an extension is granted by the City Council.
3. A plat note shall state that all conditions of approval of the amended Master Planned Development, Conditional Use Permit, King's Crown Re-Subdivision Plat (Ordinance No. 2018-05 and Ordinance No. 2019-51), and amended Housing Mitigation Plan shall continue to apply.

8.F 1500 Snow Creek – Conditional Use Permit – Silver King Coffee is Seeking a CUP for a Retail Drive-up use in the Regional Commercial Overlay District in the South-East Side of the Snow Creek Crossing Parking Lot. (Application PL-19-04339)

Planner Ananth introduced Ben Buehner and Brooke Hontz, representing the applicant.

Planner Ananth reviewed the application for a conditional use permit to relocate the existing drive-thru business from Kearns Boulevard to the Snow Creek Shopping Center. The applicant is proposing to locate in a landscaped area of the Snow Creek Shopping. The Center is zoned RD with a Regional Commercial Overlay. It is also a transfer of development rights receiving zone. Planner Ananth reported that an MPD governs the shopping center.

Planner Ananth reported that retail drive-thru businesses require a CUP to consider traffic impacts on the surrounding area.

Planner Ananth presented a slide showing the existing conditions and the proposed drive-through. It would basically connect through the landscaped area from one drive aisle to another off of Snow Creek Drive. Another slide showed the proposed conditions with a drive-thru, the new coffee kiosk, improvements to the landscaped area, some seating, and a new children's play area. The applicant had drawn in seven cars to address queuing concerns. Planner Ananth reported that the applicant was proposing the option of having a voice order box to help with the efficiency of the queue.

The Staff found that the application complied with the Land Management Code and it was consistent with the Park City General Plan; and the use had been mitigated through careful planning and would not interfere with the intended traffic circulation on site or in the area, as conditioned.

The Staff recommended that the Planning Commission review the proposed conditional use permit, conduct a public hearing, and consider approving the CUP for a retail drive-up business, according to the Findings of Fact, Conclusions of Law, and Conditions of Approval.

Commissioner Suesser asked if they had considered putting access to the drive-up on both sides of the kiosk, as it is currently.

Mr. Buehner replied that it could be configured with drive-up on both sides. However, after speaking with the Planning Department, parking was a concern and the proposed design does not eliminate current parking. It also helps with the flow if they can create an entry/exit point to the actual parking lot off of Snow Creek Drive. Mr. Buehner noted that this proposal was designed to accommodate a maximum of seven or eight cars. An order box with the new building would also help with efficiency. He stated that the last and final option would be to slide further east to allow for one additional car.

Commissioner Sletten asked about the financial obligation for the children's playground in terms of construction. Director Erickson replied that it would be a condition of approval on the applicant.

Chair Phillips favored the idea of the children's playground. He believed that end of the parking lot was under-utilized. Commissioner Suesser was pleased that the applicant found another location and that they were not losing the business. Commissioner Kenworthy was in favor of the proposal.

Commissioner Thimm thought it was a good and appropriate use for the area. He liked the idea of shifting the building to make room for queuing. He asked if there was a downside for the applicant to do that. Mr. Buehner answered no. Commissioner Thimm suggested making that change. Commissioner Thimm asked if the voice order box was definite or still being considered. Mr. Buehner stated that they hear feedback from customers on the benefit of being more personal and ordering from someone face to face. A voice order box takes away from that personal ability, but if it is not busy, customers can bypass the order box and order from the window.

Brooke Hontz understood that Commissioner Thimm was asking to move the building to the east. She noted that moving to the east would potentially eliminate a portion of the sidewalk. Mr. Buehner thought they could reconfigure everything to accommodate the shift.

Ms. Hontz stated that as a former Planning Commissioner she understood the time commitment; however, more than ten people were present to speak in support of this application. She welcomed public comment, but if the Planning Commission was leaning in the direction of the Staff recommendation, it would save time if not everyone spoke.

Director Erickson stated that the Planning Commission must open a public hearing. He suggested that one person could speak and the rest of the public could just state that they agree with the previous speaker. Another option would be for everyone to speak but keep their comments to a short, designated time frame.

Commissioner Suesser stated that she goes to Silver King Coffee all the time and she likes being able to pull up on either side of the kiosk. It may not be the best solution for the new location, but she would like the applicant to see if it can be worked into the new design.

Chair Phillips concurred. He thought the Planning Commission would be open to that change. He also liked the idea of direct communication with the customers. Commissioner Suesser clarified that she was not opposed to a voice order box. Her feedback was about the ability to pull up on both sides of the kiosk.

Director Erickson stated that depending on what the Planning Commission decides, the Staff would come back with a minor amendment to the CUP for the drive-thru if they determine that both sides are appropriate.

Commissioner Thimm asked if that would result in another driveway on the north side. Director Erickson replied that it could be a driveway or a loop. He wanted the opportunity to look at the design before making a definite decision.

Commissioner Van Dine liked the setup the way it was proposed. One side appears to be a pedestrian walkup side with the ability to sit with your children. She and her family ride their bikes in that area all the time. Having a place to buy coffee while the kids play in the park is awesome. She loved the location and the proposed changes. Commissioner Suesser complimented the applicant on a great job and she was glad the business would continue.

Commissioner Thimm preferred the solution of having the building be a barrier between the playground and cars.

Chair Phillips opened the public hearing.

Ms. Hontz suggested a show of hands in support rather than actually speaking.

All the public present for this application raised their hands.

Chair Phillips closed the public hearing.

Commissioner Kenworthy stated that a local business that is family friendly and meets the Code has his support.

Commissioner Sletten asked whether the Planning Commission would address the question of a drive-up on both sides of the kiosk this evening, or whether they would leave it to the applicant. Director Erickson stated that the Staff would come back with a simple amendment to the MPD if they determine that it is feasible.

Commissioner Suesser clarified that she would vote for the current application as proposed. She was only providing feedback for the applicant to consider from the standpoint of someone who frequents the business. Director Erickson noted that her comments would be reflected in the Minutes.

Commissioner Hall asked if the entire new concrete pad would be accessible to Silver King Coffee. For example, if someone places an order that will take longer than normal, could that car pull up to wait and still be on the concrete pad. Director Erickson answered yes.

MOTION: Commissioner Hall moved to APPROVE the Conditional Use Permit for the Silver King Coffee relocation. Commissioner Kenworthy seconded the motion.

VOTE: The motion passed unanimously.

Director Erickson referred to the question from Commissioner Sletten regarding the financial responsibility for the playground. He suggested amending the conditions of approval to include the landscaping plan, per the site plan, as the responsibility of the applicant. Another condition should be added stating that the building shall be moved slightly to the east per Planning Commission direction.

Commissioner Suesser moved to amend the conditions of approval as stated by Director Erickson. Commissioner Thimm seconded the motion.

VOTE: The motion passed unanimously.

<u>Findings of Fact – Silver King Coffee</u>

1. The Retail Drive-Up business Silver King Coffee has operated at off of Kearns Boulevard in Bonanza Park for the past 8 years without complaints.
2. The Retail Drive-Up business is proposing to relocate to the Snow Creek Crossing shopping center in the Residential Development Medium Density Zone and within the Regional Commercial Overlay District and is also within the Transfer of Development Rights Overlay Receiving Zone.
3. The Snow Creek Crossing shopping center is subject to an MPD approved in 1993.
4. Silver King Coffee operates as a Retail Drive-Up business which requires a Conditional Use Permit in the Regional Commercial Overlay District.
5. Drive-up windows require a Conditional Use Permit to consider traffic impacts on surrounding Streets.
6. The applicant has demonstrated that at periods of peak operation business patrons will not obstruct driveways or Streets and will not interfere with the intended traffic circulation on the Site or in the Area.
7. The MPD includes approval for a 90,500 square foot commercial center consisting of six (6) buildings including a retail anchor (grocery store) limited to no more than 52,000 square feet and 446 parking spaces.
8. In 2006 the City Council executed a Memorandum of Understanding with the Utah State Division of Facilities Construction and Management for a liquor store in Snow Creek Crossing. The MOU states that the City has no land use zoning jurisdiction over the property owned by the State. It is estimated that the liquor store removed approximately 42 parking spaces from the development for them

development pad leaving approximately 400 parking stalls for the shopping center.

9. Approximately 87,000 square feet of the shopping center has been built (excluding the 12,000 square foot State Liquor Store).

10.Two banks currently in the Snow Creek Crossing Center also have Drive-up windows.

11.The proposed new coffee kiosk will not exceed 400 square feet and includes queuing for at least six (6) cars in the new access drive which is parallel to Snow Creek Drive.

12.The applicant is proposing to enhance the current landscaped area with seating and a small children's playground.

13.Prior to submittal the Planning Director made a determination that the proposed use was substantially in compliance with the MPD and that only a CUP would be required to relocate the kiosk within the MPD as Snow Creek Crossing has not met the square foot cap (excluding the liquor store), the proposed footprint of the kiosk will not exceed 400 square feet, and the addition of the kiosk does not constitute a change in concept, Density, unit type or configuration of any portion or phase of the MPD.

14.Snow Creek Crossing has access from SR-224 and SR-248 and the proposed location of the kiosk is parallel to Snow Creek Drive. The proposed site and location are appropriate for a Drive-up window. LMC Section 15-1-10(E)1.

15.Surrounding Street capacity including SR-224, SR-248 and Snow Creek Drive is sufficient to handle the proposed Drive-up business. LMC Section 15-1-10(E)2.

16.The site has access to all utilities and the Engineering Division will review final site plans prior to the issuance of any building permits to ensure storm water runoff is sufficiently mitigated. LMC Section 15-1-10(E)3.

17.The proposed use will not change emergency vehicle access. LMC Section 15-1-10(E)4.

18.The proposed use does not remove any parking and most business patrons are expected to utilize the Drive-up aspect of the use and will not require parking. Employees and patrons that do utilize parking will likely park close to the use and the proposed new sidewalk where parking is generally readily available as it is not adjacent to existing businesses. LMC Section 15-1-10(E)5.

19.It is expected that the majority of vehicles will arrive at the site via Snow Creek Drive and then turn into the proposed new access aisle which will accommodate queuing for at least six (6) cars. Sidewalks and a bike rack are proposed to encourage alternative modes of transportation to/from the site. The internal vehicular and pedestrian circulation system appears sufficient for the proposed Drive-up use. LMC Section 15-1-10(E)6.

20.No fencing or screening is needed for the proposed use. The applicant will relocate any landscaping removed within the existing green space in order to

maintain and enhance the site. LMC Section 15-1-10(E)7.
21.The Planning Department will review final site plans and elevations prior to issuance of a building permit to ensure that the proposed building will complement the surrounding shopping center. LMC Section 15-1-10(E)8 & 11.
22.The site will maintain over two acres of landscaped areas and sufficient open space, and site plans include a proposed small children's playground. LMC Section 15-1-10(E)9.
23.Signage and Lighting plans must be submitted to the Planning Department for review and approval and must conform to Building and Land Management Code standards. LMC Section 15-1-10(E)10.
24.No noise, vibration, odors, steam, or other mechanical factors that might affect people and Property off-site are expected. LMC Section 15-1-10(E)12.
25.Service vehicle trips to the site are expected to be minimal. LMC Section 15-1-10(E)13.
26.No changes to the ownership of Snow Creek Crossing or Silver King Coffee are proposed with this location. Silver King Coffee will lease a portion of the shopping center from the property owner. LMC Section 15-1-10(E)14.
27.No environmental hazards are known to be present on site and the site is located outside the Soil Ordinance Zone. LMC Section 15-1-10(E)15.
28.Maintaining unique local businesses is an important factor in Core Value #3 of the Park City General plan, Sense of Community. The applicant is enhancing the public realm by including a small children's playground area and is including a bike rack on site to encourage alternative modes of transportation. LMC Section 15-1-10(E)16.

Conclusions of Law – Silver King Coffee

1. The proposed application as conditioned complies with the requirements of the Land Management Code.
2. The proposed Retail Drive-Up business use is compatible with surrounding structures in use, scale, mass, and circulation.
3. The proposed use is consistent with the Park City General Plan.
4. The effects in difference in use or scale of the Retail Drive-Up business use have been mitigated through careful planning and Conditions of Approval.

Conditions of Approval – Silver King Coffee

1. All standard project conditions shall apply.
2. The applicant must obtain and maintain a valid Business License.
3. Compliance with all building and fire code standards is required as a condition precedent to issuance of a building permit.

4. Any exterior lighting shall conform to the City's lighting requirements.
5. No exterior commercial signs are approved as part of this Conditional Use Permit. Any future signs on the property shall be subject to the Park City Sign Code and the MPD Master Sign Plan.
6. The coffee kiosk shall not exceed 400 square feet.
7. The Planning Department shall review and approve final site plans and elevations prior to the issuance of building permits to ensure that the proposed building will complement the existing surroundings. The kiosk will meet all Lot and Site Requirements for the RDM and RCO District
8. The Engineering Division will review final site plans prior to the issuance of any building permits to ensure storm water runoff has been sufficiently mitigated.
9. The Planning Director and City Engineer may review the traffic flow if problems arise that are not mitigated and may require the CUP to be reopened for review by the Planning Commission.
10. Any landscaping removed for the proposed improvements including the play area will be relocated on site in order to maintain and enhance the site and no Significant Vegetation including trees six inches (6") in diameter or greater measured four and one-half feet (4.5') above the ground shall be disturbed.
11.A voice order box shall be allowed in order to help facilitate an efficient queue.
12. The applicant may consider shifting the kiosk to the east slightly in order to accommodate additional vehicles in the queue.

8.G <u>632 Deer Valley Road – Condominium Plat - the Applicant is Proposing to Create a Condominium Plat consisting of four (4) Units</u>.
(Application PL-19-04308)

Planner Ananth introduced the applicant, Frank Wanatabe.

Planner Ananth stated that under Ordinance 2018-04, the lot was subdivided into to legal lots of record. Each lot was allowed a duplex dwelling, for a total of four dwelling units, including the existing historic house at 632 Deer Valley Loop, which was deconstructed and reconstructed. Planner Ananth reported that the four units are currently under construction and upon completion, the applicant would like to sell them as condominium units.

Planner Ananth clarified that the proposing was simply a change from duplex dwelling to condominium units.

The Staff found good cause for this condominium plat, as it will allow for the sale of the four units as residential condominiums. It is consistent with the LMC, and it does not adversely affect the health, safety, and welfare of the citizens.

The Staff recommended that the Planning Commission review the condominium plat, conduct a public hearing and consider forwarding a positive recommendation to the City Council based on the findings of fact, conclusions of law, and conditions of approval as found in the draft ordinance.

Commissioner Suesser asked if the Planning Department had received public input on this application. Planner Ananth replied that the Staff had not received any input prior to or after the Staff report.

Mr. Watanabe recalled that there was significant public discussion when this proposal originally came before the Planning Commission. He clarified that the purpose of this application is to give the applicant the ability to obtain different addresses and different tax ID numbers in order to list the units individually.

Chair Phillips opened the public hearing.

There were no comments.

Chair Phillips closed the public hearing.

MOTION: Commissioner Sletten moved to forward a POSITIVE recommendation to the City Council for the 632 Deer Valley Road Condominium Plat, based on the Findings of Fact, Conclusions of Law, and Conditions of Approval as contained in the draft ordinance. Commissioner Van Dine seconded the motion.

VOTE: The motion passed unanimously.

<u>Findings of Fact – 632 Deer Valley Road</u>

1. The property is located at 632 Deer Valley Loop Road and Rossie Hill Drive.
2. The property consists of the Lilac Hill Subdivision – First Amended, Lot 1A and Lot 1B, each with a Duplex Dwelling currently under construction.
3. The applicant is creating a Condominium Plat that incorporates the two lots so that the four (4) dwelling units can be sold as individual Residential Condominiums creating the Lilac Hill Condominiums.
4. The property is located in the Residential-Medium Density (RM) District.
5. 632 Deer Valley Loop Road is listed on Park City's Historic Sites Inventory (HSI) and is designated as Significant.
6. Single-family, duplex, and triplex dwellings are allowed uses in this zone.
7. The four units have received Historic District Design Review and Approval.

8. Existing access to the Lot 1A is limited to a driveway from Deer Valley Loop Road.
9. The property is located outside the Park City Landscaping and Maintenance of Soil Cover Ordinance (Soils Ordinance).
10.All Conditions of Lilac Hill Subdivision – First Amended, approved as Ordinance 2018-04 shall continue to apply and remain in full force and effect.
11.All findings within the Analysis section and the recitals above are incorporated herein as Findings of Fact.

<u>Conclusions of Law – 632 Deer Valley Road</u>

1. There is good cause for this Condominium Plat as it will allow for the sale of the four (4) units as Residential Condominiums.
2. The Condominium Plat is consistent with the Park City Land Management Code including Sections 15-4-12, 15-7.1-3(C) and 15-12-15(B)(9) and applicable State Law regarding Condominium Plats.
3. Neither the public nor any person will be materially injured by the proposed Condominium Plat.
4. Approval of the Condominium Plat, subject to the conditions stated below, does not adversely affect the health, safety and welfare of the citizens of Park City.

<u>Conditions of Approval – 632 Deer Valley Road</u>

1. The City Planner, City Attorney, and City Engineer will review and approve the final form and content of the Condominium Plat 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 at the County within one year from the date of City Council approval. If recordation has not occurred within one (1) years' time, this approval for the Plat will be void, unless a request for an extension is made in writing prior to the expiration date and an extension is granted by the City Council.
3. Lots 1A and 1B of the Lilac Hill Subdivision – First Amended shall not be further subdivided in the future.
4. Any new development on this lot shall not block the view of the historic house from the 632 Deer Valley Loop Road and Deer Valley Drive rights-of-way.
5. A ten foot (10') wide public snow storage easement is required along the Rossie Hill frontage of the property.
6. Driveway access shall be limited from Deer Valley Loop Road and Rossie Hill Drive. The new lot facing Rossie Hill Drive shall only be accessible from the eastern half of the Rossie Hill frontage where the property line directly abuts the City right-of-way. The slope of the access off of Rossie Hill Drive shall be no more than 5% for the first 20 feet of driveway off of the right-of-way to maintain sight lines. Access to Lot 1 B shall be limited to a shared driveway accessible from Rossie Hill Drive.

7. The property owner has agreed to finance the cost of a pedestrian staircase to the west of the subject property, linking Rossie Hill to Deer Valley Loop, at his cost up to $75,000. The stairs shall be constructed at cost to the applicant prior to a Certificate of Occupancy (CO) for the dwelling units on Lot 1B. Should the stairs not be constructed prior to CO, the applicant shall post a guarantee or bond for the construction of the stairs. If the BLM does not grant the easement for the pedestrian staircase, the applicant's guarantee or bond shall sunset within 36 months of CO on the Condominium project.
8. All conditions of the Lilac Hill Subdivision – First Amended, approved as Ordinance 2018-04, continue to apply and shall be noted on this Plat.

8.H. <u>81 King Road – Nightly Rental Conditional Use Permit – The Applicant is seeking a Conditional Use Permit for a Nightly Rental Use at 81 King Road.</u> (Application PL-19-04326)

Planner Ananth reviewed the application for a conditional use permit for a nightly rental at 81 King Road. The house is 3700 square feet with five bedrooms. Two parking stalls are provided; one is in the garage and the other is an exterior stall in front of the garage that does not block the sidewalk or driveway. The house is historic and designated as a Significant site. It is located in the Historic Residential Low-Density District (HRL), which allows nightly rentals with a CUP.

Planner Ananth remarked that the HRL District allows nightly rentals if reasonable conditions or measures are taken to mitigate potential impacts of the proposed use. The CUP is transferrable with the title to the underlying property and runs with the land. However, any new owner would need to apply for a business license in order to operate as a nightly rental.

Planner Ananth reported on public comments she received last week that were attached to the Staff report. She noted that the concerns primarily focused around the proliferation of nightly rentals in the neighborhood, as well as noise, traffic and parking issues. Planner Ananth had drafted conditions of approval that she believed would help mitigate the issues. Conditions 6-10 address the specific concerns mentioned in the public comment. The Conditions 1) limit leases to no more than two vehicles and the vehicles must be parked on the property and not in the street or the surrounding neighborhood. 2) Trash receptacles are set out only at the proper times and removed efficiently. 3) Leases should inform perspective renters that access can be difficult on King Road, and a four-wheel drive vehicle is recommended in the winter. 4) Leases shall inform renters about walkable access to skiing, Main Street, Municipal garages, and the availability of free transit services.

The Staff found that the application complies with the LMC and it is consistent with the Park City General Plan; and that the use has been mitigated through careful planning as conditioned.

The Staff recommended that the Planning Commission review the application, conduct a public hearing, and consider approving the CUP for nightly rental at 81 King Road.

Commissioner Suesser was pleased with the conditions of approval and thought it was similar to the conditions drafted on previous applications. Commissioner Suesser asked if it was possible to limit the occupancy of a nightly rental home. Planner Ananth believed the Building Code regulates the occupancy. It would be difficult to enforce that type of limitation, and it was best to rely on the Building Code licensing procedure.

Commissioner Van Dine noted that one of the letters from the public indicated what is known "as the party house". She asked if there was a way to enforce quiet hours. Director Erickson replied that during the day the enforcement mechanism is Code Enforcement. The nights are enforced by the Police. Director Erickson noted that he sees the police reports on matters related to Conditional Use Permits. The Planning Department files the CUP information with the police on nightly rentals. If renters exceed the noise ordinance it is a violation.

Planner Ananth stated that she did not have a condition of approval to address noise, but she was willing to add a condition. City Attorney Harrington recalled that this issue was raised at the last public hearing. He noted that Section 453 of the Municipal Code requires that already, and sustained complaints is a basis for revocation. He did not think it was necessary to include it as a condition of approval.

Chair Phillips opened the public hearing.

There were no comments.

Chair Phillips closed the public hearing.

Commissioner Hall asked if there is a mechanism to address continued severe violations. She clarified that she was asking about CUPs in general and not specific to this application.

Director Erickson stated that the first violation would be a Code Enforcement action on the business license. For the second violation, if the City could make a finding that they were in violation of the conditions of approval of the CUP, they could take action or revoke the CUP.

City Attorney Harrington did not think it was that black and white. He stated that Code Enforcement has the ability to revoke depending on the nature of the violation. Business License regulation under the Municipal Code is separate, and any violations of that Code can be raised and addressed at any time. Mr. Harrington pointed out that the Staff also has the conditions of approval of the CUP in addition to the other standards, which can be a basis of revocation through the LMC. Mr. Harrington stated that revoking based on the LMC is more difficult and typically they would pursue the Business License. He agreed with Director Erickson that typically the process begins with Code Enforcement and Civil Enforcement.

MOTION: Commissioner Van Dine moved to APPROVE the Nightly Rental Conditional Use Permit for 81 King Road, according to the Findings of Fact, Conclusions of Law, and Conditions of Approval as outlined in the Staff report. Commissioner Kenworthy seconded the motion.

VOTE: The motion passed unanimously.

Findings of Fact – 81 King Road

1. The property is located at 81 King Road, Summit County in the Historic Residential-Low Density (HRL) District.
2. The property is estimated to have been constructed circa 1900, and underwent a renovation and significant addition in 2016. The property retains some historic integrity as a mining-era Structure and is designated a Significant Site on Park City's Historic Sites Inventory.
3. 81 King Road is a five-bedroom/seven-bathroom Single-Family Dwelling that is located on a 0.11-acre parcel.
4. 81 King Road is within walking distance to Park City Mountain Resort skiing and to Park City's free public transit.
5. The five-bedroom Single-Family Dwelling at 81 King Road is located within the area designated for Nightly Rentals in the HRL District, subject to a Conditional Use Permit.
6. On September 10, 2019, the owner of 81 King Road submitted an application to request Commission review and approval of a Nightly Rental Conditional Use Permit.
7. The Nightly Rental Conditional Use Permit application was deemed complete on September 10, 2109.
8. According to the City's business license records, there are currently seven (7) active nightly rental business licenses in the surrounding HRL District including 309 the recently approved 74 King Road.

9. In addition to a Nightly Rental Conditional Use Permit, the owner must secure a Nightly Rental Business License to use the property as a Nightly Rental. The business license application process requires that the Building Department inspect the property to ensure that the property meets all applicable building and fire codes.
10.81 King Road is a five-bedroom house on a 0.11 acre site located within the potential Nightly Rental Conditional Use Permit zone and there are no unmitigated impacts from the site size and location.
11.King Road is a narrow and steep street and should only be accessed by two vehicles associated with a Nightly Rental on this lot. All parking shall be contained on site and there shall be no parking allowed on surrounding neighborhood streets. This portion of King Road is steep and all-wheel drive vehicles are recommended during winter months.
12. 81 King Road is currently used as a private residence and use of the property as a Nightly Rental will minimally change utility capacity and storm water run-off.
13.A Nightly Rental Conditional Use Permit will not alter the required emergency vehicle access.
14.During weather-related road conditions, access to 81 King Road may be limited and renters may need to find parking off-site to walk to the property. Leases shall contain information on available municipal parking and all-wheel drive vehicles shall be recommended during winter months.
15.No fencing or landscaping changes are proposed at this time.
16.The building mass, bulk, orientation, and location will remain unchanged.
17.No signs or additional lighting are proposed to be installed.
18.No changes to the physical design of the house or site are proposed.
19.No noise, vibration, odors, steam, or mechanical factors that might affect people and property are anticipated.
20.No deliveries beyond what are reasonably expected for a Single-Family Dwelling are anticipated. Residential trash pickup for the property will be from King Road and subject to the Municipal Code of Park City § 6-1-11.
21.The property will be maintained by a professional property management company.
22.81 King Road is located outside of the Park City Soils Ordinance Zone.
23.Use of 81 King Road as a Nightly Rental is in keeping with Objective 7C of Goal 7 to focus future nightly rental units to resort neighborhoods – near Park City Mountain Resort and Deer Valley. 81 King Road is within a walkable distance to Park City Mountain Resort with access through Upper Norfolk Avenue.

<u>Conclusions of Law – 81 King Road</u>

1. The proposed application as conditioned complies with the requirements of the

Land Management Code.
2. The proposed Nightly Rental is compatible with surrounding structures in use, scale, mass, and circulation.
3. The proposed nightly rental use is consistent with the Park City General Plan.
4. The effects in difference in use or scale of the Nightly Rental have been mitigated through careful planning and Conditions of Approval.

<u>Conditions of Approval – 81 King Road</u>

1. The applicant must obtain and maintain a valid Nightly Rental Business License.
2. Compliance with all building and fire code standards is required as a condition precedent to issuance of a Nightly Rental Business License.
3. All existing and any new exterior lighting shall conform to the City's lighting requirements prior to the issuance of a Nightly Rental Business License.
4. No exterior commercial signs are approved as part of this Nightly Rental Conditional Use Permit. Any future signs on the property shall be subject to the Park City Sign Code.
5. This Nightly Rental Conditional Use Permit is approved for the five bedroom/seven-bathroom Single-Family Dwelling. Any additions to the Structure that enlarge the Structure terminate this Conditional Use Permit and require a new Conditional Use Permit that reflects the altered size of the Single-Family Dwelling.
6. All lease agreements for Nightly Rental shall include language that limits the vehicles allowed at 81 King Road to two (2) vehicles that must utilize on-site parking. No parking in the surrounding residential neighborhood is permitted.
7. The property owner or a Property Management Company shall place trash receptacles for trash pickup according to the Municipal Code of Park City § 6-1-11, which requires that trash receptacles cannot be set out for collection prior to 6:00 PM of the day before collection. All trash receptacles in the HRL District must be removed from the street as soon as practical after being emptied, and in every case must be removed from the street prior to 11:50 PM the day they are emptied.
8. All lease agreements for Nightly Rental shall include language indicating that during heavy snowfall or bad road conditions, access to the property may be limited and a list of municipal garages shall be provided. There may be times when renters need to park off-site in a public parking lot and walk to the property, and all-wheel drive vehicles are recommended during winter months.
9. The applicant must provide renters with detailed information regarding walkable access to skiing, to Park City's Historic Main Street, to Old Town, to Park City's free transit service and to Park City Municipal Garages.
10.Nightly Rental of 81 King Road prohibits Commercial Uses such as hospitality

houses, screening rooms, reception centers, etc.
11.The property owner or a professional property management company shall oversee the property and shall maintain the property and landscaping in a manner that shall comply with all City Code and Land Management Code standards.

8.I. **7677 Village Way, Lot 2 Village at Empire Pass North Subdivision, The Argent at Empire Pass – Conditional Use Permit – The Applicant is Proposing the Development and Construction of a Residential Condominium Building on Lot 2 at Empire Pass North. The Site is Subject to the Amended Agreement for Flagstaff Mountain March 2007, Which Granted the Developer/Owner a Large Scale MPD. The Property is Also Subject to the Village at Empire Pass Master Planned Development (VEP MPD), July 2004, and the Village at Empire Pass North Subdivision Plat, June 2017. The Applicant is Proposing a 108,602 Square Foot Structure Consisting of 28 For Sale Units (not exceeding 64,000 square feet or 32 Unit Equivalents), One (1) ADA unit, Two (2) Employee Units, 39 Parking Spaces and Various Residential Accessory Uses. The Applicant Submitted a Concurrent Application for a Condominium Plat. If This CUP is Not Approved the Condominium Plat Will Be Continued to a Future Date. (Application PL-19-04276)**

8.J. **7677 Village Way, Lot 2 Village at Empire Pass North Subdivision, The Argent at Empire Pass Condominiums – Condominium Plat – Empire Pass North LLC, is Proposing the Development and Construction of a Residential Condominium Building on Lot 2 at Empire Pass North. The Site is Subject to the Amended Agreement for Flagstaff Mountain March 2007, Which Granted the Developer/Owner a Large Scale MPD. The Property is Also Subject to the Village at Empire Pass Master Planned Development (VEP MPD), July 2004, and the Village at Empire Pass North Subdivision Plat, June 2017. The Applicant is Proposing a 108,602 Square Foot Structure Consisting of 28 For Sale Units (not exceeding 64,000 square feet or 32 Unit Equivalents), One (1) ADA accessible unit, Two (2) Deed Restricted Employee Units, 39 Parking Spaces and Various Residential Accessory Uses. The Applicant Submitted a Concurrent Application for a Conditional Use Permit. If the CUP is Not Approved the Condominium Plat Will Be Continued to a Future Date. (Application PL-19-04278)**

Planner Ananth stated that the Conditional Use Permit and the Condominium Plat for 7677 Village Way would be presented and discussed together; however, the Planning Commission would open a separate public hearing on each item and take two separate actions.

Joe Geroux with East-West Partners, Tom Bennett, Legal Counsel, and Peter Pillman with IBI Group, were representing the applicant.

Planner Ananth reviewed the applications for a conditional use permit and condominium plat for a 28-unit residential condominium building on Lot 2 of the Village at Empire Pass North Subdivision. She noted that Building 4 of the Village at Empire Pass was approved under the Village Master Planned Development. The applicant was proposing to utilize up to the full 32 unit equivalents that were allocated. The massing and the volumetrics were part of the MPD.

Planner Ananth reported that one ADA unit and two deed-restricted employee housing units are proposed. The site is zoned Residential Development (RD). She noted that this item was continued from the October 9th Planning Commission meeting.

Planner Ananth presented a slide showing the original Village at Empire Pass MPD map, which showed the layout of the large condo buildings in Empire Pass; including Building 4.

Planner Ananth stated that the CUP application is subject to the CUP criteria for the site. The lot complies with the site requirements of the zoning district, the MPD, and the original condo plat.

The Staff found that the application complies with the LMC, the CUP criteria, and applicable State law regarding condominium plats, as conditioned.

The Staff recommended that the Planning Commission conduct the public hearings, review the applications and the draft findings of fact, conclusions of law, and conditions of approval; approve the Conditional Use Permit and forward a positive recommendation to the City Council on the Condominium Plat.

Commissioner Van Dine could only find three surface parking spaces in the plan; but the Staff report indicated four parking spaces. Planner Ananth replied that one parking space is in the driveway adjacent to the Empire Residences building.

Mr. Geroux explained that the agreement between the two landowners gave the applicant the right to one parking space in the adjacent parcel, which satisfies all the parking requirements.

Commissioner Suesser could not recall why the Planning Commission had continued these items. Planner Ananth stated that it was continued to give the City Council the opportunity to have a Work Session to discuss the preservation and open space issues in the Flagstaff Development Agreement. Director Erickson stated that on November 7th the City Council reviewed the Development Agreement requirements and the draft Memorandum of Agreement. The City Council also took public comment. Three Planning Commissioners were present at that meeting. Director Erickson remarked that the Council had conversations about how to move forward and provided direction to Director Erickson to move forward on the MOA.

Commissioner Suesser wanted to know how that applied to the application. Planner Ananth stated that the EPMOA had retained SWCA, environmental consultants, to conduct a historic preservation plan update for Flagstaff Mountain. The update was to assess the conditions and compliance for 19 of the 21 sites that were originally identified in the 2001 Preservation Plan.

Director Erickson clarified that there are 21 sites total. Four sites are buildings and the rest are mine waste areas. The City Council directed moving forward with an immediate plan to stabilize the roof the Judge Mining and Smelter Building for the winter; and also conduct additional work on the other sites and to move forward with the funding mechanisms. He was currently working on the funding source to stabilize the roof the Judge Building.

Planner Suesser asked if the City Council had given direction as to the approval of these projects as they come before the Planning Commission. City Attorney Harrington stated that the City Council did not give direction, but they preferred to continue on the path with the existing condition of approval with regards to the Twisted Branch Plat as being the final hurdle, as stated in the Residence at Tower Club that was previously conditioned. Mr. Harrington clarified that projects should still be evaluated on a case by case basis, even though that was not across the Board direction. He pointed out that it was a work session but the Staff was not directed to change course. Mayor Beerman confirmed that his expectation was not to hold up applications across the board while other issues are being resolved. However, Mr. Harrington clarified that the expectation was not direction to approve. It only means the City Council is comfortable with the current direction and qualified by further steps for the Staff to take with regards to budget and other deadlines.

Commissioner Sletten stated that he and Commissioner Kenworthy specifically asked the question and he wrote down the exact answer. He could not recall which Council Member had responded, but the quote was "Not to tie individual applications to the bigger agreement."

Commissioner Hall had also attended she heard the comments from the Council Members and the Mayor. However, she wanted her personal opinion on the record. Commissioner Hall did not agree with the City Council and understood they were speaking from a policy standpoint; but from her standpoint, processing a CUP in compliance with the LMC still does not comply with the Development Agreement. She noted that a Developer is defined in the Development Agreement as "an assignee in whole or in part". Commissioner Hall remarked that she had spent considerable time researching the matter on her own in an effort to see what they were missing and what happened over the past 20 years because it is a tragedy in the community. Commissioner Hall stated that in order to induce the agreement to bestow these development rights, there is a mitigation plan and an amended plan. She noted that under 2.16 a preservation plan was required. The subsequent 2000 historic preservation plan said there would be a detailed repair and stabilization and public protection plan that was concurrent with the first CUP; and that was not followed through. Commissioner Hall stated that even though other applications have been approved that did not comply with the Development Agreement, as someone processing an application, she thought it was false to say that this application was in compliance with the Development Agreement.

Commissioner Hall understood that the City Council provided direction, but she disagreed with the Staff report in terms of processing the application.

Commissioner Thimm also disagreed with the Staff report. He understood that Commissioner Hall was talking about 7.3 in the Findings of Fact. Commissioner Thimm read from 7.3, "There is no indication that this particular property or application is inconsistent with a specific provision of the Flagstaff DA or LMC." He pointed out that the Historic Preservation Plan Update for Flagstaff Mountain Resort states several times that the recommendations are not fully met.

Commissioner Thimm had a condition he would like to add if the Planning Commission reaches the point of voting to approve the CUP and a positive recommendation on the condominium plat. Commissioner Thimm thought the Finding should be amended because the Consultant clearly stated in their report that it is not in compliance.

Commissioner Kenworthy concurred with Commissioner Thimm. Commissioner Kenworthy had attended the City Council work session and he thought it was very positive. The Planning Department wrote a report and all of the cards are now in the hands of the City Council. He noted that there were some issues related to liability and which owners did not fall under the Agreement and how they intend to deal with all of those. Commissioner Kenworthy believed the Planning Department did their job and they now have 19 sites that are defined. The developers had come to the table with a good faith offer; but many of the Council Members thought it was too low. There was a commitment to address it and Commissioner Kenworthy wanted it to be addressed as soon as possible. Mr. Kenworthy remarked that issues with the Legal Department could not be discussed in an open meeting and he hoped those issues would be addressed. However, he believed many of the issues was like "getting blood from a turnip". In his opinion, those issues will not change the damages. The Planning Commission is attempting to get the issues resolved and he would like to see it resolved on the global issues. Commissioner Kenworthy remarked that these 19 sites were only one issue. There are many more. Commissioner Kenworthy encouraged the City Council to take action. The developers are here in good faith and they understand what historic preservation means, the economics of it, and what it means for the development and the community. Commissioner Kenworthy stated that all the cards are on the table for preserving these 19 sites and it should be done quickly.

Commissioner Kenworthy was not in favor of pushing the developers down the road because they were at a place where an agreement could come together.

Commissioner Sletten had written down a question from Becca Gerber about future funding. Director Erickson answer her question by saying there would definitely be requests for future funding from the City Council in terms of the expanded scope of looking at historic sites.

Chair Phillips opened the public hearing on the CUP.

Sandra Morrison from the Park City Museum stated that she would not repeat all the prior input regarding the East-West Partners application. She thought it obviously did not comply with the Flagstaff Development Agreement. Ms. Morrison thought it was unfortunate that the Staff report did not discuss the City Council work session that was held on November 7th. During that meeting the City Council reviewed the updated historic preservation report, the detailed Staff analysis, and the Staff conclusion that significant portions of the obligations have not been met. Ms. Morrison noted that during the work session, the City Council reached no conclusions and made no decisions. Council Member Joyce stated his opinion, but nothing was agreed upon and nothing was voted on. Ms. Morrison noted that the City Council indicated that a further work session would be held to prioritize compliance items. They indicated a desire to work with all responsible parties to achieve compliance; but set no dates for additional work sessions and made no decisions.

Ms. Morrison noted that at the end of the meeting, City Attorney Harrington said the Planning Commission should continue to review the applications on a case by case basis. Ms. Morrison was here this evening to ask the Planning Commission to review the application on its merits regarding how it meets the obligations of the Flagstaff Annexation Agreement.

Ms. Morrison reiterated that the City Council had opinions but they did not provide specific direction. She thought it was clear that the Planning Commission was not directed to ignore the compliance issues when reviewing applications under the Flagstaff Development Agreement. Ms. Morrison read from page 9 of the Staff report, "The City Council gave direction to continue to process individual applications unless compliance issues are specifically identified by Staff". She believed compliance issues have been identified. Ms. Morrison noted that page 42 from the Work Session Staff report states, "The Staff reviewed the updated report and made the following conclusions with respect to compliance with the 2001 Technical Report #6, Historic Preservation Plan". She noted that the table continues to show 20 projects were not completed. The most conspicuous was the Daly Judge Mining and Smelting Office Building. The Staff report states that this building is the greatest concern. Ms. Morrison remarked that compliance issues have specifically been identified by Staff.

Ms. Morrison pointed out several problems with the Staff report for the East-West Partners application being discussed this evening. Finding #3, no indication that this particular property or application is inconsistent with specific provisions of the Flagstaff Development Agreement. Finding #4, Council will separately consider the compliance matters regarding Technical Reports #5 and #6 as the proposed Memorandum of Agreement with REDUS, Storied Development, and the Master Association on November 7th. Ms. Morrison remarked that Finding #4 was outdated because the November 7th work session had already been held. Also, no decisions on Technical Reports #5 and #6 were made during that work session. Ms. Morrison read from Finding #5, the Residences at the Tower Condominiums plat, condition of approval requires finalizing of the Memorandum of Agreement prior to recordation of the Twisted Branch Road subdivision plat. Ms. Morrison thought the finding was irrelevant because this application involves two different developers.

Ms. Morrison handed out copies of her proposed Findings of Fact, which amended the Findings she thought were incorrect; as well as added Findings that outlined what occurred at the City Council November 7th Work Session. Ms. Morrison suggested additional Findings indicating that the currently proposed MOA had not been executed and the terms have not been finalized; that in the currently proposed MOA, developers Storied Development and REDUS agreed to provide $40,000 each in escrow funds for costs incurred by the Association to stabilize the building; and this amount has not been determined to be adequate. Another Findings would state that the application for East-West Partners is not a signatory to the proposed Memorandum of Agreement and has not committed to providing any funds for stabilizing costs.

Ms. Morrison noted that the Planning Commission had already discussed that Conclusion of Law #1 in the Staff report was misleading and incorrect because neither the City Council and or anyone else had made a determination on the compliance issues with Technical Reports 35 and #6. Ms. Morrison remarked that the SWCA report identified numerous instances where compliance has not occurred and the critical maintenance was not done. She reiterated that the MOA had not been executed, bringing any responsible parties into agreement.

Ms. Morrison offered additional conditions of approval that should be added so this application could be considered for approval. She believed her proposed conditions would assure that the long deferred historic preservation obligations under the Flagstaff Development Agreement. Ms. Morrison offered Condition #26, “The applicant agrees to use its best efforts to assure that the Empire Pass Master Owners Association will expeditiously execute a new Memorandum of Agreement with the City to achieve substantial compliance with the continuing obligations of the Development Agreement and Technical Reports #5 and #6. Condition #27, “The applicant agrees to contribute an amount equal to that agreed by the other developers, such as Storied and REDUS, as specified in Paragraph 3B of the currently proposed Memorandum of Agreement for costs stabilizing and structural protection work at the Judge Mining and Smelting Building. Condition #28, “The applicant agrees to use its best efforts to assure that the Empire Pass Master Association will work expeditiously to complete and continue its preservation and maintenance obligations of the Flagstaff Development Agreement and Technical Reports #5 and #6, and will cooperatively work with the City to achieve actual compliance. Condition #29, “The applicant agrees that the new Memorandum of Agreement with the City must be finalized and executed prior to the recording of its condominium plat for the Argent at Empire Pass Condominiums. Condition #30, “Staff will report back to the Planning Commission within six months of this approval with an update on the progress towards the substantial compliance with the continuing obligations of the Flagstaff Development Agreement and Technical Report #5 and #6”.

Ms. Morrison referred to the analysis of the conditional use criteria regarding open space. On page 328 of the Staff report, the Staff’s analysis of the conditional use criteria set forth in the LMC for usable open space is as follows: “Both passive and active open space are provided in excess of 88% within the Flagstaff Annexation boundary. He individual lots were not required to provide open space and the proposal includes a private plaza and pool area overlooking the adjacent ski runs and lift area. No Unmitigated Impacts". Ms. Morrison thought it was very inconsistent for East-West Partners to claim the benefits of the excess of 88% open space within this annexation boundary, and at the same time disclaim any obligations regarding the preservation and maintenance of that protected open space as required by the Flagstaff Annexation Agreement and Technical Reports #5 and #6. She pointed out that while none of the historic mine sites are on their property, none of the 88% open space is on the property either. Ms. Morrison did not believe this impact had been mitigated. Ms. Morrison reiterated that Finding of Fact 6-1-1 was incurred. She stated that 6-1-2 was also incorrect. The definition of Open Space in the LMC does not include private plazas or pool areas.

Ms. Morrison stated that with the proposed updates to the Findings of Fact and the proposed additional Conditions of Approval, East-West Partners would be demonstrating good faith efforts to rectify the compliance issues and obligations of the Flagstaff Annexation and Development Agreement.

Ms. Morrison thanked the Planning Commission for considering the proposed changes and additions prior to approving the application because it would move them in the right direction. If the Commissioners could not make the proposed changes, she would ask them to deny the application for failure to comply with the obligations of the Flagstaff Development Agreement.

Hope Melville was unsure what the East-West developer for this CUP application would argue this evening. Because the public does not have the ability to comment further after the public hearing is closed, she wanted to address a few items in case they come up. Ms. Melville stated that any argument that none of the historic mine sites or structures are on this developer's particular development pod or land is irrelevant. It was never the case in the Flagstaff Annexation Development Agreement that any development should ever occur where there were historic structures or sites. These historic structures or sites were always in the open space of the Flagstaff Annexation area. Ms. Melville further stated that any argument that East-West may have about not being a party to the original Flagstaff Agreement is also entirely irrelevant. This developer obtained its land from the original developers and claims its right of development under the original Flagstaff Development Agreement. There are obligations of historic preservation in the agreement have not been met. Both the rights and the obligations transfer with the land. Ms. Melville stated that this developer claims that the benefits of the 88% open space within the Flagstaff Annexation boundary are to its benefit, but none of that open space is on the developer's development pod or land. Therefore, they cannot disclaim the corresponding obligations that go with that open space and then try to claim the benefits of it for their CUP open space requirements.

Ms. Melville referred to a statement in the Staff report that at their November 7th Work Session, the City Council gave the direction to continue to process individual applications unless compliance issues are specifically identified by Staff or the City Attorney. Ms. Melville pointed out that it has already been discussed that lack of compliance was clearly identified in the Staff report for the Work Session. Ms. Melville was unsure why those were not included in the Staff report for this meeting. At the work session, the City Council specifically noted the serious concerns with the Judge Mining and Smelting structure, and City money will be spent within the next few weeks to stabilize the roof to survive the next winter. Ms. Melville believed there was no dispute that the serious compliance issues under the Flagstaff Development Agreement have been identified.

Ms. Melville urged the Planning Commission not to approve this application without correcting the findings of fact and conclusions of law; and adding the conditions of approval that would move things forward to achieve compliance with the historic preservation requirements of the Flagstaff development agreement by this developer and others who continue to develop. They should not kick the can down the road again. Ms. Melville understood that the City Council intends to take care of it, but she questioned how they would do it. If approved, this developer will not be coming back to the Planning Commission or the City Council. Ms. Melville was skeptical of the representation given that the City could go back to the developers later and request additional money because there was no mechanism for that to occur. Now is the time and she asked the Planning Commission to take it seriously.

Sanford Melville agreed with Sandra Morrison that there were serious deficiencies in the application regarding compliance with the Historic Preservation Plan of the Flagstaff Development Agreement, as was shown in the recent SWCA report. He noted that the SWCA report was not included or discussed in the Staff report for this meeting. He noted that Ms. Morrison had also pointed out deficiencies in the findings of fact and conclusions of law that must be remedied. Mr. Melville did not believe the application could be approved as set forth in the Staff report.

Mr. Melville stated that the findings of fact that Ms. Morrison provided to clarify the current reality regarding compliance with the Flagstaff Development Agreement should be included in the Staff report. The conditions of approval that Ms. Morrison proposed are entirely reasonable and necessary before this application can be approved. Ms. Melville remarked that if the Planning Commission approves the application without any changes, they would be doing what previous Planning Commissions have done for the past 20 years. The only difference is that they would be approving an application knowing that there is an obligation for historic preservation that is being ignored to the detriment of the public.

Mr. Melville stated that the Flagstaff developers are smart business people and they will not voluntarily open their checkbooks for something like historic preservation, even when there is an obligation. The proof is that the City has not applied pressure for 20 years and no checks have been written. Mr. Melville believed the proposed MOA was a classic example of what happens without any pressure. It has been nearly a year and very little progress had been made on the MOA. Mr. Melville asked the Planning Commission to at least add Ms. Morrison's amendment before they consider approving this application.

Ms. Melville had attended the City Council work session and he closed his comments this evening with a comment by Council Member Lynn Ware-Peek at the work session. She said, what has been happening up there for the last 20 years with regard to historic preservation is shameful. Mr. Melville believed her comment summed it up perfectly.

Chair Phillips closed the public hearing.

Mr. Geroux stated that they were not here to argue us against them. They were here for the betterment of Park City and Empire Pass. Mr. Geroux believed they were in compliance.

Tom Bennett did not believe they were that far apart on what they think should happen. However, they were a ways apart on how it will happen and who is responsible.

Mr. Bennett stated that the Flagstaff Development Agreement was very clear on what responsibilities fell to subsequent owners of development parcels in Flagstaff. Section 8.1 of that Development Agreement states, "All successors in interest shall succeed only to those benefits and burdens of this agreement which pertain to that portion of the project to which the successor holds title". Mr. Bennett remarked that there was no question that the Flagstaff Development Agreement runs with the land. There was no question that the historical preservation obligations have not been satisfied. The question is who is responsible. Mr. Bennett stated that the question in evaluating this conditional use permit and plat is whether this applicant is in default in the performance of its duties and obligations under that development agreement. He thought the Development Agreement was very clear in saying that the Master Developer, United Park City Mines and its successors, was responsible for preserving those historical artifacts that were identified in the technical reports and were in place at the time. It was also very clear that it was the responsibility of the Empire Pass Master Owners Association to maintain those structures and historical features moving forward. Mr. Bennett noted that a mechanism was created for doing that, which is the 1% transfer fee. He explained how it was organized. The Master Developer was supposed to stabilize the historic sites because the Master Developer owned the land. Mr. Bennett stated that Sandra Morrison was correct in saying that the historic features are not on developable property. They are on property that was owned by the Master Developer, which is why it was the Master Developer's obligation.

Mr. Bennett stated that if in the past East-West wanted to fix the Judge Mining Building, they could not have done it because it was not their land. Mr. Bennett remarked that the development agreement was thought through and the individual parcel developers had an obligation; and that obligation is to pay money. They pay money through their assessments that they and subsequent owners pay into the Master Association. Money is also paid through the transfer fees. Mr. Bennett stated that when East-West Partners purchased this property in May, they paid over $107,000 in transfer fees. Half of the money went to the City and half went to the Homeowners Association. By the time the applicant completes this project and sell it out, they will have paid approximately $850,000 in transfer fees.

Mr. Bennett stated that in the projects that East-West Partners has developed in Empire Pass over the past years, they have paid approximately $8.5 million in transfer fees. The fact that those transfer fees were not used to repair and maintain these historic preservation sites is not the fault of East-West Partners. They paid the money and the money was available. Mr. Bennett noted that the City and the Empire Pass Master Association had the money but the work was not done. Now the applicant was being asked to wait and to pay to take care of a problem when they have already fulfilled their obligations.

Mr. Bennett remarked that East-West Partners has said they would contribute to the money being raised under the MOA. However, he felt it was wrong to put those types of obligations as conditions of approval because all of the suggested conditions are outside of the control of this applicant. Whether or not the Empire Pass Master Association and the City can come to terms to sign a MOA within the next weeks, months or years, East-West Partners has no control over it.

Mr. Bennett commented on what East-West Partners can control. He stated that if the Planning Commission wanted to add a Condition of Approval that obligates East-West Partners to pay what it agreed to with the MOA, the condition could require East-West Partners to submit a written confirmation that the money will be paid. Mr. Bennett offered another option of having the money paid into an escrow account with the City.

Mr. Bennett clarified that the applicant was not trying to get around the obligation; even though he viewed it as a voluntary obligation.

Mr. Bennett remarked that everyone agrees that historic preservation is important. He pointed out that the City Council kept using the phrase "hold developers hostage." Mr. Bennett stated that this developer has done everything they were asked to do or obligated to do, and in some cases, they have done more. He requested that the Planning Commission allow this application to move forward in the ordinary course so the applicant can obtain the necessary approvals.
Commissioner Hall did not believe anyone was trying to blame this applicant for what has occurred previously. She appreciated that the applicant was working with the City and trying to find a solution. Commissioner Hall clarified that the Planning Commission was perplexed as to how they got to this point and how they could cohesively move forward. It was difficult to manage because there were so many moving pieces. Commissioner Hall stated that her thinking was to brake for a short time to see if they could get some order to create a plan moving forward.

Mr. Bennett agreed that progress has been made, and he acknowledged that "blame" was probably not the right word. Mr. Bennett stated that the applicant could have pushed it a month ago and requested a denial to appeal to the City Council. However, they did not go in that direction because they wanted to take the pressure off the Planning Commission and wait to see what progress could be made. Mr. Bennett believed the discussion with the City Council and the Planning Commissioners who attended was the most positive he has seen in a City meeting for a long time. He thought progress had been made and the road was laid out for how to resolve the issue. In addition, significant financial commitments have been made. At this point he thought it would be unfair to hold up a decision on this project, because progress has been made and this developer was stepping up to do their share.

Commissioner Hall questioned the Findings, but she believed they could reach common ground on some of them. Mr. Bennett referred to Finding 7.4, "The Council will separately consider". He suggested revising the language to read, "The Council considered the compliance matters regarding Technical Reports #5 and #6 at its meeting on November 7, 2019".

Commissioner Hall clarified that she was talking about the findings that Sandra Morrison had proposed. Mr. Bennett thought the applicant could agree to some of the factual things Ms. Morrison had included in her findings. However, he had concerns with all of the conditions of approval that Ms. Morrison proposed. Mr. Bennett was not opposed to adding conditions of approval that were within the applicant's control.

Commissioner Hall suggested that the Planning Commission go through the findings of fact and to see if they could find common ground. In terms of moving forward, she believed they might also be able to find common ground on a condition of approval.

Commissioner Sletten stated that he was on the Planning Commission in 2006, and he had kept a redlined copy of the Amended and Restated Agreement. Commission Sletten had it with him this evening. He read from the document, "All Successors of Interest shall succeed only to those benefits and burdens of this Agreement, which pertains to the portion of the project to which the Successor holds title." Commissioner Sletten believed that language clearly exempts East-West Partners or any other applicant from the issues discussed by Sandra Morrison. However, he believed the meeting on November 7th was an eye-opener for the City Council and he expected to see changes. Commissioner Sletten stated that there was nothing substantive to point to, or anything substantive to put into conditions of approval. He thought it was important to look at the language in the Development Agreement that was approved.

Commissioner Hall was familiar with what Commissioner Sletten had read, but she did not think it was a cut and dried argument. She thought there were gray areas, such as the open space. Commissioner Hall stated that there are certain components that only impact the land this applicant holds title to. However, to say that other things were not intertwined was inaccurate in her opinion.

Commissioner Sletten did not think there was any ambiguity in the language. Chair Phillips agreed with Commissioner Sletten, but he also agreed with some of the points Commissioner Hall had expressed.

Commissioner Kenworthy thought the applicant understood that the Planning Commission wanted to resolve the issues. He recognized that the applicant had offered to contribute $20,000 in addition to the assessment fees and other fees. He now believed the City Council had the cards to move towards the end goal. Commissioner Kenworthy stated that he was not in a position to say whether the applicant was responsible in the gray area debate. He asked how the applicant would propose to help the Planning Commission reach the end goal without a condition of approval.

Mr. Geroux was unsure what Commissioner Kenworthy was asking. Commissioner Kenworthy believed the applicant wanted the economic development of historic preservation for the community, and he asked Mr. Geroux for his thoughts on how they get there. Mr. Geroux was concerned that everyone was grouping everything into one basket. He believed the issues were separate. They cannot take the money from whatever fund its in and help repair these historic structures. Mr. Geroux stated that the applicant can only contribute financial amounts to help accomplish that. He remarked that if he was in charge of the money, the work would be done. The sites would be restored and maintained.

Mr. Bennett believed the only outstanding obligation for this applicant would be to fulfill their obligation to pay the $20,000 they offered. He thought it would be appropriate to add a condition of approval requiring the money to be paid prior to recordation of the plat. If they wanted the money paid sooner, that would be acceptable as well.

Commissioner Thimm did not believed the Historic Preservation Plan Update would even exist if the Planning Commission had not taken the Development Agreement that was put in place years ago under full consideration. Commissioner Thimm noted that the Planning Commission requested the report and asked that a number of things be included with the report. Some items were included; however, they were missing responsibility for each of the pieces, a schedule, and an order of magnitude costs. All of the missing items were requested.

Commissioner Thimm stated that for every matter that comes before the Planning Commission there are delicately written findings of fact, conclusions of law, and conditions of approval. He noted that on some occasions the Planning Commission has amended the written findings and conditions; or added to them; but the changes are minimal. He could not recall ever adding two pages worth of changes to the findings and conditions. Commissioner Thimm stated that he could not support making two pages of changes this evening.

Commissioner Thimm proposed that Finding of Fact 7.3 be amended to acknowledge the fact that the Development Agreement has not been complied with. He also proposed a condition of approval stating that an executed Memorandum of Agreement with all the responsible developers be put in place that includes a responsibility schedule and an order of magnitude of cost for follow-through of all of the preservation outlined by the Historic Preservation Report, prior to issuance of a building permit.

Mr. Geroux asked Commissioner Thimm to clarify the proposed condition. Commissioner Thimm stated that he was proposing that the MOA be put in place and fully executed by all responsible parties prior to issuance of a building permit. It would include all the requirements as outlined by the Preservation Plan; along with a responsibility schedule and order of magnitude of cost.

Mr. Geroux emphasized that it was out of their control. Commissioner Thimm explained that he was saying this application could move forward, and whosever did have the control, would need to be brought to bear prior to the issuance of a building permit. He clarified that he was not saying that East-West Partners was responsible. Commissioner Thimm noted that he had no idea who would be responsible or who owns the land these structures sit on.

Mr. Bennett stated that some of the people who own the land and would be parties to the MOA are competitors with this developer and may not be anxious to move it along quickly. He thought that was the problem with having a condition of approval for this application that is in the hands of other people. Commissioner Thimm stated that these were the conditions under which he could support moving ahead with both applications.

Commissioner Van Dine suggested putting the $20,000 from this applicant in escrow as their contribution to being part of the MOA. Director Erickson thought Condition #27 that was proposed by Sandra Morrison gets to that clause. He stated that the MOA has a six-month time-frame and part of the work in that six months is to make a determination of responsibility and funding sources. There is an inventory of current status, and once the clock starts on the MOA it is up to the City to determine the entire sequence of responsible parties as discussed at the last City Council meeting. It all needs to be determined within the six-month time frame.

Director Erickson thought the proposed Condition of Approval 27 speaks to the payment of the obligation to EPMOA. He pointed out that the Master Developer and responsible party of the Flagstaff Development Agreement is not a party to the MOA. It is a completely independent document that allows independent funding sources to move forward while they try to assign responsibilities. Director Erikson stated that the signatory parties to the MOA are REDUS, Storied Development, and the Empire Pass Master Association. He noted that the Planning Commission could ask this developer to meet the same contributions that other developers were asked to meet.

City Attorney Harrington stated that there have been some misstatements of the record, and he wanted the record to be clear. He clarified that the Staff had not identified compliance issues with regards to the criteria of the MPD nor the CUP criteria to this particular application. He noted that the "Staff" is primarily Planner Ananth and himself. What has been identified is a compliance issue with the Master Development Agreement itself. Mr. Harrington stated that what they chose to do, and recommended to the City Council, and what the Planning Commission agreed to do through the other application, was to condition a different path of enforcement rather than straight enforcement of the Development Agreement through United Park or other parties. They took a different path, which is the Memorandum of Agreement. That is the path to best achieve compliance and what the Staff continues to recommend; as opposed to enforcement of the Master Development Agreement.

City Attorney Harrington thought it was important to make that clarification, because the Planning Commission does not have the authority to do enforcement activity. The Staff and the City Council need to make that decision. The Planning Commission only has the power of this application. When they tie the conclusions of non-compliance, it only regards to this application. Mr. Harrington noted that the Planning Commission has made that argument and they can debate the argument that it is sufficient enough to tie to this application. The Staff disagrees and he disagrees, but the Commissioners could still make that recommendation. Mr. Harrington was not comfortable with an ad hoc request for financial contribution that is not codified in a technical report, a condition of approval, an agreement, or any criteria in the Code. From an integrity perspective, he would not let that dialogue occur. Mr. Harrington thought the applicants, the Planning Commission, and the public had done their best. It was frustrating for all parties and there is no clear responsibility. He thought "shameful" was a tough word in terms of personal responsibility because this was not a result of deliberate malfeasance. Mr. Harrington encouraged the Commissioners to adhere to their authority between the Development Agreement and the criteria of this particular application.

City Attorney Harrington agreed with Mr. Bennett in that they were not that far apart. There are a number of complexities beyond the control of the Planning Commission, the applicant, and the Staff. Mr. Harrington stated that they were doing their best to construct an agreement that has a number of timing complexities and nuances, and they were working those out as quickly as possible.

City Attorney Harrington stated that if the Planning Commission wanted to suggest additional recommendations to the City Council that they were not pleased with as a result of the meeting, they could include that in the condominium plat recommendation. With regards to the CUP, Mr. Harrington was hearing them say there was an issue of compliance with the Development Agreement and for that reason, they were not processing other applications. He encouraged them not to say that because it puts the Commissioners in a problematic situation in terms of what they get out of that result; as well as the likelihood of success and the merits of that. Mr. Harrington stated that at the same time specific developers are moving forward with their projects under a good faith process that has been clear on its face. It has not been held hostage and was a voluntary process to move forward. Mr. Harrington stated that the types of applications that the Staff would recommend are things the Planning Commission deals with all the time when they are able to re-open a Development Agreement. He remarked that the Code gives the City the ability to revisit the terms of the Development Agreement and turn back the clock when certain things happen. The circumstance in terms of the final building after 20 years is not where they should start that discussion on an Administrative permit. He and Jody Burnett have been consistent on that.

Mr. Harrington stated that at some point they cannot continue to play ping-pong with applicants just to achieve the best they can for the public. He remarked that this is what they were trying to balance and the Museum helped with that because they raised thorough research. It put them in a position where the Planning Staff could put together a methodology to prioritize and move forward; and get more compliance than what they believed was achievable through either the original Agreement or an enforcement action.

City Attorney Harrington remarked the Planning Department had laid out a path. He did not think it was fair to accuse people of doing nothing, and he reassured the Planning Commission that things have been getting done. They had to work through complexities and took steps that were not anticipated; but those are resolving and the parties are moving forward. Mr. Harrington stated that the timeline the City Council gave the Staff to return is consistent with a window that holds the REDUS and the Storied plat, which is conditioned, as an end result in terms of building permits for future applicants.

City Attorney Harrington stated that if the Planning Commission intends to ask the applicant to consider additional conditions of approval, he recommended putting them in the condominium plat and sending a representative to the City Council Meeting to make sure the Planning Commission's perspective is considered by the Council.

City Attorney Harrington stated that Commissioner Sletten and Commissioner Kenworthy could verify that the City Council's statement was going to be more blanket about not holding people up, until he opened the door for case by case consideration by the Planning Commission. He did not think it was fair to assess the Staff with some of the allegations that have been made regarding compliance issues.

Commissioner Suesser asked Mr. Harrington to clarify the schedule that he referenced for the Staff to return to the City Council. Mr. Harrington stated that Director Erickson has an immediate work action that is dependent upon access to property; and to proceed regardless of what was originally set forth as a disbursement process for the funds. Director Erickson was directed to immediately make an emergency disbursement to fix the roof on the Judge Building as soon as possible. It does not have a specific deadline, but they were working on it daily in terms of trying to achieve that repair.

City Attorney Harrington stated that the other item was the budget process and the City contribution. The City Council is willing to consider what allocation they could re-appropriate from their half of the 1% towards contributing to the work plan. Mr. Harrington stated that they were also working on finalizing the form and timing of the two additional $20,000 contributions that were offered in advance of that meeting; as well as finalizing additional terms that the City Council and the public has requested prior to bringing the MOA to the City Council for final action. Commissioner Suesser asked when the MOA was scheduled to be finalized. Mr. Harrington replied that it is not currently scheduled, but it is subject to the final deadline. It would be February at the latest, but he hoped it would be by the end of the year.

Commissioner Kenworthy stated that the Mayor had done a great job summarizing the work session. Commissioner Kenworthy agreed that the Planning Commission does not have the purview to negotiate prices. He clarified that he had only asked Mr. Geroux what the applicant would be willing to contribute or had already contributed. He noted that the City Council would be addressing those issues in terms of what is adequate and appropriate for the MOA.

Chair Phillips suggested that the Planning Commission go through the Findings of Fact and Conditions of Approval and make appropriate changes. He thought they could start with adding a condition as suggested by Mr. Bennett regarding the applicant's contribution.

Commissioner Thimm stated that he had not changed his opinion from the changes he suggested earlier.

Commissioner Sletten disagreed with Commission Thimm with respect to Finding 7.3 in the Staff report. He thought 8.1 of the Development Agreement was crystal clear in that it limits the responsibility of the developer to the specific property they are working with. Commissioner Sletten believed the applicant was in compliance with the Development Agreement.

Commissioner Hall disagreed with Commissioner Sletten. While she agreed with Commissioner Thimm, she preferred to strike Finding 7.3 in its entirety.

Commissioner Hall reviewed her own list of proposed changes to the Findings of Fact in the Staff report. She would strike Finding 6.I.2, regarding the open space as the private plaza. Mr. Bennett noted that Finding 6.1.2 simply states that the project has a private plaza and pool area. Under the Code it is considered open space. Commissioner Hall was willing to leave 6.1.2 as written. Commissioner Hall reiterated her preference to strike Finding 7.3 in its entirety because it was unnecessary. Commissioners Thimm, Suesser, and Kenworthy agreed with deleting Finding 7.3. Commissioner Hall suggested revising the language in Finding 7.4 to say the City Council separately considered the compliance issues; removing the wording "will consider", since the meeting had already passed.

Referring to Finding 7.4, Mr. Bennett stated that the MOA draft he had seen only had the City and Empire Pass Master Association as the two parties. REDUS and Storied Development are not signatories to the agreement. Mr. Bennett explained that the Master Association was agreeing to cause REDUS and Storied Development to pay the money.

Commissioner Suesser thought Storied and REDUS were definitely signatories to the MOA. City Attorney Harrington stated that the City contemplates having them execute in conjunction with the funding. However, it was still being decided whether it would be in addendum form or a signature to the actual agreement. Mr. Harrington stated that they did not want to specify that until all the contributions were finalized. Commissioner Suesser asked if the Master Owner was a signatory to the MOA. Mr. Bennett replied that the Master Owners Association is a signatory.

Commissioner Hall thought they could strike Finding 7.4 and just say a work session was held on November 7th and progress was made. She suggested using the wording from Sandra Morrison's proposed Finding 7.9 in lieu of Finding 7.4 in the Staff report. Commissioner Thimm pointed out that 7.9 did not address everything mentioned in Finding 7.4 of the Staff report. He suggested changing the sentence in Finding 7.4 to say that the meeting happened, rather than it will happen. The Commissioners concurred.

Commissioner Suesser did not understand Ms. Morrison's objection to Finding 7.5 in the Staff report. Planner Ananth noted that Ms. Morrison had said the reference to Twisted Branch was irrelevant to this application. Planner Ananth thought it was relevant because it puts finalizing the MOA on Twisted Branch Road on the record. She explained that it states that something is going to be done, even though it is not directly related to this application. The Commissioners agreed to keep Finding 7.5 as written.

Commissioner Hall expressed appreciation to Sandra Morrison for taking the time to write out her proposed Findings of Facts from 7.6 to 7.11. She did not believe it was necessary, but she did not have a strong opinion either way as to whether they should be included. Commissioner Hall thought the statements were accurate but benign.

Commissioner Suesser thought it was a good chronology of what has taken place; especially that the Planning Commission will continue to adjust these applications on a case by case basis. She thought it was good to have a record to look at the history. Commissioner Suesser asked the Staff if Ms. Morrison's proposed Findings 7.6 - 7.11 were appropriate or necessary and should be included.

City Attorney Harrington reiterated that the Planning Commission could forward a recommendation with the Condominium Plat for the City Council to consider the Findings proposed by Sandra Morrison. He thought the Findings were consistent with the Minutes of the City Council meeting since it represents what the City Council did or did not do. Commissioner Thimm favored the suggestion to forward a recommendation with the condominium plat.

Commissioner Hall recalled that Mr. Bennett had suggested language for an added condition of approval. Mr. Bennett stated that the had suggested that the applicant deposit with the City the sum of $20,000 to be used for historic preservation, and that that will occur as a condition to recordation of the condominium plat. Mr. Bennett thought it might be better to send that language in the recommendations with the plat approval rather than as a condition of approval.

City Attorney Harrington asked if Mr. Bennett would consider adding the language to Sandra Morrison's proposed Condition #28 in terms of the proposed best efforts. He added, "To that end the developer agrees to pay the agreed on $20,000 to be used for historic preservation." Mr. Bennet was comfortable with that suggestion. Mr. Harrington recommended that the Planning Commission add that recommendation to the Condominium Plat. Planner Kenworthy pointed out that it would become Condition #26 because #25 was the last condition in the Staff report for the condominium plat.

Mr. Bennett clarified that Mr. Harrington was suggesting putting Condition of Approval #28 from Ms. Morrison's letter into the conditions for the Condominium Plat. If that was the intent, he requested one change. The language reads, "The applicant agrees to use its best efforts to assure that the Master Association will work expeditiously". Mr. Bennett preferred to say "encouraged" because the applicant cannot assure that the Master Association will meet their obligation.

Director Erickson summarized the change to the Findings and Conditions per the discussion this evening. The conditional use permit would be approved in accordance with the Findings of Fact, Conclusions of Law, and Conditions of Approval as modified as follows: Finding of Fact #3 is deleted. Finding of Fact 7.4, the word "will" is changed to "considered". Commissioner Suesser clarified that Finding 7.4 should read, "The Council separately considered the compliance matters regarding Technical Reports #5 and #6."

Commissioner Hall recognized that it was not the consensus of the Planning Commission, but she wanted it on the record that she still preferred to add Findings 7.6

through 7.13 from Sandra Morrison's letter to the CUP; even though it was being proposed with the condo plat.

MOTION: Commissioner Sletten moved to APPROVE the Conditional Use Permit for 7677 Village Way, Lot 2 Village at Empire Pass North Subdivision, the Argent at Empire Pass in accordance with the Findings of Fact, Conclusions of Law as modified by deleting Finding #3 and revising Finding of Fact 7.4. Commissioner Suesser seconded the motion.

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

The Planning Commission discussed the Condominium Plat

Planner Ananth noted that the building plans for the Condominium Plat were attached to the Staff report.

Chair Phillips opened the public hearing on the Condominium Plat.

There were no comments.

City Attorney Harrington noted that prior public comments were part of this record as well.

Chair Phillips closed the public hearing.

Commissioner Hall asked for a summary of the changes per their discussion.

City Attorney Harrington stated that the Commissioners wanted to eliminate Finding #23. Finding #24 was modified to replaced "will" with "separately considered". The language from Condition #28 as proposed by Ms. Morrison and revised by Mr. Bennett to change "assure" to "encourage", and the additional sentence that East-West will pay the $20,000 voluntary contribution prior to plat recordation, would become Condition #9 in the conditions of approval.

Commissioner Suesser asked for the anticipated date of the plat recordation. Director Erickson replied that would take several weeks to go through the City Council and the redlines before it is signed off. Mr. Bennett anticipated approximately 60 days.

Director Erickson suggested that the Planning Commission make the motion as written in the Staff report with the revisions. They should then make a second recommendation that the City Council consider the draft findings of fact, conclusions of law, and conditions of approval as submitted by the Museum on November 13, 2019.

Commissioner Hall reiterated her preference to incorporate all the Findings of Facts in Ms. Morrison's letter.

Commissioner Suesser asked if the City Council needed to approve revisions to the Finding of Fact. City Attorney Harrington stated that the City Council ultimately approves, but the Planning Commission could include the revisions in their recommendation this evening.

Commissioner Suesser had listened to the City Council Work Session and she did not believe the Findings of Fact proposed by Sandra Morrison were inconsistent with the City Council discussion. She was unsure why they were sending it to the City Council. Commissioner Sletten thought it should go to the City Council to make sure the Council agreed that the proposed Findings were consistent with their comments. Commissioner Kenworthy agreed with Commission Suesser that the Findings fall in line with what transpired during the work session.

Commissioner Hall clarified that she wanted to include the Findings from a procedure standpoint. She would like to make it as turnkey as possible and focus on the bigger issues. Commissioner Hall thought everyone could agree on the proposed Findings, and if they were included, the City Council could discuss the higher-level issues as they see fit. Commissioner Kenworthy concurred.

Commissioner Thimm thought it was a lot of information to add to the formally crafted documents. Chair Phillips preferred to keep it the way it was proposed and leave the decision to the City Council. Commissioner Van Dine agreed.

Chair Phillips respected Commission Hall's opinion and he appreciated her stating it for the record.

Commissioner Suesser agreed with Commissioner Hall that it should be included as a helpful chronology and a statement of what actually took place. She thought that was missing from the Findings of Fact in the Staff report, and it is helpful to have that recitation of what happened. Commissioner Kenworthy could not see a downside for not including it.

Mr. Bennett asked if it was possible to keep the motion clean and include a recommendation to the Staff that the Staff include these Findings of Fact in the Staff report for the City Council meeting. Commissioner Kenworthy and Commissioner Thimm thought it was a good suggestion.

Mr. Bennett pointed out that Finding 7.13 needed to be corrected because the last sentence currently states that East-West Partners had not yet committed to providing any funds, and that was inaccurate. Mr. Bennett requested that the last sentence be deleted.

Commissioner Suesser suggested amending the Findings of Fact and the Conditions of Approval to include the Findings proposed by Ms. Morrison, with the revision to Finding 7.13. Commissioner Hall clarified that Condition #28 as proposed by Ms. Morrison would be included, with the revision to change “assure” to “encourage”. She asked City Attorney Harrington to read the last sentence that was added regarding fund. Mr. Harrington read, “East-West Partners will pay the $20,000 voluntary construction prior to plat recordation”.

MOTION: Commissioner Suesser moved to forward a POSITIVE recommendation to the City Council for the Argent at Empire Pass Condominium Plat, based on the Findings of Fact, Conclusions of Law, and Conditions of Approval as found in the Staff report and amended by deleting Finding #23; amending Finding #24 to remove “will” and change “consider” to “considered; to insert Condition #9 to read, “Applicant agrees to use its best efforts to encourage that the Empire Pass Master Owners Association will work to expeditiously complete and continue its preservation and maintenance obligations of the Flagstaff Development Agreement and Technical Reports #5 and #6, and will cooperatively work with the City to achieve actual compliance. In addition, East-West Partners will pay the voluntary contribution of $20,000 prior to plat recordation.” In addition, Findings of Fact 7.13 shall be amended to read, “This applicant, East-West Partners for the Argent at Empire Pass, is not a signatory to the proposed MOA.” Also, to recommend that the City Council include in the Findings of Fact for the Condominium Plat the revised Findings 7.6 through 7.13 as proposed and submitted by the Park City Museum and the Historical Society on November 13, 2019. Commissioner Kenworthy seconded the motion.

Commissioner Suesser amended her motion to delete Finding 7.13. Commissioner Kenworthy accepted the amended motion.

Chair Phillips thought this was a good collaborative effort by everyone in the room and he was proud of what they were able to accomplish. He thanked the applicant for stepping up and the public to help move this forward. Chair Phillips believed they had come a long ways and he hoped in the end the applicant could take pride in the fact that they were a part of this.

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

Commissioner Thimm understood that a number of similar applications would be coming before the Planning Commission. He presumed what occurred this evening will become a template that can be utilized going forward.

Findings of Fact – 7677 Village Way, Lot 2 - CUP

1. Site Location
   A.The Argent at Empire Pass Condominiums is located at 7677 Village Way in the RD-MPD District, within Pod A of the Village at Empire Pass Master Planned Development.
2. Site Zoning
   A. The site is zoned Residential Development (RD) as part of the Flagstaff Annexation and Master Planned Development
3. Controlling Documents
   A. The property was originally part of the Flagstaff Mountain Annexation and Development Agreement approved by City Council per Resolution No. 99-30 on June 24, 1999 and amended on March 2, 2007.
   B. The Development Agreement is the equivalent of a Large-Scale Master Plan. The Development Agreement sets forth maximum project densities, location of densities, and developer-offered amenities for the annexation area.
   C. On July 28, 2004, the Planning Commission approved a Master Planned Development for the Village at Empire Pass (Village MPD) (Pods A and B1) within the Flagstaff Mountain Annexation and Development area. The MPD (known as Mountain Village) was amended to include Pod B2 (Montage). The Mountain Village (Pods A, B1 and B2) was approved for a maximum of 785 UE of multi-family (550 multifamily units) and 16 single family units. A maximum of 60 PUD style units (i.e. Belles, Paintbrush, and Nakoma) were approved as part of the overall multi-family units.
4. Flagstaff Development to Date
   A. To date 534 multi-family units (770.28 UE) (of which 60 are PUD style units) and 16 single family units have been approved, platted and/or built within pods A, B1 and B2 including the subject property.
   B. Constructed lodge style buildings include Shooting Star (Building 2), One Empire Pass (Building 5) Silver Strike (Building 6), Flagstaff (Building 7), Arrowleaf A and B (Buildings 8 and 9). Empire Residences (Building 3) is under construction as, as is the Residences at the Tower (Building 1).
   C. There is sufficient density remaining within the MPD with approximately 14.72 UE remaining.

D. Approximately 572 UE Certificates of Occupancy have been issued for the entire Flagstaff Annexation and Development area (Pods A, B1, B2, and D). According to the Annexation and Development Agreement, 15 UEs of Affordable Housing obligations come due for each 150 UE Certificates of Occupancy. The next Affordable Housing obligation trigger point is 600 UE Certificates of Occupancy, when 60 AUE are required to be complete. As of now 10.675 Deed Restricted UEs are completed and have certificates of occupancy (89 off-mountain and 16.675 on-mountain).

E. One (1) Deed Restricted UE is 800 sf for the Flagstaff Development. As part of the Village at Empire Pass North Subdivision, two (2) on-site deed restricted UEs (1600 sf) are required for this lot. The two (2) deed restricted units total 1611 sf (one unit is 803 sf and one unit is 808 sf).

5. <u>Application</u>

A. On July 22, 2019, the Planning Department received an application for a Conditional Use Permit for a 28-unit residential building to be located on Lot 2 of the Village at Empire Pass North Subdivision.

B. The application was deemed complete on August 22, 2019, following submittal of revised plans.

C. The property is also known as Lot 2 of the Village at Empire Pass North Subdivision, approved by Council in 2017.

D. Lot 2 consists of 87,556 square feet and is currently vacant.

E. The proposed Argent at Empire Pass Condominiums consists of a single multi-story building with 28 residential units ranging from 1,491 sf to 3,779 sf, one 801 sf ADA accessible unit, and two deed restricted units of 808 and 803 square feet respectively.

F. Gross building area is 108,602 sf, of which 63,986 sf is market rate residential condominiums utilizing up to 32 UE, which does not include the two deed restricted units or the accessible unit.

G. Guest amenity areas (arcade/game room, fitness areas, ski lockers, lobby, lounge/après ski room, kids' room and reading room, etc.) are proposed on the basement, first and sixth level. These common residential accessory uses do not require use of UEs.

H. No commercial uses are proposed within this building.

6. <u>Compliance with CUP Criteria</u>

A. Size and location of the site;

1. The size and location of the site comply with the parameters of the VEP MPD and the approved Village at Empire Pass North Subdivision. (15-1-10(E)1).

B. Traffic considerations including capacity of the existing Streets in the Area;

1. The site is accessed from Village Way and Empire Club Drive, private roads that connect to Marsac Avenue, a public UDOT Right-of-Way with sufficient capacity to handle the proposed 28 additional units.
2. A Traffic management plan was approved as part of the Technical Reports for the Flagstaff Annexation and Development Agreement to reduce overall traffic generated from the development.
3. The Empire Pass Master Owners Association operates a transportation system within Empire Pass to reduce traffic along the Empire Pass canyon corridor by providing transportation to owners, guests and visitors staying in Empire Pass.
4. The Transit and Parking Management Plan approved with the VEP MPD also requires a 25% reduction in parking from what would normally be required by the LMC. Based on unit sizes, fifty-two (52) spaces would be required for the 28 units, affordable units, and ADA unit. The 25% reduction rounds up to 39 spaces. The underground parking structure will have 35 parking spaces. Four (4) surface spaces are provided for a total of 39 parking spaces. There is sufficient parking located on site (15-1-10(E)2).

C. Utility Capacity

1. All utilities are available at the site and will be located out of setbacks and screened with landscaping and retaining walls.
2. A final Storm Water Plan is required for review and approval prior to the issuance of a building permit (15-1-10(E)3).

D. Emergency vehicle Access;

1. Access to the property is from Village Way, a private street and emergency vehicle access is sufficient with two access points onto Marsac Avenue. (15-1-10(E)4)

E. Location and amount of off-Street parking;

1. The underground parking structure will have 35 parking spaces. Four (4) surface spaces are provided for a total of 39 parking spaces. There is sufficient parking located on site for the proposed 28-unit building (15-1-10(E) 5).

F. Internal vehicular and pedestrian circulation system;

1. A vehicular drop off area is located in front of the building and pedestrian paths connect the site to existing paths within the Village (15-1-10(E)6)

G. Fencing, Screening, and landscaping to separate the Use from adjoining Uses;

1. Sufficient screening and landscaping separate the use from adjoining uses.
2. A final landscape plan is required as a condition precedent to Building Permit (15-1-10(E)7).

H. Building mass, bulk, and orientation, and the location of Buildings on the Site; including orientation to Buildings on adjoining Lots;

1. This building is one of nine multi-story lodge style buildings that was planned to be clustered within Pod A and orientated along the Silver Strike lift as approved under the Village at Empire Pass North Subdivision in 2017.
2. The VEP MPD sets forth building volumetrics for Building 4 and the proposed building is consistent with both the master site plan and the volumetrics plan.
3. The maximum Building Height in the RD District is 28 feet (33 feet with a pitched roof). A height exception was approved with the Village at Empire Pass Master Plan Development and specific volumetric diagrams were approved for each Building. For Building 4, 25% of the building was permitted to reach up to 74' above existing grade, 55% of the building (central) to reach up to 92' above existing grade, and 20% of the building to reach up to 80' above existing grade.
4. The proposed building complies with the MPD height allowances.
5. The building contains 5 levels of residential units at both ends of the building, and 6 levels of residential units in the central portion of the building. There are visually five and six stories, in addition to the parking level and basement levels.
6. Building articulation and massing are consistent with previously approved lodge buildings and meet the intent of the VEP MPD. The applicant has received Final Design Approval from the Empire Pass Design Review Board. (15-1-10(E)8.

I. Usable Open Space;

1. Both passive and active Open Space are provided in excess of 88% within the Flagstaff Annexation boundary and individual lots were not required to provide open space.

J. Signs and lighting;

1. Signs and lighting must be in conformance with the LMC and the Flagstaff Mountain Resort Design Guidelines. (15-1-10(E)10).

K. Physical design and Compatibility with surrounding Structures in mass, scale, style, design, and architectural detailing;

1. Building articulation and massing are consistent with previously approved lodge buildings and meet the intent of the VEP MPD. The applicant has received Final Design Approval from the Empire Pass Design Review Board. (15-1-10(E)11).

L. Noise, vibration, odors, steam, or other mechanical factors that might affect people and Property Off-Site;

1. All uses except the outdoor plaza area are inside the building and there are no expected impacts on residents, visitors or abutters. (15-1-10(E)12).

M. Control of delivery and service vehicles, loading and unloading zones, and Screening of trash and recycling pickup Areas;

1. Service and delivery are for residential use only as there is no commercial or support commercial uses in the building.
2. Trash is located inside the garage and 4 parking spaces in the front provide for sufficient loading and unloading (15-1-10(E)13).

N. Expected Ownership and management of the project as primary residences, Condominiums, time interval Ownership, Nightly Rental, or commercial tenancies, how the form of Ownership affects taxing entities;

1. The project will be platted as a Condominium and Nightly Rental is a permitted use within the RD zone. (15-1-10(E)14).

O. 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;

1. There are no environmentally sensitive lands within or adjoining the site.
2. The building is located on a sloping lot within Pod A and is appropriate for the topography of the site with the garage below grade (15-1-10(E)15).

P. Review for consistency with the goals and objectives of the Park City General Plan;

1. This property was annexed, zoned, master planned and platted to be consistent with the goals and objectives of the Park City General Plan in providing resort based lodging and guest amenities in close proximity to Deer Valley Resort, affordable housing, reduction in traffic generation, with clustered development in the Village, shuttle service within the development and within Park City, significant open space and trails, as well as attention to mitigation of past and present environmental impacts. (15-1-10(E)16).

7. <u>Compliance with the Amended and Restated Development Agreement for Flagstaff Mountain</u>
    1. The Development Agreement is the equivalent of a Large-Scale Master Plan. The Development Agreement sets forth maximum densities, location of densities, and developer-offered amenities for the annexation area.
    2. The application is in compliance with the location, density, volumetrics, parking, design and affordable housing requirements of the Development Agreement as they apply to this lot, the VEP MPD approved in 2004, and The Village at Empire Pass North Subdivision Plat approved in 2017.

3. On November 7, 2019 the City Council held a Study Session to consider the Historic Preservation obligations of Developers under the Flagstaff Development Agreement and compliance responsibilities.
4. At the November 7, 2019 Study Session, Council was presented with a Planning Department Staff Report which summarized an October 2019 report by SWCA Environmental Consultants titled Historic Preservation Plan Update for Flagstaff Mountain Resort in Park City.
5. The October 2019 SWCA Report and the November 7 Staff Report identified current deficiencies in historic preservation obligations and mitigation and/or maintenance work needed (Nov. 7 Staff Report Tables 2-5 and 9), identified additional suggested historic preservation work needed (Nov. 7 Staff Report Table 6), and found that immediate stabilization was needed on the Judge Mining and Smelting Building before the coming winter.
6. No decisions were made by Council at the November 7, 2019 Study Session and Council stated that the issues would be further addressed at a future work session. However, Council indicated that preservation of the historic mine site structures was a priority for the Council. Also, that applications before the Planning Commission should continue to be addressed on a case-by-case basis.
7. City Council stated at the November 7, 2019 Study Session their desire to proactively work with responsible parties via a new Memorandum of Agreement to achieve compliance with the obligations of the Flagstaff Annexation and Development Agreement and Technical Reports 5 & 6, including continuing maintenance.
8. The currently proposed Memorandum of Agreement (MOA) has not yet been executed and its terms have not yet been finalized.
9. In the currently proposed MOA, developers Storied and REDUS agree in paragraph 3(b) to provide $40,000 each into escrow for costs incurred by the Association to stabilize the Judge Mining and Smelting Building. This amount has not yet been determined to be adequate.
10. This applicant, East West Partners for the Argent at Empire Pass, is not a signatory to the proposed MOA.
11. The Applicant agrees to use its best efforts to encourage the Empire Pass Master Owners Association to work to expeditiously complete and continue its preservation and maintenance obligations of the Flagstaff Development Agreement and Technical Reports 5 & 6 and will cooperatively work with the City to achieve actual compliance.
12. Prior to Plat recording, the applicant has agreed to voluntarily contribute $20,000 to Historic Preservation efforts in the Flagstaff Development Area, to be held in escrow by the City.

8. Other Findings of Fact
    1. The building complies with RD District zone setbacks maintaining a 20' front setback, 12' side setbacks and 15' rear setbacks. LMC exception to the side yard setback allows screened mechanical equipment to have a five-foot setback from the Side Lot Line.
    2. A Master Homeowners Association document and Maintenance Agreement for the Mountain Village were reviewed and approved by the City prior to issuance of building permits for buildings within the Mountain Village. This property is also subject to these documents, in addition to any declaration of condominium and CCRs recorded with the condominium plat.
    3. Excavated soil will remain within the Flagstaff Annexation area as required by the Annexation Agreement with a location to be identified on the final Construction Mitigation Plan submitted with the building permits.
    4. The property is part of a common development that exceeds one acre and thus has MS4 requirements to meet.

Conclusions of Law – 7677 Village Way, Lot 2 - CUP
1. The application, as conditioned, is consistent with the Village at Empire Pass Master Planned Development and Flagstaff Mountain Resort Master Planned Development, the Park City Land Management Code, and the General Plan.
2. The proposed CUP, as conditioned, will be compatible with the surrounding structures in use, scale, mass and circulation.
3. The effects of any differences in use or scale have been mitigated through careful planning.

Conditions of Approval – 7677 Village Way, Lot 2 - CUP
1. All standard conditions of approval apply to this Conditional Use Permit.
2. This Conditional Use Permit shall expire one year from the date of Planning Commission approval if a building permit has not been issued prior to this date, unless an extension is requested in writing prior to expiration date and the extension is granted by the Planning Director.
3. Final building plans and construction details submitted with the building permit application shall substantially comply with the plans reviewed by the Planning Commission on November 13, 2019.
4. A final water efficient landscape and irrigation plan that indicates required storm water facilities and snow storage areas, and that meets the defensible space requirements and mitigates for removal of significant vegetation, shall be submitted with the building permit application for approval by the Planning, Building, and Engineering Department, and shall be in substantial conformance with the plans reviewed by the Planning Commission on January 10, 2018.

5. All exterior lights must conform to the City lighting ordinance and the Flagstaff Mountain Resort Design Guidelines. Final compliance with the City's Lighting Ordinance will be verified at the time of building permit plan review and prior to issuance of a certificate of occupancy. Exterior lighting shall be shielded and down directed.
6. All exterior signs require an approved sign permit prior to installation.
7. Materials, color samples and final design details shall be approved by staff prior to building permit issuance and shall be in substantial compliance with the elevations reviewed by the Planning Commission on October 9, 2019.
8. All exterior mechanical equipment shall be located out of required setbacks and screened and shielded from public streets. Screening with landscaping and fencing/grating materials is allowed. All wall and roof top vents and protruding mechanical shall be painted to match the adjacent wall or roof to minimize impacts on public view.
9. All utility facilities must be located on site, unless specific easements have been provided on the recorded plat. A plan must be provided at the time of the building permit application showing all utility locations, including dry utilities. The applicant shall provide verification that the utility plan is viable and the utility boxes can be screened with landscaping and/or fencing.
10. The applicant shall record a Condominium Plat for the site prior to selling individual units.
11. Utility and grading plans, including storm water drainage plans, must be approved by the City Engineer prior to Building Permit issuance.
12. Affordable housing provided with this Conditional Use Permit shall comply with all requirements of the City's affordable housing resolution in effect at the time of the Development Agreement. The affordable units shall be indicated on the final condominium plat prior to recordation of such plat and shall be completed prior to issuance of a certificate of occupancy for the building.
13. Deed restrictions for the two (2) EHU units, approved by the City in accordance with the applicable Housing Resolution, shall be recorded prior to plat recordation. The deed restrictions shall outline and resolve any issues or concerns that may have come up on other affordable units platted as private. The plat shall note that the EHUs are subject to a deed restriction.
14. The CCRs shall limit the HOA dues related to the deed restricted employee housing unit (EHU) in order to ensure the Unit remains affordable. The CCRs shall reflect a lower par-value to reflect the reduced cost of the unit (or exempt the unit from HOA fees) to ensure that the unit doesn't lose its affordability due to HOA fees.
15. The CCRs shall be submitted with the condominium plat for review and approval by the City prior to final condominium plat recordation.

16. All conditions of approval of the Village at Empire Pass MPD shall continue to apply.
17. All conditions of approval of the Flagstaff Annexation and Development Agreement shall continue to apply, including the restrictions on solid wood burning fireplaces, removal of excavated materials, construction of pedestrian connections to the transit hub within the Village, and provision of any required ADA and affordable housing units.
18. A Final Construction Mitigation Plan (CMP) shall be submitted for approval by the Planning, Building, and Engineering Departments prior to issuance of a building permit. The CMP shall indicate where and how excavated soils will be hauled and/or stored, hours of construction, truck routes, phasing of construction, road closures, and other items required by the Building Department.
19. Interior fire sprinklers are required for new construction and shall meet requirements of the Chief Building Official at the time of review of the building permit.
20. The property is located within a water source protection zone. All sewer construction must comply with State of Utah drinking water regulations.
21. All requirements and conditions of the Snyderville Basin Water Reclamation District shall be met prior to building permit issuance.
22. The deed restricted units shall be a minimum of 800 sf to meet the plat note requirement of 2.0 EUEs for this lot. One EUE is equivalent to 800 sf according to the Development Agreement.
23. The plat shall note that this development is part of a common plan development and an MS4 storm water permit is required for all land disturbance activities, prior to building permit issuance.
24. Prior to building permit issuance, the applicant shall verify that capacity exists in the existing detention pond utilized by Pod A and shall demonstrate that sufficient run-off will remain on site to support existing tree stands.
25. Development of this property is subject to the conditions of approval, plat notes, easements and restrictions of the Village at Empire Pass North Subdivision plat.

<u>Findings of Fact – 7677 Village Way, Lot 2 – Condominium Plat</u>

1. The property was originally part of the Flagstaff Mountain Annexation and Development Agreement approved by City Council per Resolution No. 99-30 on June 24, 1999 and amended on March 2, 2007.
2. The Development Agreement is the equivalent of a Large-Scale Master Plan. The Development Agreement sets forth maximum project densities, location of densities, and developer-offered amenities for the annexation area.

3. On July 28, 2004, the Planning Commission approved a Master Planned Development for the Village at Empire Pass (VEP MPD) (Pods A and B1) within the Flagstaff Mountain Annexation and Development area. The MPD (also known as the Mountain Village) was later amended to include Pod B2 (Montage and B2 East).
4. The Mountain Village (Pods A, B1 and B2) was approved for a maximum of 785 UE of multi-family (550 multifamily units) and 16 single family units. A maximum of 60 PUD style units (i.e. Belles, Paintbrush, and Nakoma) were approved as part of the overall multi-family units.
5. To date 770 UEs and 16 single family units have been platted and/or built including the Argent at Empire Pass Condominiums.
6. Constructed lodge style buildings include Shooting Star (Building 2), One Empire Pass (Building 5), Silver Strike (Building 6), Flagstaff Lodge (Building 7), Arrowleaf A and B (Buildings 8 & 9). Empire Residences (Building 3) and the Condominiums at the Tower (Building 1) are currently under construction.
7. There is sufficient density remaining within the VE MPD for the proposed 28 units (32 UE).
8. 572 UE certificates of occupancy have been issued for the entire Flagstaff Annexation and Development area (Pods A, B1, B2, and D). According to the Annexation and Development Agreement, 15 AUE of affordable housing obligations come due for each 150 UE certificates of occupancy. The next housing obligation trigger point is 600 UE certificates of occupancy, when 60 AUE are required to be complete. As of now 105 affordable units are completed and have certificates of occupancy (89 units are off-mountain and 16 units are on-mountain).
9. As part of the Argent at Empire Pass Condominiums CUP 2.0 AUE (1600 sf) is required by the subdivision plat for this lot. The affordable units consist of an 808 sf studio and a 803 sf one bedroom unit designated as private area and can be sold as an affordable unit or used for long term rental to qualified workers consistent with the Flagstaff Housing Mitigation Plan and applicable housing resolutions.
10. On July 22, 2019, the Planning Department received an application for a both a Condominium Plat and a Conditional Use Permit for a twenty-eight (28) unit residential building to be located on Lot 2 of the Village at Empire Pass North Subdivision. The applications were deemed complete on August 22, 2019 and are currently under review by the Planning Commission.
11. The property is located at 7677 Village Way and is known as Lot 2 of The Village at Empire Pass North Subdivision, approved by Council on June 15, 2017.
12. Access to the property is from Village Way, a private street.
13. Lot 2 consists of 2.01 acres or 87,556 square feet and is currently undeveloped.

14. The property is subject to subdivision plat notes that require compliance with the Flagstaff Annexation and Development Agreement, approval of a Conditional Use Permit for each lodge building prior to issuance of a building permit, a declaration of condominium and a record of survey plat prior to individual sale of units, membership in the Empire Pass Master HOA, a 20' snow storage easement along the street frontages, water efficient landscaping, and various utility and maintenance provisions.
15. The proposed condominium plat memorializes the density, size and configuration of units to be construction in one phase and identifies areas of private, common and limited common ownership.
16. The condominium plat identifies 28 private residential units totaling 63,993 sf, utilizing up to 32 UE. The units range in size from 1,506 sf to 3,927 sf. The 801 sf ADA accessible one-bedroom unit is identified as common area. The 815 and 803 sf deed restricted units are identified as private area.
17. No commercial uses are proposed in the building.
18. Based on the unit sizes, a minimum of 39 parking spaces are required when taking into consideration the 25% parking reduction required by the Flagstaff Development Agreement and MPD.
19. An underground parking structure provides 35 parking spaces, including 2 ADA spaces, as well as limited common storage areas for some unit. Four surface spaces are provided for a total of 39 parking spaces.
20. All parking spaces will remain Common Area on the Plat but each unit will be assigned one stall and the rest will be kept as common usage.
21. The plat is consistent with the approved Village at Empire Pass Master Planned Development and the Empire Residences Conditional Use Permit in terms of density, height, uses, setbacks, and parking.
22. The application is in compliance with the location, density and affordable housing requirements of the Development Agreement as they apply to this lot, the VEP MPD approved in 2004, and The Village at Empire Pass North Subdivision Plat approved in 2017.
23. On November 7, 2019 the City Council held a Study Session to consider the Historic Preservation obligations of Developers under the Flagstaff Development Agreement and compliance responsibilities.
24. At the November 7, 2019 Study Session, Council was presented with a Planning Department Staff Report which summarized an October 2019 report by SWCA Environmental Consultants titled Historic Preservation Plan Update for Flagstaff Mountain Resort in Park City.
25. The October 2019 SWCA Report and the November 7, 2019 Staff Report identified current deficiencies in historic preservation obligations and mitigation and/or maintenance work needed (Nov. 7 Staff Report Tables 2-5 and 9), identified additional suggested historic preservation work needed (Nov. 7 Staff

Report Table 6), and found that immediate stabilization was needed on the Judge Mining and Smelting Building before the coming winter.

26. No decisions were made by Council at the November 7, 2019 Study Session and Council stated that the issues would be further addressed at a future work session. However, Council indicated that preservation of the historic mine site structures was a priority for the Council. Also, that applications before the Planning Commission should continue to be addressed on a case-by-case basis.
27. City Council stated at the November 7, 2019 Study Session their desire to proactively work with responsible parties via a new Memorandum of Agreement to achieve compliance with the obligations of the Flagstaff Annexation and Development Agreement and Technical Reports 5 & 6, including continuing maintenance.
28. The currently proposed Memorandum of Agreement (MOA) has not yet been executed and its terms have not yet been finalized.
29. In the currently proposed MOA, developers Storied and REDUS agree in paragraph 3(b) to provide $40,000 each into escrow for costs incurred by the Association to stabilize the Judge Mining and Smelting Building. This amount has not yet been determined to be adequate.
30. This applicant, East West Partners for the Argent at Empire Pass, is not a signatory to the proposed MOA.
31. The Applicant agrees to use its best efforts to encourage the Empire Pass Master Owners Association to work to expeditiously complete and continue its preservation and maintenance obligations of the Flagstaff Development Agreement and Technical Reports 5 & 6, and will cooperatively work with the City to achieve actual compliance.
32. Prior to Plat recording, the applicant has agreed to voluntarily contribute $20,000 to Historic Preservation efforts in the Flagstaff Development Area, to be held in escrow by the City.
33. A Residences at the Tower Condominiums Plat Condition of Approval requires finalizing that MOA prior to the recordation of the Twisted Branch Road Subdivision Plat.
34. A Master Homeowners Association document and Maintenance Agreement for the Mountain Village were reviewed and approved by the City prior to issuance of building permits for buildings within the Mountain Village. This property is also subject to these documents, in addition to any declaration of condominium and CCRs recorded with the Condominium Plat.
35. The condominium plat allows for the sale of individual units.

<u>Conclusions of Law – 7677 Village Way, Lot 2 – Condominium Plat</u>

1. There is good cause for this Condominium Plat.

2. The Condominium Plat is consistent with the Park City Land Management Code and applicable State law regarding condominium plats.
3. Neither the public nor any person will be materially injured by the proposed Condominium Plat.
4. Approval of the Condominium Plat, subject to the conditions stated below, does not adversely affect the health, safety and welfare of the citizens of Park City.

<u>Conditions of Approval – 7677 Village Way, Lot 2 – Condominium Plat</u>

1. The City Attorney and City Engineer will review and approve the final form and content of the amended Condominium Plat 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 Condominium Plat 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 request for an extension is submitted in writing and approved by the City Council.
3. Conditions of approval of the Village at Empire Pass Master Planned Development (MPD) and Empire Pass Lot 2 Conditional Use Permit (CUP) apply to this Plat and a note shall be added to the Plat prior to recordation referencing that Conditions of Approval of the Village at Empire Pass MPD, Village at Empire Pass North Subdivision, and Empire Pass Lot 2 CUP continue to apply to this Condominium Plat.
4. All applicable recorded public utility and access easements shall be indicated on this Condominium Plat prior to recordation.
5. The deed restricted housing units shall be a minimum of 815 and 803 sf respectively, to meet the plat note requirement of 2.0 AUE for this lot. One AUE is equivalent to 800 sf according to the Development Agreement.
6. Deed Restrictions for the restricted units, approved by the City in accordance with the applicable Housing Resolution, shall be recorded prior to Plat recordation. The deed restrictions shall outline and resolve any issues or concerns that may have come up on other affordable units platted as private. The Plat shall note that the EHU is subject to a deed restriction.
7. The CCRs shall limit the HOA dues related to the deed restricted employee housing units in order to ensure the units remains affordable. The CCRs shall reflect a lower par-value to reflect the reduced cost of the unit (or exempt the unit from HOA fees) to ensure that the unit doesn't lose its affordability due to such fees. The CCRs shall be submitted with the Condominium Plat for review and approval by the City prior to final Condominium Plat recordation.
8. The ADA unit shall be platted as Common Area.

9. The applicant has agreed to voluntarily contribute $20,000 to Historic Preservation efforts in the Flagstaff Development Area, to be held by the City in escrow prior to the recordation of the Plat.

The Planning Commission Meeting adjourned at 10:00 p.m.

Approved by Planning Commission: ____