

PARK CITY MUNICIPAL CORPORATION
PLANNING COMMISSION MEETING MINUTES
COUNCIL CHAMBERS
MARSAC MUNICIPAL BUILDING
NOVEMBER 8, 2017

COMMISSIONERS IN ATTENDANCE:

Chair Adam Strachan, Melissa Band, Preston Campbell, Steve Joyce, John Phillips, Laura Suesser.

EX OFFICIO: Planning Director, Bruce Erickson; Francisco Astorga, Polly Samuels McLean, Assistant City Attorney, Jody Burnett, Outside Counsel

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REGULAR MEETING

ROLL CALL

Chair Strachan called the meeting to order at 5:35 p.m. and noted that all Commissioners were present except Commissioner Thimm, who was excused.

ADOPTION OF MINUTES

October 25, 2017

Commissioner Campbell referred to the first paragraph on page 69, and changed the second Commissioner Campbell in the sentence to correctly read, **Commissioner Band**. The sentence should correctly read, "Commissioner Campbell suggested that Commissioner Band read LMC...." He believed he was responding to a question Commissioner Band has regarding the deck. Commissioner Band concurred.

MOTION: Commissioner Joyce moved to APPROVE the Minutes of October 25, 2017 as amended. Commissioner Phillips seconded the motion.

VOTE: The motion passed unanimously.

PUBLIC COMMUNICATIONS

There were no comments.

STAFF/COMMISSIONER COMMUNICATIONS AND DISCLOSURES

Planning Director Bruce Erickson stated that the Staff was preparing the agendas for the next two months.

Chair Strachan congratulated Steve Joyce on winning the election to City Council. He stated that Commissioner Joyce would be greatly missed on the Planning Commission,

and it has been a pleasure working with him. Chair Strachan also congratulated Andy Beerman on being elected as City Mayor.

CONTINUATIONS (Public Hearing and Continue to date specified.)

1000 Ability Way – National Ability Center (NAC) Conditional Use Permit for Phase 1 improvements including: expansion of equestrian center, addition to administration building, new recreation building, relocation and improvements to archery pavilion, improvements to outdoor riding arena, campground area for program participants, green house for gardening activities, addition to storage areas and maintenance shop, additional parking and various landscaping improvements. (Application PL-17-03436)

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

VOTE: Commissioner Band moved to CONTINUE 1000 Ability Way, National Ability Center Conditional Use Permit for Phase 1 Improvements to November 29, 2017. Commissioner Band seconded the motion.

VOTE: The motion passed unanimously.

REGULAR AGENDA - DISCUSSION/PUBLIC HEARINGS/ POSSIBLE ACTION

NOTE: The Treasure Hill portion of the Minutes is a verbatim transcript.

1. Treasure Hill Conditional Use Permit, Creole Gulch and Town Lift Mid-station Sites – Sweeney Properties Master Plan (Application PL-08-00370)

Chair

Strachan: Francisco, how are we going to tackle it this evening?

Planner

Francisco

Astorga: Thank you. What I, what we would like to do is pretty much start where we left off last---two meetings ago, two weeks ago, where the Planning Commission requested specific information to be prepared by Staff. So I do have a presentation that was not included in the packet for you, as we needed the extra time to complete some of the analysis or, or presentation. So on page 73 of your packet we have this list of items, specifically from that October 25, 2017 meeting. We would like to start

with that. Then I would like to move on and address the eight items specified in the Staff report. And then we'll let the applicant provide their presentation.

Chair
Strachan: Sounds good.

Planner
Astorga: So to start out, I do need to let you know that we sent you an email Monday to let you know that the applicant submitted a position statement Friday after we closed the shop down, so we were not able to hyperlink those exhibits on the Staff report. However, we were able to on Monday place them on our website. And, obviously, we sent you those specific hyperlinks that is a total of 273 pages in the form of a position paper, plus Exhibits A through G, that they presented Friday evening.

We also wanted to let you know that we only received one public comment in this last two-week period. We also did receive it late Friday. That one came in about 6:30 p.m. However, have placed it on our website where we have all of our public comments.

The applicant, they can come up to the front table if they wish at this time. That's fine with me. Maybe they don't have a presentation for us tonight.

So, going on page 73, the Planning Commission requested a Construction Staging Timeline. That has not been presented or submitted by the applicant. It was not included in the supplemental information that came in late Friday.

Applicable Code Timeline. We created a short section about that. I believe Commissioner Campbell had questions about that, and that's been addressed in the Staff report. You guys, the Planning Commission, does a wonderful job always reading all the packets, so I don't want to go into detail in that specific section, unless you have any questions for Staff on that.

Moving on to the Area Building Elevations that were not included in the packet, that was Commissioner Phillips. And I would like to go into presentation mode for that. It is one quick exhibit, and we have been working on that presentation over the weekend, even as late as today. So it is not available online yet. We will go ahead and place it online so the

public has access to it. If you let me find it real quick. Give me a second. Oh, it's right here. This is just for reference. Just, it's just the site plan for Refinement 17.2. The next exhibit is the concept depicted in the Master Plan. So we talked about the five cross sections that were provided. The specific request by the Planning Commission was to provide an area of each cross section. That's this next exhibit. I will be more than happy to zoom in and out of these. I do apologize for the yellow markings on it. That's just the annotation software that we use.

In order for me to come up with these calculation, I had to use two different software packages that the City has for us. I just---I do need to let you know that we are not a professional architectural firm. We are a public planning agency. And I am semi-limited by resources and budget associated with the type of exhibit that I can provide. So I just wanted to let you know that. However, these numbers are accurate.

So I believe the intent of this request was to see the area. It is a square footage calculation of each square footage, which does not translate to volume in any shape or form. It simply allows the Planning Commission to start comparing above and below areas. And obviously, wherever that cross section was picked, that, that would change the specific area.

So I, I would love for this part of the presentation to be an interactive section. You could, you could, as you know---please, you can stop me at any time with any given question.

So we start off by showing you the first cross section, which is B. These cross sections go from left to right on the Master Plan. In other words, they go from south to north within the site. This is Section B, which would be the Mid-Station site. And these are the two calculations. And obviously I was able to add them together just for you to have that, that idea of, of your request that you had two weeks ago.

Commissioner

Joyce: When, when you say natural grade, just for clarification, are you talking about the original grade or the finished grade?

Planner

Astorga: Thank you for that clarification. And we spent some time discussing this two weeks ago. This is the original grade as we provided that entire height, height analysis with the specific boxes. So this original grade.

Commissioner

Joyce: Okay, thank you.

Planner

Astorga: So I'm going to just go ahead and move on to Section A, just to the other side. Again, the yellow boxes they don't mean anything. The yellow tiny dots. Where we've got about 7500 above natural grade on Section A and just under 1500 below grade.

Commissioner

Phillips: Francisco?

Planner

Astorga: Yes.

Commissioner

Phillips: What the, the black hashed line?

Planner

Astorga: Those are the associated, I believe those are the associated height parameters. I can go back to the presentation from two weeks ago to confirm that.

Commissioner

Phillips: Oh, okay.

Planner

Astorga: That we had the specific colors on them. But those were---actually no. I think, I think that the height parameter as indicated here, the height restriction, is the one that goes on that angle that follows the natural grade that Commissioner Joyce just talked about. I believe those are other portions of the building beyond that, that section.

Commissioner

Phillips: Oh, okay. Beyond. Okay.

Planner

Astorga: And, and David Eldredge is here. He is an architect and he can confirm that. I believe that's what those dashed lines are.

Commissioner
Phillips: Okay.

Commissioner
Joyce: And one last question, just to confirm what we're looking at. So when you talk about square footage you're literally just, you've taken a slice through a building or a set of buildings. And this is a view from the side of how much of it square footage wise of that slice would be below ground and above ground.

Planner
Astorga: Correct. I believe that was what the Commissioner requested two weeks ago. It's just the area of this, of this shape in essence. Oh, I need to grab it. No, I can't grab it on this one. But it's, it's that shape. It's that area of that shape.

So if you don't mind, we're going to move on to Creole Gulch site. First is Section E, with the almost 14,000 and the 3800 below. Again, we're going from left to right on the Master Plan from south to north. And I've got the site plan here to just give you a quick idea. Again, all these sections have the maximum elevation. After a specific given point, they were given that height parameter. We move on to Section D, which is about the middle of the Creole Gulch site. And then we move on to Section C. This is the one closest, I guess, to the neighborhood on Lowell Avenue.

We're going to go ahead and move on. And we can come back to these at any given point, but I do believe that that satisfies that specific Planning Commission request that we had two weeks ago.

Commissioner
Phillips: And you'll be putting that on the---

Planner
Astorga: I will be putting this entire presentation, this set of PDF's on our website.

Commissioner
Phillips: Okay. Thanks.

Planner

Astorga: The next one. The, the Planning Department was requested to do a comparison of 17.2 with the Master Plan concept. And I know you can't read these, but I, I blow these up so we can---I zoom in. I don't blow---I, I zoom in just a little bit. But we did, we did this exercise when it came, when it came to 17.2 refinements.

We're going to move on to the next exhibit. So here are the five cross sections that I was just discussing. The one is red is the one that, is the one that we're going to talk about right now. Let me make that just a little bit bigger. As I said, from left to right, from south to north. So this is Mid-Station. These are the measurements that I got from natural grade down to that excavated level. In fairness this---I don't believe this anticipated any sort of footing and foundations, the same way that the other drawings, the 17.2 did not. And we're going to see them side by side in just a little bit.

This is the closest cross section that I could find related to this one found in the Master Plan. So just so you know, these cross sections are not at the exact same locations. They're not because the site plan is not identical to the concept from the Master Plan. So this is the closest one. As you can see on their site plan, it shows the location of this cross section on the Mid-Station site.

The next exhibit is exactly the same exhibit you just saw, but we just zoomed in a little just so we can read the numbers a little bit. This is Section S1. And then the next exhibit is both cross sections compared. I do apologize that they're mirror images as far as the cross section. Unfortunately, the plans that were submitted in the 2009 set went the exact opposite direction of the cross sections that were produced with the Master Plan. And the other thing you need to understand is that these two exhibits are not to the same scale. However, the measurements found in these exhibits are accurate, as they were both produced in its own image or scale, which I then had to combine them in one exhibit so you could see it side by side. I believe this is what the Planning Commission also requested two weeks ago.

As we go through this exercise, please note that the Master Plan concept had only five cross sections. The applicant in this, in their 2009 and in their Refinement 17.2 submittal provided nine cross sections. So I had to pick the one closest to it. And we'll go through the next one. This is one

of five. If you need to stop me, you can. Here's the next one on Mid-Station, Section A. Here we have with the 26 and the 24 feet. And then we have the closest cross section that we could find---building section, I'm sorry, that we could find from their plans. We zoom in on Section 17.2, and then we have the comparison.

Director
Erickson: So, Francisco, just to help the Commission, what is the height that you're comparing it to on Version 17.2?

Planner
Astorga: The, the purpose of this exercise, or I think that the purpose, why it was requested, was to show the difference from, for example, the 24 and the 26 at this specific section, versus the 86 feet from natural grade that is currently being proposed.

Director
Erikson: So recognizing that the concept that is part of the Master Plan Development is a concept, and we're, we're finding compliance with that. Right now, what Francisco is illustrating is the difference between what was in the concept, recognizing excavation for footings and foundations, and this and that and the other thing, goes from 24 to, in this case, 84.

Planner
Astorga: 86.

Director
Erickson: 86. So that's kind of what's going on in these drawings. They're not well refined at this point because we're dealing with technology from 1985 and the newest technology in 2017. But it will give you an idea of the differential between the two concepts. Thank you, Francisco. I'm sorry.

Planner
Astorga: That's okay. We're going to move on to, actually, this one. I could not find one to compare as 3, again, 5 and 9. So we move on to the next one. This is Section E. Now we move on to the Creole Gulch site. And here, as I said during our meeting two weeks ago, most of the bulkiness of these buildings was towards the front of them. As you can see, if you're in a concept similar to this, you could have a door right here on this second to last, or last level here, and you'd be walking out to natural grade, or existing grade.

We're going to move on to the comparable building section, S4. And, and these numbers in red that you saw, that you see here on the bottom, these were the same numbers that I provided to you two weeks ago. This is the exact same presentation. We just added up on it. And then we have the side by side. I do want to spend one minute on this one to show the difference here. As indicated on the---I'm going to go back to the, the site plan. And I did mention this. We did mention this two weeks ago. This site plan had a ski run going through two buildings, literally. Through here and here. We can see that in the cross section, which was indeed a small opening. I don't disagree with that statement. In this scenario here, the buildings were pushed towards both sides. It created a bigger, and I would even say safer, ski run through it. But that's why we now have two separate buildings on this comparable building section instead of one, with that ski run going through it. And you can see that box about right here.

We're going to move on. I don't believe we had a good one for S5. Now we go to Section D. As I said, substantial amount of bulkiness and mass towards the front. And, and I say this at every meeting, this was a concept and this was an unmitigated concept. Now we're going through the conditional use permit to mitigate any detrimental impacts. Same thing with the ski access going through the building.

Commissioner
Band: Francisco?

Planner
Astorga: Yes.

Commissioner
Band: I do have a question. When we're talking on the Woodruff plan, you were saying it doesn't make allowances for footers. How much---

Planner
Astorga: I'm sorry, I didn't---

Commissioner
Band: Sorry. When it's, when you're saying on the Woodruff plans earlier, where it's not making any allowances when we're looking at the depth of excavation for the footers.

Planner

Astorga: No, no. All I'm saying was that in the Master Plan, and also in the submitted set of plans, they're not showing me the footings and foundations.

Commissioner

Band: Footings and foundations. Right.

Planner

Astorga: Correct.

Commissioner

Joyce: For either of them.

Planner

Astorga: For either. For either one.

Commissioner

Band: Okay, okay. Then it's apples and apples. Never mind. I misunderstood.

Planner

Astorga: This section, S6. And then we have the same comparison for both buildings. And once the Commission is ready. I, I see two Commissioners intensely looking at this one. We're going to move on to the next one. S7. We could have used one for this one comparative, but we chose to use the one closest to the residential neighborhood. And we could use them both, but this is the last one that we have towards the north, Building Section C. And, obviously, it---not that much towards the rear. And substantial or a lot towards the very, very front. And we believe that's why they colored it in red. We went over this two weeks ago to indicate underground or below grade. And then we had the building section here closest to Lowell Avenue neighborhood. We zoom in. And then we have the comparison. The difference between this building and the other two on the Master Plan is that this one didn't have that ski run going through the building. This is just another cross section that, that they submitted.

So we truly hope that this was the comparison document that the Commission was looking for. Specifically, it was indicated a side by side

comparison. So if, if this is not what the Commission meant, I apologize about that and we'll get on it.

The next item on our bullet list, page---I'm still on page 73, is an excavation height analysis compared to each percentage, as indicated on the Master Plan. That one we will owe you that specific analysis. We're working on that. So that, that one we're marking that we're still working on that.

Next on our list is the Limit of Disturbance Building Area Boundary. Our official recommendation on that, and we drafted a section that was indicated in our Staff report. I'd like to leave that one for discussion as we get into the, the Staff report.

The next item on our bullet list is the Updated Constructability Report in writing from the applicant. We have not received it as it was requested by the Planning Commission, as they had a presentation on that about a month ago. I could be wrong on that date. We have not received that and it was not included in their supplemental packet of information that came in Friday.

The next item is the Employee Housing Update. We wrote a section on that and we'll be more than happy to get into that.

The last one is an Excavation Soils Expansion. And on that one we're looking at the updated version of the update. I say it like that because the applicant, I want to say that in maybe April or May, submitted an updated constructability assessment report, which then updated it again towards the end of June of this year, specifically to address Refinement 17.2. And that was the last version that, that we received. So we're still waiting on, on that component.

And then to wrap up our list of items as discussed during that last meeting was the phasing plan and the revegetation plan. We have not received that.

Those are the items that was the list that we compiled as specific items that needed to be reviewed by the Planning Commission. If we missed anything, please let us know. But we believe that that was a complete list.

Going on to the Staff report. For the audience following along, we're on page 74. The next section of the Staff report we simply outline major items of concern that Staff has in items 1 through 8. The first one we tried to get a little bit more organized in terms of the density and the size of the development. I don't believe that we have anything new that we didn't show you on our October 11th, 2017 Staff report. If you have any questions on, on this section, please let me know. But I do want to jump to page 78. I don't want to repeat the analysis word for word, but on page 78 I do want to outline a quick mistake that we made in the text. Item A.

Well, let me, let me go, back up and read at the top of the page, does the Planning Commission agree with this analysis? Staff finds that the specific square footage can be reduced to (a) meet the Master Plan, not, not just the master limitation. But that, that's meant to say meet the Master Plan limitation. So I just wanted to say that so we can get that on the record. That's what we meant on that.

So, we are repeating this question, even though I believe that the Planning Commission already answered the specific topic, which what we heard was that you were in consensus with the Staff analysis. I don't want to put words in your mouth, but I believe we've already asked you that question and you've already addressed it. We just wanted to put that in the Staff report as that's still an area of concern that, that Staff has.

The next one, it's a short section. It's regarding the excavation deviation. As we had our presentation two weeks ago, we have our follow-up presentation today, which is we find a substantial deviation from the Master Plan concept. The same is found on Item 3, Mass/Scale Deviation, which in essence it, it, it's, it's a result of the current proposal and the placement of the buildings on site. I did not want to replicate much, so we added a hyperlink that took you to the October 25, 2017 assessment that we provided with all the findings regarding the excavation. And the same numbers that we just saw today.

To get into building area boundary, we wrote an entire section on this starting on page 78, 80 and 81. And we talk about the exact, the intent of the limit of disturbance, the building area boundary. And the text as written on the Master Plan, it simply indicates that that limit of disturbance would be deferred towards that conditional use permit application, which is exactly what we're doing right now. Our interpretation as written on the Staff report is that while mass or regrading can occur outside of the

building area boundary, even the limit of disturbance, as long as it's done with compliance with applicable codes, in a way that it, it doesn't look like we have a huge new mountain that wasn't there before; or hill or whatever you want to call it, if we softly regrade places in a specific manner that we would be consistent applying the Code. As from time to time, the Resort, they get to regrade their ski runs to alleviate specific ski levels and whatnot. That, that has to be done in a sensitive way. And we don't disagree, or Staff does not disagree that areas outside of the building area boundary can be regraded. We're just saying that it has to be in general compliance of applicable codes in a way that it feels, that it retains its natural state. Now, when talking about the cliffscapes, those have more of a---not more of, but those do have long term affects over the visual analysis that, that we can provide, as once a cliffscape is there it's going to be there forever. So we do have an issue in allowing the cliffscapes outside of the building area boundary as detrimental impacts have to be mitigated when it, when it comes to the specific physical compatibility that the Planning Commission has to find. So that's that specific section as indicated on page 78, 80, and 81.

What I wanted to add regarding the limit of disturbance is that the reason that a clause was placed on the original Master Plan approval may be that the limit of disturbance can be further defined. In other words, the limit of disturbance can be placed within the building area boundary. And we don't disagree with that statement. But we don't believe that the building area boundary can go outside of the building---I'm sorry, let me rephrase that. I think I used the wrong term. We don't believe that the limit of disturbance can go outside of the building area boundary or the development boundary. It can be further implemented to become a smaller area of a limit of disturbance, but in no way shape or form get bigger. That's what we're saying.

Chair

Strachan: And have you changed any of your findings as to whether there's any structures which are in, sorry, outside the building area boundary, as defined on the MPD?

Planner

Astorga: Yeah. Those items are specifically---I'm going back on the presentation here to the very first page, which is the site plan. And this thin black line, as you can see, this is not the one that I had once prepared. This is just the unedited raw site plan. There are areas within the building area

boundary that have the cliffscapes. For example, Mid-Station. I'm going to zoom in here just a little bit. This is definitely an improvement in, in terms of this specific compliance. Because of the cliffscape, as you can see, these contour lines, the closer together they are the steeper it is. Most of these were outside of the building area boundary on the 2008, 2009 refinement or version. So we, we do say that they're doing a good job bringing them lower closer to the building, and lower where they can be further mitigated by, in essence, placing them behind the buildings.

The issue that we have is around the Creole Gulch site, as it's not necessarily all within or all without. It's the right in the middle of the line in some places. Also, towards the north side. So this is, I believe, the second question that we have, which is, does the Planning Commission agree with this analysis. I'm only summarizing what we wrote in the Staff report. I don't want to sound too repetitive.

Chair

Strachan: Do you guys have a conclusion on whether the limits of disturbance should be set at the development boundary, as opposed to somewhere within it?

Planner

Astorga: We find that it should be within the development boundary.

Chair

Strachan: Where within?

Planner

Astorga: Not outside.

Chair

Strachan: Yeah, but, like how far within?

Planner

Astorga: This, this project has been so complicated that that's---we're currently going with at least no going outside of it.

Chair

Strachan: Yeah. That's probably going to change, depending on whether you're looking at, you know, the north side, the south side, where a corner of a building is. Yeah.

Planner

Astorga: Right. And, and it would also change according to that construction mitigation and how it's going to be built, and what specific area, area, or areas need to be placed for that specific staging and whatnot.

Chair

Strachan: Yeah.

Planner

Astorga: Regarding---if we are ready to move on to Item 5, which is the setback, I do, I would like to graphically show you what we mean by this. And I'm going to go towards right where I left off in the presentation. Here we go. So you remember this exhibit. This has three different, four or, yeah, four different components. This is the height parameter exhibit. You should remember this from two weeks ago, and the colors that show zero MBH, which is maximum building height in all the other sub areas. We talked about the specificity, which this exhibit provided based on the Master Plan that was selected. It was one of the many choices and which was ultimately approved.

So, the Master Plan, and I'm going to jump to the Master Plan right now, if you don't mind. The Master Plan has three references regarding setbacks. Let me see where I wrote that. The first one comes on page 2. I might be looking at a---hold on.

Commissioner

Suesser: Number 7.

Planner

Astorga: Yeah. Give me a second. I had one that was highlighted. Nope, not that one. I believe this is it. Yeah, here we go. So, a finding. Finding 7 said the proposed setbacks will provide adequate separation and buffering. It doesn't give us a specific standard. It just says that. We're just going to go over a different page. Here's a second reference on page 9, bottom of the page. Buildings have been, have been setback from the adjacent road approximately 100 feet, and are in a comparable distance to the nearest adjoining residents. And then we go to the third reference, which is the setback section under major issues. I'm sorry, let me get the page. this is page 15. And then it says, all of the development sites provide sufficient setbacks. The Hillside properties was a major portion, but it

wasn't 100% of the entire Master Plan area. And then it talks about another part of the site plan, or Master Plan. And then it says, the Hillside properties provide substantial 100-foot plus setbacks from the road with building cited considerably farther from the closest residents. If we---once going back---here we go, to this exhibit, it's extremely difficult to find where that section came from. Where is that 100-foot section. Keep in mind that at the time in 1986, this portion of the road had not been deeded over to the City just yet. And that entire area was in that 0'-0" maximum building height. If you were to go ahead and extend the line over on this site plan, and I'm going to zoom in in just a moment, we get 108', 123' and 100'. This is our indication of where they grabbed that 100-foot plus, as indicated on the site plan. So this was the setback reference that the Master Plan provided. The issue that we have, and we're going to go to the next exhibit, which is Refinement 17.1. And we did use different colors. I used yellow, they used blue, and that's fine. They have this area in bluish-purple, which is the same area. So the first thing I want to get on the record, establish that that setback area was not to be measured from that future road that got dedicated later in 1991. It was measured from wherever those lines showed us on that, on that parameter, right here. This is the 100-foot reference.

Why is this an issue to Staff? This is an issue because we recognize, and that's the picture on your Staff report, page 84, so we do have to go back to our, our packets here. And I could bring it up. On page 84, we have a retain, we have two sets of retaining walls that are within that 0'-0" maximum building height; which Staff, we do consider that to be the front yard setback area. Now, what applies to this project is the 2004 Land Management Code that indicates that within front yard areas retaining walls cannot exceed four feet in height.

Now, as being requested by the application, any project that, that gets reviewed through a conditional use permit, they're able to go ahead and ask the Planning Commission to see if impacts can be mitigated to allow retaining walls more than what the Code allows. This is often done in the, for example, what you're familiar with is the Steep Slope Conditional Use Permit Criteria. You've got to go through that specific criteria for the house, but from time to time there are retaining walls that meet the either front yard or side and rear yard allowance. However, it is also an administrative application and the Planning Commission allows, may allow additional heights on those specific areas.

So, we can go ahead and go back to that Staff report, if I can find it. I'm going to go back to page 84. And we've reviewed Refinement 17.2. And the difficulty here is that I don't have exact measurements of this proposed retaining wall. Retaining walls are measured from final grade. I don't have this information. Just by looking at it---just by looking at this exhibit, we can say---I'm going to zoom in to Mid-Station, this is a lot more than four feet from final grade.

So the applicant has not made the specific request to say, by the way, also Planning Commission please go ahead and approve my retaining walls. I want to bring that out because I don't want to have an issue how many months or years later on, and we say oh, wait, your retaining walls don't meet the, the height parameters as specified in the Code.

We wanted to treat both sides consistent. And I'm trying to go back now to my exhibit. The 100-foot assessment was only places, or was only done in---right here. Mid-, I'm sorry, Creole Gulch site. There is no mention of a setback anywhere on the Master Plan within Mid-Station. Because of that 0'-0", 0-feet, 0-inches maximum building height on both sides, we find, or we recommend, the Staff recommends that that front setback area and all corresponding height exceptions apply to both sites, just to be consistent.

So we ask you that question, do you agree with that specific height analysis or recommendation from Staff?

Chair

Strachan: And walk me through again how you've determined the area on the Mid-Station site that's subject to the 0'-0".

Planner

Astorga: It, it was depicted on the Master Plan. It was right---I'm going to zoom in. The Master Plan showed it, this entire area, as the same, the same as they did right here. The yellow areas. So the Master Plan called those areas 0'-0" maximum building height.

Commissioner

Suesser: 0'-0" maximum building height. But a four-foot wall would be permitted, but the proposed wall is higher than the wall permitted.

Planner

Astorga: That's exactly it.

Commissioner

Suesser: Okay.

Planner

Astorga: So Staff, we would like to first know the exact height of those walls within the yellow areas. And per our research and analysis, that's the only item that's out of compliance within this setback area as depicted on the narrative section of the Master Plan.

Commissioner

Joyce: So how does, how does it change if---I mean, you keyed on the, the front yard setback. It's a little hard to look at a big development like this and call one part the front yard and one part the back yard and one part the side yard. So, what, what happens if this isn't the front yard? What changes?

Planner

Astorga: From four to six.

Commissioner

Joyce: Okay.

Planner

Astorga: The retaining walls in the front yard is for feet. If this was a side yard or rear yard it would, it would go six feet; which is, which means that Staff, we have the authority to approve retaining walls that are no more than 6 feet in height. The Code indicates that the Planning Commission gets to approve walls within setback areas that are more than 6 feet.

Commissioner

Joyce: Okay.

Planner

Astorga: Through the conditional use.

Commissioner

Joyce: Okay, thank you.

Planner

Astorga: And if I, and if could also expand on that. The front yard is only on the Lowell Empire area because this---for example, this line over here is the building area boundary; however, that's still their property. So we don't, we don't treat that as a side yard. The only one that we're worried about is the area towards the front here. Let me get the hand. I want to give you this example. Right here, this is their property. This is their property line and this is that building area boundary as shown here on the Master Plan. So we wouldn't necessarily need to say we need a setback from that line on. No, that, that was already determined.

Commissioner

Joyce: Okay. Thank you.

Planner

Astorga: Moving on to---so that's, I think now, the third question we had for the Planning Commission. Do you agree with our analysis regarding the setback?

Number 6. Again, this is a list of Staff concerns. We had this concern on July 13th, 2017 regarding the utilities. I don't think I want to spend too much time expanding on it. This is extremely similar to what we identified as a concern again on July 13th.

And then 7 is the, the lack of the updated proposal regarding to the soil placement and excavation. The Planning Commission shares the same concern. They wanted this document in writing. We do to.

The next item replaces the employee housing contribution. Treasure, back in 2009 Treasure Hill on February 20th, 2009 went to the Housing Authority, which is essentially the City Council, as they are charged to the responsibility of approving housing plans. And the determination of the Housing Authority was that all the employee housing had to be provided on site. We've had a change in refinement and the numbers are slightly different. But the Staff recommendation pulled from the Planning Department and also from the Housing Department is to not deviate from the direction that was provided by the Housing Authority back in 2009. That's what we wrote here.

And I believe those are the eight items that Staff has concerns. And we are working with some other items and exhibits and analysis, as this is a

very unique project based on its current location adjacent to Old Town, and given where it's located based on it's literally on the mountain. So we'll have more for you on the 29th. I will be more than happy to answer any questions that you have for us, but that concludes the Staff presentation unless Bruce wants to add anything.

Chair

Strachan: Nothing to add, Bruce? All right. From the Sweeney's perspective, what are you guys planning on presenting this evening, if anything?

Shawn

Ferrin: Good evening. We're going to---

Chair

Strachan: Just remember to state your name.

Shawn

Ferrin: Yeah, right. Shawn Ferrin on behalf of MPE, the applicant. So, tonight I'd like to take ten or 15 minutes and talk about some issues, some high level issues. And then my partner, Brandon Mark, is going to take a few minutes and respond to the presentation; a bit of the presentation from last week. And we're also willing at any point to answer questions throughout this.

We are preparing---Francisco noted that there's some things that you have asked for or Staff has asked for that you don't have yet. We're preparing those materials for you. And if there are materials that we don't think are appropriate or, you know, we're not going to get together for you for one reason or another, we'll let you know that as well.

You know, I want to, I want to take a, quickly take a step back really from the details of the CUP review process and get a little big picture look about where we are in the process and what's transpired over the last 18 months; which is about when you guys had me standing in front of you last time.

I've worked on real estate and entitlement transactions for over 30 years across the western United States. Hotels, office buildings, shopping centers, ski resorts and what most people would call the most difficult to entitle projects; big box stores like Walmart and Home Depot, including the Home Depot in Silver Creek. And based upon that experience, I can

tell you that in many respects Treasure Hill is unprecedented in the history that we've had, 30 plus years, in the level of detail and information the applicant has been asked and has given to the Planning Commission. Frankly, the mere number of Planning Commission hearings we've had in the last 18 months that we've all been able to enjoy together, and for your time and for the detail you've put in that. And for some of you, the mere fact that you have extended your tenure so we could have some continuity. We appreciate that. I can tell you also, Treasure Hill is not unprecedented in some respects; and that is the detail, the complexity it has, and it's not unprecedented in its opposition. More difficult, more detailed projects have been approved for conditional use permits, and projects with more opposition have been approved. And remember, in the end the fervor of the public comment can't be taken into consideration in granting a conditional use permit approval.

Now initially, I want to remind all of us about what our charge is here. The applicant is charged with submitting a CUP application. The Planning Commission is charged with reviewing that application. And we have 15 CUP Criteria from the MPD to look at. In completing its review, the Planning Commission needs to determine whether or not the applicant reasonably mitigated the impacts of the development. That's the standard. Have they reasonably mitigated the impacts? The applicant does not have to eliminate the impacts, or mostly eliminate the impacts. Just reasonable mitigation is what is required. And that's the standard for you to consider in everything you're evaluating based on the application.

Now during the past 18 months, the applicant has submitted 18---excuse me, 10 position statements. Detailed analysis about the CUP criteria, compliance with the CUP criteria, the impacts of the project, and a lot of detail with respect to the proposed substantial mitigation of those impacts. Each of those position statements are critical. They're critical to understanding the history of the CUP application and the MPD application. And they're critical as a whole to understand the mitigation that MPD is proposing as part of the project. They tell the whole story. They're long, they're detailed, but you have to read them. You cannot just read the Staff report and get a full and complete picture of the Treasure Hill CUP application.

Now it's interesting to note. I've read them, I've read the Staff reports. Nobody to this point is really addressing the issues that are in those position statements. An example is tonight. I listened to Francisco, who I

have a great amount of respect for, and he talks about the building area boundary. But he's not gone back and analyzed the position statement with respect to the building area boundary; and what the applicant has said to that. The building area boundary is a building envelope. It says nothing about grading. And yet, based upon the Staff report, you would think that grading is talked about in there, and that it is limits of disturbance. But that's not what's in the MPD. That's why the position statements are critical and important for you to read to understand the entire project. And in fact, nobody has gone back and taken an analysis, tried to refute, tried to rebut the issues in the position statements. There's been pieces, yes. People have tried to claim that certain parts of the application are not correct. Or they're trying to pick out a point here and point there. But you can't just take out a little piece now and again, and say no it doesn't work. You have to make a critical review and analysis of the entire position statement. Just because you don't like what the applicant says doesn't mean the applicant is wrong. Just because you disagree with what the applicant says doesn't mean he's wrong. I believe no one has taken that analysis. Not Staff, not THINC, not the other members of the public, because the analysis in the position statements is correct, it's complete, and no one has been able to go and attack it. I also believe the position statements show substantial mitigation of the impacts of the project in detail.

The position statements also address many of the misconceptions that have been thrown out and have become kind of the mantras of the opposition to the project. Concepts epitomized by catch-word phrases like areas of disturbance. That's not a concept in the MPD. Or honor the land. That's not a concept in the MPD. When you read the position statements you learn unequivocally many things, including that the MPD did not establish construction boundaries as I talked about. The MPD only established building area boundaries, which are envelopes, to identify maximum building heights and potential locations. All of the applicant's buildings are located within the building area boundaries.

As additional mitigation, in 17.2 the applicant reworked the grading, as Francisco noted, and it also brought significant portions of the cliffscapes within the building areas. Staff disagrees with the applicant's position on that; but they've never reviewed, they've never rebuffed the facts and circumstances in the position statement that outlines why those are only building area boundaries. They are not limits of disturbance areas. And there's no support that we've been able to find in the Code, in the MPD

that says a cliffscape is a structure. And when I go to the backside of St. Regis and I look at the cliffscapes that surround the entire backside, they're no more than the cliffscapes that are proposed. And maybe they're greater than the cliffscapes that are proposed for this project.

The position statements similarly let you know that there's no legal requirement that Treasure Hill should be designed to fit the site; not the site modified to fit the project. That concept comes from the 2004 LMC. And that concept applies to Master Plan Developments. It doesn't apply to conditional use projects. It doesn't apply to Treasure Hill. As a practical matter, and as we saw---and I think this was the question that somebody brought up when Francisco was showing you Woodruff; the side cuts of Woodruff. There's no excavation under the top portion of those conceptual drawings. There's no footings. There's no foundation. There would be substantially more excavation that needed to be shown, but wasn't, because those are merely conceptual drawings.

There's no requirement in the MPD that commercial space within Treasure must be used only for guests of the Treasure Hill project. The MPD merely states that commercial space should be oriented towards the project. The 1985 Code also says, "All support commercial facilities should be oriented to the internal pedestrian circulation system of the Master Plan Development. Signage on support commercial facilities must be visible only from within the development". But there is no requirement that that space be used only for people and guests staying at the project.

There's been some discussion about meeting space and Treasure Hill being a convention center. The 1985 Code allows meeting space of up to 5% of the gross floor area. Treasure Hill proposes approximately 16,000 square feet of meeting space, which is only about 2.7% of the gross floor area. Not up to 5%. The Treasure Hill project is very close in this regard to the Montage project and the amount of meeting space. It is not a convention center by any stretch of the imagination.

With respect to size, if you read the position statements you will know that Treasure Hill 17.2 is not out of proportion with the Woodruff concept plan. Woodruff was a rough concept plan. It did not account for many aspects that you would have in a final project; employee housing, arrival areas, check-in, informal gathering areas, meeting space, administrative offices. And yet, Woodruff was 875,000 square feet.

Treasure Hill 17.2 is approximately 8% larger than Woodruff at 948,000 square feet. There's not a different, a substantial difference proportionally in the square footage of Treasure Hill 17.2 and Woodruff.

And finally, if you read the position statements you know that Woodruff is a concept plan; it is not an approved design. The applicant is not obligated to build Woodruff or anything like it. Woodruff was a concept plan to evaluate mass and scale of the relevant MPD sites, identifying limits of coverage, percentage of open space, and building height.

When I think about your job in reviewing this, which is a difficult one, you have to determine whether or not the applicant reasonably mitigated the 15 conditions. But what level of review is required? What do you have to look at in making that determination? Do you get to review final building plans, or final landscaping plans, or photometric plan? Do you get to require the applicant provide you with information on the size of utilities, where they'll be brought in and placed by third party utility companies? Do you get to ask us how many blasts are going to happen with respect to completing the excavation?

The applicant believes that the Planning Commission must evaluate the application in a manner consistent with how the Planning Commission has historically acted in evaluating other similar projects. Projects like Montage. Projects like St. Regis. In our review of those applications and those approvals, the amount of information and detail required and submitted for those applications is substantially less than the information and the detail submitted in connection with the Treasure Hill project.

Since 1986, the Staff and the Planning Commission and the public never stated that they wanted Woodruff. In fact, there have been specific statements to the contrary. Recently; however, 30 years later there seems to be a change. About a year ago when I made a presentation to you about the history of the MPD approval and the history of the CUP application, I was told that the prior actions of the Planning Commission and the Staff didn't matter. That they were relevant to what we were doing as part of this push to get to the final CUP application. I respectfully disagree for this reason. The evolution of Treasure Hill from Woodruff to 2004 to the 2009 submittal, shows the way that the applicant, at the direction of Staff, prior Staff, and the direction of the Planning Commission, prior Planning Commission, refined that project, refined Woodruff to reasonably mitigate the impacts of that approval. Yes, there

was more excavation, but there was more excavation as a way to mitigate height and to mitigate mass, and at a substantial cost to the developer. That is reasonable mitigation. The refinements of Treasure Hill from 2009 to 17.1 reflect further ways the applicant mitigated the impacts from the project. Reducing size, mass and scale. Reducing excavation. Creating sightlines through the project for neighboring properties. Improving ski-in access so it's not just the advanced and expert skiers who can come down the mountain and get to the base area, the Town Lift Base. So that you can bring intermediate and beginner skiers down, and reduce traffic to the base area of Park City. And then finally, this last piece. The Refinements from 17.1 to 17.2 that have happened in the last 18 months; that have happened as a result of comments from Staff and comments from you. They are precise and direct mitigating efforts to address your concerns.

Now in response to the applica-, the applicant's presentation on 17.2, many of you said that you liked the refinements but they weren't enough. They didn't eliminate the cliffscapes, they didn't get rid of the excavation, it didn't fix perceived traffic problems on Lowell and Empire. But that's not the standard. The standard you to evaluate reasonable mitigation; not elimination. In evaluating and approving the CUP for Treasure Hill, you have to ask, in light of the requirements you impose on other similar development projects, has the applicant taken reasonable steps to mitigate the impacts of the project. And in that analysis, it must be made from the beginning; 1986 to the end. 17.2. Failing to look at that entire timeline is refusing to understand and recognize the scale and scope of the mitigation the applicant is proposing. The position statements and the other submittals that the applicant has provided, with more to come, show not only reasonable mitigation, but quite frankly, extraordinary mitigation for this project. Over the next few weeks the applicant will continue to supply materials, continue to submit position statements in an effort to continue to show you how this project, how the applicant's efforts to change it, to refine it have been mitigation from the MPD approval.

I'm happy to answer any questions, or we can go to Brandon Mark who is going to show some slides and respond to some of the issues that were addressed in last week's Staff report.

Chair

Strachan: Yeah, I've got a question. Just in terms of the applicant's analysis of the relevance of the Woodruff drawings. I understand your position is that,

you know, they're just conceptual. I'm wondering what your position is--- what is they're relevance, if any at all. Do you guys consider them relevant at all to this, or do you consider them completely irrelevant?

Shawn
Ferrin: To the CUP process?

Chair
Strachan: Yeah.

Shawn
Ferrin: You know, I think they were designed as conceptual plans at that time to show what does this mass look like, how much square footage is it, where is it located, how can it be done. But they were merely conceptual plans to get a sense about what the MPD approval was about.

Chair
Strachan: Let, let me ask it---

Shawn
Ferrin: It was not, it was, it was not an approval to say you have to build this or something like it.

Chair
Strachan: Let me ask it this way. Should we rely on the Woodruff drawings in any regard whatsoever when making our decision?

Shawn
Ferrin: I think you can rely on what was thought about it at that time as a possible way to develop it, and the basis for which you could then refine the development, including mitigating the impacts of Woodruff.

Chair
Strachan: Did you think they're drawings as to the amount of subterranean excavation for subterranean flooring and parking has any bearing whatsoever on our decision?

Shawn
Ferrin: I think that the Woodruff drawings do not show all of the excavation that would have been required. And we're in the process of doing an analysis. If you took Woodruff and you had to do excavation for those buildings,

how much excavation would that really entail? And that's a number we will get to.

Commissioner

Joyce: You, you mentioned that---you said that it was conceptual and it didn't include footings and foundations and stuff.

Shawn

Ferrin: Yeah.

Commissioner

Joyce: But I was just looking at 17.2 and I didn't, I didn't see footings or foundations in any of that. So, are---

Shawn

Ferrin: Yeah. So, will you pull up that sheet; the Woodruff cross section?

Commissioner

Joyce: Well, I understand the Woodruff ones. I just was trying to---I, I thought we were looking at apples to apples, which is why I'm confused.

Shawn

Ferrin: Yeah.

Commissioner

Joyce: So when we look at all the drawings that you have on 17.2, I can't find anything anywhere that shows footings and foundations.

Shawn

Ferrin: Right.

Commissioner

Joyce: Is that---?

Shawn

Ferrin: That's correct.

Commissioner

Joyce: So, are they conceptual, too? Because that was---I mean, I, I wrote down your statement.

Shawn

Ferrin: Right.

Commissioner

Joyce: It just kind of caught me off guard that---

Shawn

Ferrin: Let me have the architect answer that.

Commissioner

Joyce: Okay. I, I thought we were doing apples to apples is why it's important.

Shawn

Ferrin: Well, I, I do want to make---

David

Eldredge: In regards to footings and foundations we are doing apples to apples. The difference is, Woodruff is nothing more than an outline of a footprint with some indication of some bays and a number of stories from which we determined the area. There's no designation of use. There's no designation of net area for units. There's no corridors or exit facilities. There's no fire protection.

Commissioner

Joyce: Oh, I know. I don't think---

David

Eldredge: So that's, that's the difference.

Commissioner

Joyce: So, okay, okay. So I just---

Director

Erickson: David needs to be on the record.

Assistant

City Attorney

McLean: Can you say your name?

David
Eldredge: Sorry, David Eldredge, architect.

Commissioner
Joyce: So that's, that's, I, I just want to make sure that---because you've said a couple of times in your thing about, you know, they're conceptual because they don't show the full excavation, including footings and foundations. And I just want to point out to you that we've seen 18 months of your plans and never once have we seen a footing or a foundation in 17, 17.2, 2004, anything. And so---

Shawn
Ferrin: So let me, let me show you---Francisco's going to pull up the sheet that I want to point to with what I was referencing, Commissioner Joyce.

Commissioner
Joyce: Okay. Thank you.

Planner
Astorga: You want to see a cross section, Shawn?

Shawn
Ferrin: Yeah, just pull---if you'll highlight one of those.

Planner
Astorga: Here's one.

Shawn
Ferrin: So pull up one of your, you know, one of your originals.

Planner
Astorga: Original what?

Shawn
Ferrin: The front of the Woodruff. There you go. So what I'm talking about, Commissioner Joyce, is the area right here. Sorry, right here, which shows a little bit of excavation, but I don't think that that shows the excavation that would be necessary if you were actually to build that project.

Commissioner

Joyce: Right.

Shawn

Ferrin: You'd be, you'd be going much deeper; not only with footings and foundations, but excavation to put in what's underneath that. It, it's just a conceptual drawing in that context, as opposed to David's conceptual drawings---

Planner

Astorga: Which doesn't show---

Shawn

Ferrin: [Inaudible.]

Planner

Astorga: It doesn't show any footing and foundation either.

Shawn

Ferrin: Yeah.

Planner

Astorga: That's what Commissioner Joyce is saying.

Shawn

Ferrin: Yeah, so I may be using the term footing and foundation wrong. I'm talking about just merely excavation.

Planner

Astorga: Right.

Commissioner

Joyce: So, so let me go back to the architect just to make sure, because I just, I think we're, it's important to us. I think you said apples to apples for both. I, I completely agree that, yeah, you don't have hallways and uses and everything defined in Woodruff. I got that. But if you were trying to look at your charts, like the one that's up here right now, every, every chart that we've looked at for the past 18 months, you're going to have to dig down another x-number of feet to, to build footings and foundations and stuff. Whether it's Woodruff or your plans or whatever, no one is going to just slap it down on, on a---

Planner
Astorga: Slab.

Commissioner
Joyce: Yeah, slab. And so.

David
Eldredge: Being that deep in the ground it's not going to go that much further.

Commissioner
Joyce: Okay, for both, for both of them.

David
Eldredge: But I do want to say one thing about the Woodruff drawings. Back in June of 2016 when I calculated the estimated area, I pointed out in my presentation the discrepancies between the building plans and building sections. If you look at those sections, the vertical circulation core doesn't even make it to the bottom level of the parking garage, which is clearly shows on the Woodruff plans. So those, those sections are not nearly coordinated to the level that one would in, in our case have carried it. That's, that reinforces the fact they were, they were basically bubble diagrams.

Chair
Strachan: Which sort of brings me back to the question I was about to ask, which is, how do we determine when we're supposed to look---in the applicant's mind, how do we determine when we're supposed to look at the Woodruff drawings as relevant; and how, and when we're not supposed to. What's your position on that? Because you're saying sometimes they're conceptual and sometimes they're not. So guide us through how we determine when they are and when they're not.

Shawn
Ferrin: I'm not sure I've said it, Commissioner Strachan, that they're not conceptual. I think they are always conceptual.

Chair
Strachan: And so we should---but I also thought you said we should use them at least in some circumstances to base our decision on.

Shawn

Ferrin: Right. I think that is the context that the original Planning Staff and the original Commissioners looked at them and said, we want something different than this. They're too much weighted towards the front. They're hanging over the town. We don't like this. We want something different than this.

Commissioner

Joyce: Who, who said that?

Commissioner

Band: Wait, wait, where was that? Sorry.

Commissioner

Joyce: Yeah, who, I'm sorry I missed it. Who, who did you say?

Shawn

Ferrin: Previous Staff.

Commissioner

Joyce: Oh, okay.

Shawn

Ferrin: And previous Planning Commissions. And so that was the direction; do something different than this. And so the mitigation that results from doing something different than that is the mitigation that the applicant has done to mitigate for the project.

Commissioner

Joyce: Was there just kind of a time frame? When did that happen?

Pat

Sweeney: Pat, Pat Sweeney, the applicant. Those discussions happened very early, starting in 2002. They became very specific from 2004 to 2006. I think Bruce was around for some of that conversation. He was on the Planning Commission.

Chair

Strachan: And those would be in the Minutes or---

Shawn

Ferrin: Those are in Minutes and they're in Staff reports.

Pat

Sweeney: They're, that---what, what Shawn talks about is evident in both the Minutes and the Staff reports.

Commissioner

Joyce: Okay. Thanks.

Chair

Strachan: All right. And then, Shawn, just finally, which position paper---and maybe this is putting you on the spot and you may have to defer to your associate.

Shawn

Ferrin: My partner.

Chair

Strachan: Which---partner, excuse me. Which position paper best explains your legal justification for the amount of excavation? Where is that best set forth? And it can be one or more position papers, but I just want your citation to what I should read to find your justification for that.

Shawn

Ferrin: I'll get that to you.

Chair

Strachan: Okay. Thank you.

Shawn

Ferrin: Great. Thank you for great questions clarifying what I was trying to say.

Chair

Strachan: Okay. Thank you.

Mark

Brandon: While Francisco pulls it up I'll introduce myself. I may look familiar. I've been around for most of these hearings. But my name is Brandon Mark, and I'm an attorney for the applicant, MPE. Author of most of the position statements, or, you know, I should say I've---

Chair

Strachan: Co-authored.

Mark

Brandon: I collected the information to put in there. I'm just the scribe in many respects. You know, obviously, we presume that those are being read, and so I'm not going to---you know, especially with this most recent one that we submitted, I'm not going to sit here and regurgitate that or summarize it for you. If there are any questions about any of the content in the latest one I'm happy to answer any of those questions. But instead, I wanted to focus on a couple of issues that have come up, you know, repeatedly in recent times, and, and focus on those. And some of it is going to, and I apologize, it's going to sort of overlap with what Shawn said. But I'll emphasize, hopefully emphasize certain aspects or different aspects than what Mr. Ferrin was emphasizing. And you know, he's clearly more smooth and suave than I am, and so it's tough following that.

I think this actually is a good segue. You can, you've seen the slide that I've got up right now, now for a couple of minutes now, and it's actually a good segue into Adam's question just a few minutes ago. And I think the answer that I would have given to that question is that exactly what Planner Cattin said in 2009. And if you remember, you know, Planner Cattin was no friend of this project. You know, she came in and, and really sort of changed the tenor of how this project was being reviewed. And so, you know, having someone like this explain what the purpose of the Woodruff drawings are, I think you know, was it only for the purpose of testing volumetrics. Testing whether the amount of square footage that we thought needed to be built could be built on that site. And it did not restrict or limit what, how that was ultimately designed. She said so, explicitly, you know. They were just trying to figure out volumetrics.

A part of this quote that I did not highlight but is important is that simply to make sure that the volumetrics work in terms of units. That's the point of the Woodruff drawing. It was always the understanding that the architecture was not final and it would change. And she again clarified the building is not what has to be built for the MPD. And so, you know, there's been a lot of discussion recently about going back to, well this is not like Woodruff. Or Woodruff is the benchmark against which we're, we are evaluating this particular plan. And that wasn't the purpose of the Woodruff drawings. And, you know, respectfully I don't think that would

be an appropriate use of, of those drawings. And the fact that, you know, that the current plans deviate from Woodruff, for example, in the amount of excavation, doesn't mean that they are, you know, contrary to the MPD. I mean, that's the concept that we've heard from the public recently, is that somehow because we deviate from the Woodruff drawings that we're in violation of the MPD. But as Staff itself understood, that was not the purpose of those exhibits. The exhibits were simply to give a sense of the volumetrics. And what's interesting about that is that it's the one purpose that we've used those drawings for, as Mr. Ferrin just said. You know, for all of the handwringing, for all of the hand waving that's been done about the Woodruff drawings over the last couple of presentations by Staff, what has not ever been refuted is that those drawings showed a project of about 875,000 square feet; which by the way, did not have all of the amenities, did not have all the spaces, did not have all the vertical corridors through it. So we knew it was going to be even bigger than that. And the project that is proposed is not meaningfully different from that kind of volumetrics. And so, if anything, it shows that we are consistent with the Woodruff drawings. That the current plan is consistent with the Woodruff drawings. And the one sole purpose that those drawings were for was to define the volume of the eventual project.

Chair

Strachan: Do you have Minutes or other evidence besides Planner Cattin's statement to support that?

Brandon

Mark: Do you mean contemporaneously with---

Chair

Strachan: No, at any time through the body of this whole process, starting with the MPD. I mean, she says it's just a volumetrics, you know, a benchmark.

Brandon

Mark: Right.

Chair

Strachan: But where else can I find evidence of that?

Brandon

Mark: Sure. And, you know, again these are in the position statements. In fact, you, you had pointed out portions of the MPD last---the MPD report last

time. And if you actually look at the very next paragraph, it talks about how the MPD allows the final design, or the final developer to, to vary and mix it. And this is just paraphrasing. I don't have the exact language. That kind of concept is, is peppered throughout the MPD. At least it's---I know it's in there at least twice where it talks about, you know, we're just trying to get a basic concept, a basic idea of where it's going to go and, and the size of it; and that eventually, the eventual developer has the flexibility to do different things with that design.

Chair
Strachan: Okay.

Brandon
Mark: That's in the MPD itself.

Jeff
Mangum: If I could interrupt. Jeff Mangum for the applicant. I believe there's some comments by Pat Putt that I can furnish to the Staff, to, to the effect that---of what Katie Cattan was saying. So I'll look for those.

Chair
Strachan: Okay. All right.

Brandon
Mark: So, again, going back to, you know, this idea that we have to step up the hillside. There's been lots of talk about this and---

Commissioner
Suesser: He needs his mic.

Chair
Strachan: Don't forget your mic there, Brandon.

Brandon
Mark: Sorry about that. This cord is---

Chair
Strachan: Jammed.

Brandon

Mark:

Exactly. That's better. All right. So the, the stepping up the hillside concept that's been discussed in recent meetings has all been about how we want, you know, the bottoms of the buildings to climb up the hillside and step up the hillside so we don't have to have the excavation. But, in terms of how the public is actually going to perceive this project, what's more important is the stepping of the tops of the buildings, which will actually be seen by the public both on-site and off-site. Nobody's going to see the bottoms of the buildings. Everybody's going to see the tops of the buildings. And, you know, in, in response to the comments that we've heard, the applicant is, you know, has looked at that in the Version 17.2 to improve the visual stepping of the buildings. And you know, this goes back to the original responses that we got about Woodruff. You know, we realize that the Woodruff buildings were very front-loaded, right? And a lot of the bulk went up very quickly right near the property line. Instead, you know, we were told it would be better to push it back. It would feel less big; it would loom over the City less if we could push it back. And so, if you see, you know, I just took some examples from actually Staff's report from last time. These are actually just taken out of Staff's own report. You have, you know, the 17.2 which shows a gradual stepping of the tops of the buildings up. And you can see the maximum height isn't reached until the buildings are, are towards the back, the rear of the lot. And so the perceived mass for the public is much less than if you see on the right, an example from the Woodruff drawings. Right? That step happens almost immediately. And then you have this big long building at the maximum height for the entire length of the site. And, you know, that, it feels like it's a bigger project and looms over the City. And so we believe that if anything, the current design has better stepping feel than, than the Woodruff drawings.

Staff made this point. You know, it sort of dovetails with the last point. The Staff made this point at the last hearing that the perceived height of--- because of the excavation and particularly the perceived height of the current plans they are somehow greater than Woodruff, but Staff also conceded that it didn't do a visual perception analysis for Woodruff. You know, Staff said---you know, they pointed to one particular exhibit. I actually think it was a different exhibit where they showed, look with the excavation if somebody's standing at the bottom of this building behind the excavation, then it's 101 feet. Well, I went into the Staff's analysis and found the worst case scenario. So the worst case scenario, according to the visual perception analysis done by Staff, was 104 feet if you're

standing at the base of this building. And, and Staff suggested that this was very, very different than how the Woodruff drawings would have been perceived by somebody at that site. But if we can go to the next, the next slide, this is again straight out of Staff's own report from the last time, and you can just add the numbers in Staff's own drawings. And look, you have a person standing next to that building. And they're going to perceive the height of that Woodruff building at over 100 feet. You have 25' over here, 75' over feet over here; and that doesn't even go to the top of the, the elevator or utility shaft. And so the perceived height of the buildings are exactly the same. You know, it just depends on where you're standing. And of course it does, because they're not the same plans. But you know, if you're standing in the wrong spot the Woodruff buildings are going to feel every bit as big as Version 17.2. There's no meaningful different between those in terms of perceived height; except that---

Chair

Strachan: Do you dispute the, the numbers at all? I mean, the perceived height is, is a different issue, but do you dispute the numbers in Francisco's report, or the numbers you're showing there in terms of the heights and the grades.

Mark

Brandon: I, I would defer to David because he's done the, you know, he did the analysis with the square footage. And so I don't know if he's had a chance to verify those.

David

Eldredge: I have not verified Francisco's heights.

Chair

Strachan: Okay. So you don't know one way or the other?

David

Eldredge: I, I couldn't tell you without the drawings in front of me. No.

Chair

Strachan: Okay. All right.

David

Eldredge: But I, I trust Francisco made his best effort to, to measure correctly.

Chair

Strachan: Okay.

David

Eldredge: I mean, we did do---months and months ago we did do some comparatives where he found some mistakes in mine and I found some mistakes in his. And we had that information back in summer of last year, as I recall.

Chair

Strachan: But to you as the architect, I mean, are they close? Are we---

David

Eldredge: Yeah, I, I think---

Chair

Strachan: Or, or should we be waiting for you guys because you're coming up with some completely different heights?

David

Eldredge: No, we're not---I think the point is that the Woodruff heights were every bit very similar to what we have in our maximum heights, but theirs are much closer to the property line. That's, that's the point.

Mark

Brandon: And he made the last point I wanted to make, which is again, remember the perceived height that we just saw in that last drawing was towards the rear of the lot. Towards the hillside. Here you're going to see that perceived height right up front because, because the shifting of Woodruff is all towards the front.

The next slide. And so another issue that we've heard a lot about recently is this limits of disturbance issue. And Mr. Ferrin did a good job of addressing that. I did want to just, you know, again, what the SPMP says, what the actual MPD approval says is that it's going to be deferred until this process. So, it's hard for me to understand why Sheet 22 somehow defines that, when the text of the MPD approval itself says that it's going to be defined in this process.

It is important to understand that the City has consistently allowed site disturbance outside the building area boundaries in this very MPD. In

other lots, in other developments under this very MPD. So for Staff to come in and suddenly say that that's not allowed, you know, it's a hard a fast rule and there's no way around it. And that's City Code. That's not consistent with the way the City itself has, has treated this very MPD approval.

Chair

Strachan: Where's that? Give me an example of that.

Pat

Sweeney: Adam, it's occurred in a number of places. The first more recognizable place is in the Fifth Street. I'm sorry, make that the 4th. The Norfolk lot, sorry. The Upper Norfolk lots. So the two lots at the end of upper Norfolk. Those homes were constructed in the late '90s, in, outside the building area boundaries or limits on the plat. Retaining walls, tunnels, roads, were all constructed. And furthermore, well into the reserved open space shown on the zoning maps, these were constructed to not only accommodate the two homes; which were built on some of the steepest ground on the Master Plan, in places 60%, but also to accommodate the ski run that serves upper Norfolk. Not only serves those two homes. Both of those homes could have been reached without the ski run that circles around the homes over approximately 150' tunnel and across---it enters the driveway at the end of upper Norfolk. That's the, that's the first example.

Sec-, and, and by the way, all the dirt from those homes was placed on the lower portion of Quittin' Time run. It was tilted more to the north, which made the ski area happy. And that's in the reserved open space/MPD.

The second place that's notable where that happened is regarding the Fifth Street lots, which are the two large homes located off of approximately 500 Woodside Avenue accessed by a tunnel. Once again, within the open space, ROS/MPD, and also outside of the building area boundaries on the plat, improvements were constructed including approximately a 40-foot retaining, a tunnel, a ski trail was significantly regraded, retaining walls were built that exceeded the heights that Francisco referred to today. Once again, so the houses could be built, safely accessed; and also there could be skiing below the homes that not only serve those two homes but serve many of the homes along Woodside Avenue.

The third place that there was structures of that sort; retaining walls, roads---the third place where these were constructed, it would be the home on top of the Treasure Hill on Lot 8. And that included significant regrading of that lot.

Chair

Strachan: Is that Dave Luber's lot?

Pat

Sweeney: No, that's Pat Sweeney's lot.

Chair

Strachan: Oh, that guy.

Pat

Sweeney: It's not David---it's not that famous lot. It's not the King Road lot. And there's a small home located up there and a garage on a flat area that you can turn a fire truck around in. There's a driveway. All of the dirt from, from that lot was placed on either the open space within the lot, which was---for which the City was granted a conservation easement, which specifically allowed the placement of that dirt on the open space within that lot. And then below that lot approximately 3 acres of ground was disturbed in order to accommodate the utilities that served that lot.

Those are the examples.

Chair

Strachan: Okay. Thank you.

Planner

Astorga: Could I ask a follow-up question on that?

Chair

Strachan: Sure.

Planner

Astorga: We received the example for Norfolk, Woodside and Lot 8; and Pat mentioned building area or limit of disturbance of the plat. These, these three other sites that we're know they're not part of the Hillside property, did the Master Plan have a building area boundary for that? I'm not

referring about the plat that was later on approved and recorded. I'm talking about, did the Master Plan have a building area boundary for these three samples that you just provided? Hillside certainly does. I don't know if these other three had that.

Pat
Sweeney: These three---

Chair
Strachan: I don't know either.

Pat
Sweeney: These three areas---

Planner
Astorga: We could look at the Master Plan.

Pat
Sweeney: Are all on the Hillside portion of the Sweeney Properties Master Plan that was rezoned in 1990, ROS MPD. I don't know if that answers your question.

Planner
Astorga: No, it doesn't. The upper Norfolk, we know that the upper Norfolk lots were not part of the Hillside property or referred to---

Pat
Sweeney: Okay.

Planner
Astorga: As [inaudible] Mid-Station.

Pat
Sweeney: I understand what you're saying.

Planner
Astorga: So my question is, did the Master Plan have a building area boundary for these three sample. Not the plat. The Master Plan. And I don't know the answer.

Pat
Sweeney: I, I do.

Chair
Strachan: Well, the Sweeney's house may have.

Pat
Sweeney: Would you like me to answer, Francisco?

Planner
Astorga: Sure.

Pat
Sweeney: Adam, is that okay?

Chair
Strachan: Yeah, you bet.

Pat
Sweeney: So, I see your point, Francisco. Initially those were three homes. And subsequently they became five homes when we took the ski trail down to Woodside Avenue. Some, some density was transferred up there. But there wasn't the need in the Master Plan to go in to any detail as to terms of their volumetrics. The only thing that was determined in the Master Plan was their approximate location, the size of the footprint, and the height. The other parameters were then further developed in the CUP process, which was preceded by the plat.

Chair
Strachan: So, so just to be clear. There was or was not a building area boundary associated with the MPD on the Norfolk Lots?

Pat
Sweeney: Not, not, not drawn in the Master Plan. The building area boundary, and on one plat it was referred to as the building area zone, was established in the rough location of the outlines for those homes shown on the plat.

Chair
Strachan: The footprints.

Pat

Sweeney: And the, the Master Plan did not show so much the footprint of the homes. It showed roughly the location of where they would be built. And so what was shown on the Master Plan was most consistent with what we have been talking about here tonight, which is either referred to the building area zone or building area boundary, or boundaries. Those were converted into metes and bounds. Some, some of them by Rob McMahon, who's sitting behind me. And then within those, on the plat the limits were expressed; and specifically the size of the footprint was the main, the main limiting factor, and the height. So basically you' have a footprint with a maximum height which established a volume. And then there were also some rules regarding setbacks, etc.

Does that answer your question?

Chair

Strachan: Yeah. I mean, I guess we're just going to have to take a look at them and see if it's, you know, similar or not.

Brandon

Mark: With respect to your Sheet 22, which is the sheet that the City has suggested defines limits of disturbance, the MPD approval itself seems to describe what the purpose of Sheet 22 was. I'm quoting here from page 11, "Defines the building envelope limitations and architectural considerations. It doesn't say anything about limits of disturbance. Again, the only reference to limits of disturbance is to the fact that it would be deferred until later.

You know, also, I think that if you do just sort of a reality check, a real world reality-check to Staff's claims, it's difficult to square with their own exhibits. Again, on the right-hand side of this slide you can see---this is again Staff's own exhibit. And all I've done was highlight, because it's not clear, the backs of the Woodruff drawing buildings as---and the orange outline is Staff's. So, the orange outline. As you'll notice, both of those show corners of the buildings actually meeting, butting up against the supposed limits of disturbance, the area of disturbance; which, of course, unless you're planning to use a helicopter to drop these buildings in place, is just not feasible. I mean, if you just look at where these relatively large buildings were going to be built relative to that line, there's no way that there wouldn't have been some disturbance outside of those lines. And so to suggest that what is---that, that an exhibit whose purpose was to

define where you had building height limits is then somehow transformed into a, a hard and fast concrete line where you cannot disturb a single spec of dirt outside of, you know, simply doesn't square with the Staff's own sort of view of the exhibits.

And again, you know, Shawn earlier mentioned that, you know, the importance of going back and reading the position papers. And again, you know, just for an example in one of our position papers we addressed this issue and noted that back in 2005 when the Staff reviewed this and saw that we had cliffscapes outside of the height, this, this height envelope exhibit, concluded that quote, "All development is contained within the identified development parcels". And this the March 9th, 2005 Staff report. It's repeated in several others. And so we got, we being the applicant, got, you know, positive feedback from Staff for years and years that this is fine. That, you know, this concept, the way you're going, the direction you're going is fine. And it wasn't until many, many years later until very recently in this process that suddenly that's become, you know, you cannot disturb a single spec of dirt outside of the building envelope heights. And you know, again, I just don't think that squares with either the MPD approval or, or just sort of basic reality-check.

Go to the next one, please. You have the---we've had discussions about commercial space, and Shawn already talked about this. I'm not going to spend much time on it. You know, the SPMP, the MPD approval says to be oriented to serve those residing in the project. It doesn't say anything about excluding people from off-site. It doesn't say that you can only serve those people. That you can only---only people who are residents of the project can buy a cup of coffee or, you know, replace their ski goggles at the, at the apparel shop. And we believe that, again, the application complies with SPMP requirement.

Next slide, please. Support commercial. There's been a lot of discussion about this over the last year and a half. And we've addressed this in multiple submissions. Some examples of those submissions addressing those issues are identified in the slide. Also identified in the, in our latest submission, written submission. So you can find those references there if you'd like.

There's been some comments that somehow the density exhibit in the MPD approval limits the commercial, the support commercial that the applicant is entitled to, to have. And to be blunt about it---

Chair

Strachan: Clarify what you mean by the density exhibit. What is that document?

Brandon

Mark: So there's a chart in the MPD approval that says that the maximum density, you know, there's been---

Commissioner

Suesser: 19 UEs.

Brandon

Mark: Right, right there. Right. And we agree that in terms of the UEs allowed, the commercial UEs allowed, that's all that's allowed. But that, that does not answer the question of whether the applicant is entitled to support commercial under the 2004 Code. And this isn't a question of what the MPD approval allows or what our preference is. This is actually a question of State Statute. State Statute mandates that when an application is put forward, it is evaluated under the City Code in effect at the time that the application is submitted. That's the 2004 Code. And what does the 2004 Code say about support commercial? It says that an applicant is entitled to more of it that does not require the use of unit equivalents. So the fact that there are 19 unit equivalents specified in the MPD approval does not answer the question of whether the applicant is then entitled to more support commercial under the current Code.

We can go to the next slide. And again, numerous City Officials have corroborated this exact view of the world, right? So back in March 9th of 2005, again it was very clear that at that time Staff agreed with that interpretation. So they're allowed meeting space and support commercial. Ten percent of the total approved floor area per the LMC is allowed under the, per the MPD, in addition to the 19 UEs of commercial uses.

The City's Attorney, before we applied, said your square footage and floor areas are going to be calculated under the LMC in effect at the time of application. Again, the City's Attorney reiterated that in a memorandum, I believe, to this body in 2004. So, the, the question is not what the MPD specified in terms of commercial UEs. The question is what does the 2004 Code allow.

Commissioner

Joyce: Can I---

Chair

Strachan: Let, let me ask first. I'll take the Chairman's privilege.

Commissioner

Joyce: Okay.

Chair

Strachan: Sorry. Under your interpretation of the 2004 Code as it applies to support commercial, is there any limit at all on the amount of support commercial you can ask for?

Brandon

Mark: Yes, 5%. Up to 5%.

Chair

Strachan: That's it?

Brandon

Mark: Well, what do you---I, I don't want to be trapped. I don't understand, I guess, what, what you're trying to back me into, but it says 5%. So that's the limit. I mean, I don't---is there something I'm missing?

Chair

Strachan: No. I just want to make sure that, you know, there is some limit and that I know what it is from your perspective.

Brandon

Mark: And it says 5% for support commercial, 5% for meeting space. And I know that the current plans were well under that.

Commissioner

Joyce: So can I just ask. I'm trying to distinguish between that which is the LMC versus that which is the Master Plan, which to me is where this all kind of hinges. If---I'm going to give you a hypothetical.

Brandon

Mark: Okay.

Commissioner

Joyce: If you were negotiating this back in 1985, and as part of the negotiations the---everybody agreed to this. The MPD stated there will be absolutely no commercial at all as part of this project. And everybody signed off on it. Is it your position that you can still get 5% support commercial?

Brandon

Mark: St. Regis.

Commissioner

Joyce: So, so---

Brandon

Mark: That's a yes.

Commissioner

Joyce: So you're, your answer is even though the MPD---our hypothetical MPD.

Brandon

Mark: Right.

Commissioner

Joyce: Not yours. Even though our hypothetical MPD explicitly included an agreement that said no commercial as part of this development, then your statement is that the LMC basically overrides that agreement, and that you could have 5% anyway.

Brandon

Mark: Well, you know, I want to be careful. I mean, if it was clear that, you know, everybody had talked that no commercial UES, no support commercial, and it was crystal explicitly clear, that might be---

Commissioner

Joyce: In my hypothetical world it is.

Brandon

Mark: That might be different. Okay. Well, then that's probably a different set of facts. But that's not these facts.

Commissioner

Joyce: So, so what I want to just get back to, because I think this is where we get to the difference is---so if you had something concrete in the MPD that was explicit about this that somehow conflicted with the, the standard you get 5% kind of thing, the fact that that was part of the MPD negotiations would still make that relevant to us making a decision.

Brandon

Mark: So going back to your own hypothetical, right. The idea of additional support commercial wasn't foreign to the people that were drafting this agreement. Right? The 1985 LMC had a very similar provision that allowed for additional bonus space that did not require the use of unit equivalents. So if that was intended by the parties at the time, they knew how to draft this agreement to address that. They didn't. They didn't say that you're never going to be allowed additional support commercial under future codes or under this code. They didn't say that. I mean, it was---if that, if that's what they intended they had enough information at the time to draft it that way. They did not.

Commissioner

Joyce: So when they, there is a phrase in there, and I hesitate just coming up with a quote, but I think I can get it pretty close that says, these are maximums and are not to be exceeded. And that statement is very specifically right there with the description of the number of UEs that are provided for support commercial. And so isn't, isn't that what they did? Because I would have guessed that---I, I agree with you. They knew about it. But I thought they did exactly what you suggested they would do, which is make it really clear that these are the maximums and are not to be exceeded. I don't know how else they could have been any more clear and still given 19 UEs of support commercial.

Jeff

Mangum: Again, Jeff Mangum for the applicant. I think one of the reasons why we're having this discussion is because it is not clear. And what complicates the analysis for both sides is the reliance factor. In addition to what's been said so far, we've been told by Staff on several times that we got the extra space. And we've relied on it and we've designed on it. And we spent, what, \$4 million now since 2003 designing our project and reliance on Staff statement on what we can do. That complicates the analysis perhaps for everybody, but it is part of the analysis.

Commissioner

Joyce: Okay. Thank you. I'm just trying to make sure I understand where you guys are coming from.

Brandon

Mark: Sure. And to answer your question, it's not clear. I mean, if you actually look at the MPD it uses the term support commercial and commercial variously in different times. It doesn't, it doesn't use it as a defined term as it would under the Code. And again, the very fact that it's defining commercial in terms of UE, even though everybody knew because the Code at the time allowed for it, that there's additional support commercial allowed in addition to commercial UEs. So everybody knows that [inaudible] bucket out there, but nobody says you're not entitled to it. In fact, the MPD simply doesn't address it. And so given the fact that the MPD does not address it, doesn't say that we're not allowed, not allowed to it. Frankly, doesn't say that we are allowed to it. But that's again, that's why the, I believe the State Statute, you know, trumps everything here, right. The State Statute says that you've got to apply the Code in effect at the time of the application. That's the 2004 Code. And it says you get this additional 5% support commercial without using any UEs. And it makes it even more clear. And this is on the slide. If it's clear at all, or needs to be more clear what that means, it says if there's no more commercial allocation whatsoever granted in the MPD, you can still get 5%.

Commissioner

Joyce: Oh, no, I understand. I, I think we all got to the 2004 thing. And I think we've agreed with that. I think it's just a statement of what happens if you perceive that the MPD has a statement conflicting with that. And I just wanted your position on that. So thank you.

Brandon

Mark: Yeah. And then, let's see. So you know, we wanted to be upfront. This last one, sorry. Oh, wait, sorry. Yeah, that one. So we did, we did want to be upfront. There have been questions that have been asked that frankly are just---we can't answer at this stage. You know, and we didn't want to hide the ball or make anybody believe that they're going to get answers to these when they're just not possible.

So, for example, we've been asked about blasting detail. How many blasts are there going to be? When exactly is it going to happen? You

know, that is going to be a function of, you know, facts and evidence and information that, you know, is simply not before us at this time. We cannot provide that level of detail, you know, and frankly it's not required at this stage. But, you know, if we could do it we would, but you can't.

Upstream utility upgrade details. And I want, I do want to be careful. We are going to provide some more information about utility services because some of the information that Staff has provided we don't believe is entirely accurate. But in terms of, you know, we've been asked to provide---you know, what is it going to do upstream. You know, out on SS224, you know, what kinds of upgrades are going to be necessary? When are those going to be necessary? I mean, those are just simply things that cannot be answered at this time because they're going to depend on a whole bunch of factors that have nothing to do with this project. I mean, this project isn't going to alone require upgrading the natural gas pipeline out to the freeway or whatever they, you know, wherever it comes in at. You know, that's going to be a factor of background growth in the whole area, and so it's something we simply can't provide at this time.

We've been asked about sort of commercial tenant details. Who exactly is it going to be? What's going to be in there? Again, it's just premature at this stage for us to provide that level of detail. We've given some indication of what we think would work there, but you know, in terms of actually being able to tell you it's going to be, you know, a Starbucks and a, you know, whatever, that's just not something that, you know, can be done at this time, so.

I don't know if there's any questions. Happy to answer any questions or try to answer any questions.

Chair

Strachan: Yeah. I guess on that last bullet point, then. How do you suggest we assess the impacts associated with those commercial tenants?

Brandon

Mark: Well, I mean, in terms of the impacts that, you know, we've, we've talked about, we've already submitted a parking analysis that discusses, you know, uses sort of generic commercial space and the types of parking that would be necessary for that. I think that, you know, Gary made some reasonable assumptions about what kind of, what kind of tenants would be in there to make those. I mean, we haven't gotten any pushback to

say, well you should use this IT code and that IT code. You know, we've made as reasonable assumptions as we can make for that kind of impact. I'm not sure, you know, what other impacts in particular you're thinking about. You know, again, you know there's been suggestions that nobody be allowed to---that, that's not a resident of the project be allowed to, to patronize those commercial spaces. And just for an example, if somebody, you know, came and rented a condo and decided they wanted to have their family drive up from Salt Lake City to have dinner with them at the, at the restaurant, does that mean that they can't do that because it's restricted to the guests only. I mean, it, you know. There's, there's reasons why you can't just say hard and fast exclusively to, you know, residents and guest. You know, people, skiers. They want to drop in and get a cup of coffee. They want to have lunch, you know. They're skiing right through the resort. I mean, does anybody really expect those people to be turned away at the door and say nope, sorry, you can't get a sandwich or a cup of coffee. I mean, again, you know, that's why reasonable mitigation; not elimination.

Commissioner

Joyce: I think, just for what it's worth. I think that some of the questions that I had because I was one of the ones asking a lot of that, was when, when we were looking at things like parking assumptions and, you know, some of the parking assumptions were---you know, employees weren't showing up in the parking, and visitors weren't showing up in the parking because the employees were going to park somewhere else and the visitors, you know, this was aimed at people in the, in the facilities. That's, I think, what kind of drove it is if people start doing what you described then they do have an impact and they should be included in things like parking analysis and traffic analysis and stuff. And there were points that we were looking at where there were assumptions that said no, that's not what this space is targeted for, so we're going to have very small numbers because it's not going to be addressing---you know, we're not going to have a bunch of people coming here to eat dinner. The restaurants are aimed at the people who are staying here. And I think that's what drove a lot of those questions and, and some of the requests. if, you know, if your assumption is that you're not providing parking for people coming to use the facilities, then how do you really make sure that's real.

Brandon

Mark: Well, again, I guess, I think that it has. I think Gary, Gary's analysis did that. And you remember that he teased out the fact that the hotel uses

already had some of that built into it, and we had some additional. And you know, he did a fairly extensive analysis trying to sort of get a---you know, nobody wants to under park or over park this. We want to get this, we want to right size this parking. And so we're doing our level best and we haven't had a whole lot of feedback from, you know, people with the science to, to say you're doing it wrong.

Commissioner

Joyce: I guess I would just throw that out that just, that's kind of what we were looking for is consistency in the messages across all of the things. If you talk about the commercial is aimed inwards not outwards. Then I should see that in the parking, and I should see that in the traffic, and I should see that everywhere else. And I think we, we saw a number of places where, at least to me, it didn't feel consistent that way; which is why we're looking, I was looking for ways to kind of nail that down. So, I mean, that's something that we can go back and, and look through a little bit more. But just to help focus on, you know, kind of why we're looking for some of those commercial requirements is, is to mesh up with some of the assumptions in the, in the mitigation.

Planner

Astorga: Could I, could I ask two questions?

Chair

Strachan: Sure. Can we go back to your presentation?

Brandon

Mark: Sure.

Planner

Astorga: Where was it? Yeah, this statement right here. I am extremely confused by what has been said. This is copied word for word, page 3, from the Master Plan.

Brandon

Mark: I believe. Don't---

Planner

Astorga: No, it is.

Brandon
Mark: Okay.

Planner
Astorga: It's word for word. It says, "All support commercial uses shall be oriented and provide convenient service to those residing within the project, and not designed to serve off-site or attract customers from other areas". I don't know how one person can interpret that in two ways.

Chair
Strachan: Well, I think that's up to us to decide there, Francisco.

Planner
Astorga: Right.

Chair
Strachan: So, we'll---question duly noted.

Planner
Astorga: The other item, and I'm going to go back to the Master Plan. And this is going back to the Steve question. And let me find the Master Plan real quick. The, the reference that you were citing is page, it's Item 3 under Development Parameters and Conditions. And it's extremely interesting that this sentence is part of the parking restriction. And you got it wrong. It says this, the approved densities---you weren't entirely word for word is what I meant. "The approved densities are those attached as an exhibit and shall be limited to the maximums identified thereon." There's a period and then another sentence starts. "Parking shall be provided on-site in enclosed structures, and reviewed in accordance with either table on the approved Restrictions and Requirements exhibit, or the adopted ordinances at the time of project approval." If we were to go back and take a look at the MPD approval, that one sheet that the standard, it provides no commercial parking standards. It provides a table for residential only. I think that's---

Chair
Strachan: Also duly noted.

Planner
Astorga: Thank you. And I can pull it up if, if you don't believe me, but---there it is.

Chair

Strachan: All right. Okay. Anything further? Traditionally we're taken a little break two hours into it at 7:30 before we go to public comment. So just get a show of hands, how much public comment are we looking at tonight? All right, great. Let's take five and we'll come back and do public comment. Thank you.

Break

Chair

Strachan: Call the Planning Commission meeting back to order. All right. Let's call the meeting back to order. During the break it, it dawned on Commissioner Suesser and I that it would be nice to have Mr. Mark's presentation to review. And if you wouldn't mind submitting that we'd appreciate that. So, give it to Francisco and he can put it up on to the website.

Planner

Astorga: Yeah, he just did. So we have it.

Chair

Strachan: Done. Great. Okay. Let's open the public comment for the Treasure Hill CUP. Don't forget to sign in.

Public Comment

John

Stafsholt: Okay. Hi, John Stafsholt, 633 Woodside. I will try to keep it brief. First thing, just things that came up talking about massing and perception. The approval cites 35', 45', 75' heights in different locations. Those locations are from existing grade, that's why they're measured that way. The approval also gives a maximum elevation above sea level; which was a brilliant move, which gives you top height. So that's---the Woodruffs all go to that top height. What it doesn't do is say that you can't dig all the way to China if you don't want to. So the applicant just keeps going deeper down. And anybody with common sense realizes you'll see more mass when you take a six-story building and make it a 14-story building. Anyway, that's one thing.

Then another thing that came up. Pat, Pat Sweeney gave three examples of issues where retaining walls, tunnels, excessive excavation were done

outside of limit of disturbance areas. I want to point out that all three of those examples are what shouldn't be done. And all three of them are part of earlier, earlier Sweeney Master Plan approvals. The Fifth Street buildings that were talked about, they had tighter height restrictions than the rest of Old Town at the time. The rest of Old Town was 35' height. The Fifth Street buildings, those two lots were 25' height to make sure they were small and would fit in with the neighborhood. They ended up being 9500 square feet each. And if you guys know the ones we're taking about, they don't quite fit in with the neighborhood. And I would also mention that both of those buildings went bankrupt after being built. So building within the neighborhood and the scale makes sense. And economic sense.

First, I was going to say another great presentation from Francisco, here. Bringing things back kind of towards reality kind of. This presentation tonight from Francisco again shows some of the massive liberties and increases that the Sweeney's have taken with this version of the, of the project.

One of the things that's a bit irritating and somewhat hard to understand is that we still do not have 100% the entire complete 1985 MPD application, and all the associated attachments and appendices. The applicant has stated that they have a complete application with all the appendices, and I would request that we try to compel the applicant to bring all of the document forward to the public. Especially, when the applicant's attorney, who wrote a 200 and something page legal letter to us on November 3rd. And I quote. The applicant's attorney states in part, I quote, "whether due to ignorance or something more nefarious, Staff has presented a partial and incomplete set of documents in several respects." I'll do the dot, dot, dot. "Even those the SPMP explicitly informed Staff---this is still a quote---"that additional relevant documents exist, Staff did not bother to locate or review those documents." End quote. The applicants have repeatedly stated that they have these documents. The applicants are not producing these relevant documents even though they state that they have them. I feel that if anyone is acting in a nefarious manner in this issue, it's the attorneys for the applicant. They're willfully withholding relevant documents that matter to this, this decision coming up.

The applicants had been, prior to tonight, stating repeatedly that these documents are not important and aren't relevant. But I take issue with that point as well, because all the original applications, documents, and

pages are critical. The applicant's attorneys submitted a 270-plus page legal document last week, November 3rd, and this document does exactly what they were complaining about; picking and choosing between attachments to try and bolster their legal points. But this document leaves out other attachments that greatly hurt their weak legal arguments. I'll give a few examples.

Example 1 - Page 116 in your packet. It's the May 15th, 1985 Fact Sheet which points out very succinctly that the total support commercial square footage is 19,000 square feet. And right next to it, it shows that the total square footage of lobby space is 17,500 square feet. In this latest submittal, the applicants are requesting 271,000 square feet of circulation space versus the 17,500, which is in this document that we just got now. The lobby space is defined in the Fact Sheet as non-commercial support amenities. And those goes directly next to the support commercial as one versus the other. Here's the support commercial at 19,000. Here's the non-commercial at 17,500. And that includes the weight rooms, rec rooms, saunas, administrative offices, storage, ski storage, meeting rooms; all that stuff in the 17,500. Again, estimate is about 271,000 the applicant is asking for.

A second example. In the 1985 MPD Appendix C, phasing and breakdown of UE document, which is also in your packet on the next page, Page 117. It shows the applicant back in the '85 time-period following the UE breakdown very carefully. All the different square footages for all the different areas are all broke down, and they all add up exactly. And so not having these documents is critical, and I would say possibly nefarious.

Another example from the attorney's letter, which starts on Page 226, the Rezoning Fact Sheet from May 17th of 1985, has a very important note on it. And this is something again that hasn't been brought to light recently. But on that document, you know, submitted by, by Pat to the City, it has an asterisk and a highlighted note right at the top. Special restriction to gross density of 18 unit equivalents per acre. Well, that's a big deal. And this is a maximum, okay. That's on Page 226 of their document. And then on the next page it, it spells it out on Page 227 in verbiage. And it says, I quote, "That 11.5 acres be zoned recreational commercial, with a special restriction that gross density does not exceed..." that's a maximum, "does not exceed 18 unit equivalents UEs per acre. And the remaining 110.96 acres be rezoned Recreation Open Space." This

restriction is a maximum and it greatly reduces density, mass and scale for the Hillside parcels; Creole Gulch and Mid-Station. This specificity greatly limits the maximum project size, but even at that greatly reduced size compared to what they've turned in now, the mitigations can't be made. So, even though we're talking about size, mass, scale, density; and if we get back to reality, we still can't mitigate it for the neighborhood. There's plenty of other documents and quotes that talk specifically from the Sweeney's saying the neighborhood is more important than the project, and keeping the neighborhood intact is more important. And we see the opposite in action and deed. Thank you very much.

Chair
Strachan: Thank you.

Arnie
Rusten: Good evening. My name Arnie Rusten. I live at 1058 Lowell Avenue. I'd like to make some general comments; and as a professional civil and structural engineer, comments on the slope stability and associated environmental concerns relative to the proposed excavation and material placement for this project. It is incredibly important. I can't envision spending \$4 million dollars and not spending enough time in making sure that this project in fact is feasible at all.

Next one. This is from tonight's Planning Commission Staff report. The applicant's recent disposal plan was a real surprise to many. It's a critical component, as I said. It needs a lot more detail than what's being presented by the applicants so far. This entire submittal process to me is frustrating. I find it very unreasonable that it essentially falls on the Planning Department, Planning Commission, and the public to discover what the applicants keeps changing and to point out the items that are either incorrect or missing.

Next one. It is to me as if they're playing this game of spot the difference. The applicant will tell you that they removed the sunglasses and changed to sweaters, but they will not tell you that they made the cloud a lot bigger. This is for you to find. This is a very typical tactic of engaging large corporations and a bunch of attorneys. And it can be and is very overwhelming. I think it places undue pressure on a, an approval entity, and it ought to be gone about in a lot different way.

Next one. I spent a lot of time reviewing the history of this project now. It's puzzling that each time the project has come back it has come back bigger. There's been a lot of information discussed tonight. I just reproduced this slide here from John Stafsholt's presentations over a year ago where, you know, basically it stated that what was envisioned in the 1985 approval is between the green and the red line. It is drastically different and an amazing different as is shown with the increases in size and excavation, in particular.

Next one. I believe we can all agree, as was stated earlier, that it is appropriate to take excavated material and place it on the mountain to allow improvements to ski runs, trails, etc., to be regraded, modified, or altered as long as it's done in a naturally occurring manner, which preserves natural look, [inaudible] views, openness, etc. Question is, does the proposed placement and grading plan comply. I contend not. From a pure engineering perspective, it may not even be feasible. The proposed placement zone is the Creole Gulch, as shown in this photograph.

Next one. It is envisioned that the placement zone ultimately will look like this. A large mound, a mountain essentially. Drastically different than what it looks today. This would involve significant disturbance to an environmental sensitive area, and also within the Park City Historical District. My estimate, the fill quantities it was 1.15 million cubic yards. As a professional engineer with over 40 years of civil and structural engineering, I have grave concerns for this amount of fill placed on the hillside. Filling on a steep slope carries significant risks and can lead to disasters. The experience of a geo-technical engineer is required to assess the potential for landslides, and to develop a placement sequence that assures that it can be built safely. There's been no geo-technical investigations on this site, no slope stability analysis, and no detailed material placement plan. This is woefully inadequate; and an approval entity will have no real basis for approving this concept. Pretty renderings are simply just not enough. Plans have to be viable, and for that to be proven geo-technical explorations, and engineering feasibility studies and plans need to be prepared.

The Planning Commission needs to be given adequate basis for approval. Their decision and ultimate approval carries significant risk.

The site also---besides the slope stability concerns, there are some environmental concerns. Dealing with contaminants, as we have here on this site. It's no joke. As shown here, the site has four mining sites, there may be more, with significant elevated lead and arsenic levels in the soil. Additionally, the Creole Mine and the Creole Mine adit is either in the excavation zone directly, or in the placement zone. Additionally, these two areas are also located within the Park City Municipal Corporation Spiro Drinking Water Source Protection Zone. I would caution anyone who plans to disturb or move contaminants that may potentially hard water supply to be very careful.

The August 28th, 2006 letter from the Park City Municipal Corporation to the applicant's consultants, RMC, states in part, "Park City Municipal Corporation's position is that the consolidation of mine waste approaching 11,000 parts per million lead and 1700 parts per million arsenic within the Spiro Drinking Water Source Protection Area is unacceptable, and would be considered a potential pollution source". Therefore, the City would not approve the Creole Mine Shaft as a placement repository for mine waste originating from the Creole adit. I have not seen any new plans or any new discussions about this. A City approved plan is needed.

Here are those two sites shown in yellow within the disposal site and the excavation zone. Looking at the placement zone, if this concept is at all feasible, the process for construction would be to remove all trees and vegetation within the placement zone and the access road, remove the overburden soil layer, stockpile what is suitable, dispose of the unsuitable material, handle and dispose of contaminated material. And then construct construction roads and place the rock fill to an engineered sequence. And last, place the overburden and revegetate. None of this has been discussed or presented. It is needed. Where will you stockpile? How will you do it? Extremely important. Contaminants, again, really important. How are you going to deal with it? It has to be part of what's presented to you now.

Next one. Here are---looking at the fill and the excavation together, placement will be within the red area. Excavation that's directly affecting the Creole Gulch is within the green area. So if you draw a rough section along the yellow line, it will show something like---on the next one. Like this. The rock fill in red, placed on this slope will add almost two million tons of rock on top of the slope, while you're removing---in green---about a million and a half tons of rock. And this removed rock is very important

relative to offering a counter weight to what wants to come down the hill due to gravity. At this time, it's unknown how the rock and foundation strata is formed. It is unknown if there are any critical soil [inaudible]. And there have been no calculations made as to whether this foundation system has the strength to withstand the forces created by the placement and removal of the rock.

An added concern relative to this slope stability is what happens during an earthquake. The project is located in the high seismic zone. All of this extremely important. Questions that have to be answered now.

Next one. You don't want the fill and the slope to move down the slope like you see here. I would presume the applicant would be concerned as well.

Next. Clear cutting on Treasure Hill has obviously been a concern to Park City for a long time. This is an excerpt from the old revised ordinance of Park City, Utah 1926, where it is stated that, and I quote, "It shall be unlawful for any person to cut standing timber, wood or brush from the easterly or north easterly side of the mountain immediately we of Park City, commonly called Treasure Hill. Next one. Why are there concerns about clear cutting? The big concern is that it may cause landslides, such as you see here. This is [inaudible] in Washington State. You see slides here in Park City, also. A hike up Daly Canyon will show you several areas where slides have occurred. Or just look at the hillside immediately east of Deer Valley Drive across from lower Main Street. Ample evidence of prior slides or continue slope movement.

This is a small ski area in Washington State on Snoqualmie Pass; commonly known as Hyak. This ski slope is very similar in steepness to Creole Hill. Next one. Just as Creole Hill, it also had a ski jumping hill built in the 1930s and used until the late '50s. When this area for the ski jump was clear, some of the material was used to fill on the slope shown on the previous page. Next slide. On January 7, 2009 there was a significant slide at this ski area. First it was thought an avalanche; however, this was not the case. It was, in fact, a serious landslide. Next one. The slide is outlined here in black. It caused significant damage to homes at the edge of the ski area, as shown in red. Luckily, no lives were lost. Next one. The slide took out a ski lift. And luckily it was not deep enough because it surely would have caused much more damage and probably caused loss of life had it been deeper. The slide was caused by

heavy rains [inaudible] the interface between the shallow fill and the overburden on top of rock. This interface between the fill and the rock, placed 80 years ago, it finally decomposed to the level necessary to allow it to slip. I doubt that there were a lot of engineering done at that time into this fill design. We now know a lot more about slides and earthquakes, and we need to proceed with caution here.

Next one. As I previously stated, I've spent a lot of time studying this process. The more I learned the more I found this slide, as presented by John Stafsholt over a year ago, to be entirely applicable. This proposal is simply not close to being in compliance. Point 6. The same project has come back again to us after 12 years. Why? Sweeney's are hoping that the new Planning Commissioners, Planning Department Staff, and City Council will give them what no one else has done in 30 years; a CUP approval. I would definitely agree with Point 8. A new MPD application is needed due to the extreme modifications and unreasonable demands.

I say please stop this madness. Thank you. That's all I have.

Chair
Strachan: Thank you.

Nikki
Deforge: Nikki Deforge, here speaking tonight on behalf of THINC, a non-profit organization comprised of hundreds of Park City businesses and residents. As an initial matter, we just want to express our disappointment with the recent November 3rd position statement by the applicant; and specifically with the tone of that document and it's very unfair and personal attacks on both the integrity and competence of the Planning Staff. As John mentioned, among other things, they accused them of ignorance or something more nefarious. And we feel that these sorts of accusations and name calling are really completely uncalled for, and frankly unfounded. Although THINC does not always agree with the conclusions reached by the Planning Staff, we very much appreciate the incredible amount of time and effort that they have devoted to this process over many, many years, and for the unfaltering professionalism and dedication that they have shown. And there really is absolutely no excuse for resorting to the personal attacks and conspiracy theories.

We also disagree with the statement recently made that there's been no analysis of the past position statements. THINC has certainly address

these in considerable detail, and we will do so again tonight with respect to this most recent position statement. And with respect to that, I want to apologize in advance for my lack of brevity. That's a 270-page document, very dense; and I'm afraid it's going to take a bit of legal technicality to address. As for the actual substance of that and for the comments, frankly, made tonight, we find them to be inaccurate in virtually all material respects.

Let's start with the language of the MPD. It says, the following plans and exhibits, in addition to this report and the project file, constitute the complete development permit. And then it lists the exhibits. Number one, the Woodruff drawings. Number two, the May 1985 Fact sheet. And Number 3, the SMP application. So, although the applicant goes to great length tonight to try to explain why the City should ignore the Woodruff drawings, ignore the May 1985 Fact Sheet, and presumably the application to the extent that we have that, that simply cannot happen based on the fact that the Master Plan approval expressly incorporates by reference all of these exhibits into the complete development permit. These documents are integral and unseverable parts, therefore, of this Master Plan approval, and the City can no more ignore these documents than it could ignore exhibits that are incorporated by reference into any other contract. This is a---this is really Contracts 101 and it is directly analogous here.

Now if the, if these documents, if the Woodruff documents and the fact sheet had not been expressly incorporated as part of the complete development permit, we might have a different argument here. And the applicant might have a point that these are merely conceptual or whatnot. But that is not the case here. Here, they are part of the complete Development Permit, and they must be construed in accordance with what has been granted. And they must be given full effect based on their terms; on the face of these documents.

Now in response to this, they cite a 2009 statement by a former Planner saying, no we think these are, that these just might be conceptual or mere volumetrics. Well, a lone statement by a Planner in 2009 has absolutely no impact on the legal effect of the mandatory statements in the MPD permit itself, stating that these exhibits are not merely illustrative or potential options, but they are actually part of the complete development permit.

Starting with this May 1985 Fact Sheet. To the extent that there are any differences or inconsistencies with that, and frankly with the Woodruff drawings, it is up to the Staff to reconcile those differences by determining which of these documents controls. And that is precisely what the Staff has done. For any provision in the Fact Sheet that is directly but differently addressed in the SPMP approval, the Staff has correctly determined that the later approval takes precedent. Same thing goes with these Woodruff drawings. But where something addressed in the Fact Sheet or the drawings is not addressed differently in the SPMP approval, the Staff has correctly concluded that that fact sheet governs, or those Woodruff drawings govern. Again, what Staff cannot do is entirely disregard these documents because there appear to some discrepancies or some differences between the Fact Sheet, for example, and what was ultimately approved. And the applicant is flatly wrong in insisting that they do so. The Staff has gotten it exactly right.

As for these alleged discrepancies, the applicant contends that as between the May 1985 Fact Sheet and the SPMP approval, there are quote, "substantial and irreconcilable difference". But they curiously identify only two; neither of which is substantial or irreconcilable. First, the applicant notes that the height limits and the Fact Sheet were less than what was ultimately approved in the SPMP approval. And that is why the Staff relied on the height limits set forth in the later SPMP approval, as is standard with contract interpretation principles.

Second, the applicant notes that the site plans purportedly submitted at the time, at the same time as the May 1985 Fact Sheet are different in orientation and appearance than the Woodruff documents. Again, the Staff has rightly deferred to the subsequent Woodruff drawings---or excuse me, to the Woodruff drawings as opposed to the Fact Sheet, which were also referenced as an exhibit to the SPMP; and not held the applicant to any site plans permitted or submitted prior. And as for those earlier site plans, they were not part of the fact sheet at all; and therefore, were not part of the SPMP approval.

The applicant wrongly argues that various other submissions and reports that were allegedly submitted at or around the same time as the May 1985 Fact Sheet must be considered as part of that Fact Sheet. But again, the SPMP does not mention any of those documents. Only the Fact Sheet and any amendments to that Fact Sheet. Consequently, no such documents can be considered as part of the Fact Sheet itself or;

therefore, as part of the SPMP approval. And the applicant's slight-of-hand in referring interchangeably to the May 1985 Fact Sheet and the alleged May 1985 submission must be carefully noted in the position statement.

On the other hand, it is absolutely true that any verifiable amendments to that Fact Sheet must be considered and construed as part of the SPMP per the express language of the approval. We don't dispute that. The problem is that the applicant has not identified any such amendments. Although, they now point in their position statement to a handful of documents that it claims were amendments to the May 1985 Fact Sheet. None of those documents even mention the Fact Sheet; must less claim to be an amendment to that Fact Sheet. To the contrary, these documents are all either stand-alone documents unrelated to the May Fact Sheet, or are simply revisions to entirely different documents than the May Fact Sheet. For example, there is a document entitled, Key Questions, which was originally dated November 12th, 1985. Five months after this Fact Sheet. And then has a revision date of December 23rd, 1985.

Another document is entitled, Hillside Potential Density versus Requested. And it purports to be a December 23rd, 1985 revision of the December 3rd revision to an August 12th, 1985 document. Another is entitled, Advantages to high-rise maximum open space approach, and is dated September 23rd, 1985. Nothing in any of these documents or the others that the applicant contends were amendment to the Fact Sheet ties them to that Fact Sheet. And again, not one of these documents that were identified in the position statement make any mention, makes any mention of the May 1985 Fact Sheet or purports to be a revision or amendment to that Fact Sheet. And even if the applicant could somehow prove that any of these random documents were the amendments to the May 1985 Fact Sheet, none of the documents impact any of the Staff conclusions that the applicant so seriously disputes in the position statement. For example, the hillside potential density versus request document, likewise identifies a total of 19 UEs of support commercial space; just like the May 1985 Fact Sheet it allegedly amended. And in fact, although the applicant claims that these documents quote, "eliminated statements about all of the areas the Staff found so interesting about the May 1985 Fact Sheet", it identifies just one; lobby space. Yet, the documents did not eliminate statements about lobby space. They are simply silent on that issue. And it is a well established principle of contract interpretation that if an amendment is

silent as to any provision in the original document, then it does not amend the provision, and the original provision stands as it. Because none of these documents they contend are amendments to the Fact Sheet, purport to amend, or even address the very detailed lobby space provisions in the May 1985 Fact Sheet, those documents could not possibly have affected any amendment to the lobby space provisions in the Fact Sheet, even if they actually were amendments to the Fact Sheet; which they are not. And by the way, the purported amendments also say nothing about any parking space for the project. Yet, the applicant does not argue that they eliminated their parking space entitlements set forth in the Fact Sheet.

Finally, the applicant's contention that Staff must consider historical background, context, negotiations, discussions; as well as Dr. Sweeney's view of the intent and meaning of these various documents in construing the Fact Sheet, are equally misguided. It is also well established principle of contract interpretation that one cannot look beyond the four corners of the document, absent an ambiguity that cannot be resolved by looking to the plain language of that document. Here, the Staff can and has construed and reconciled the provisions of the May 1985 Fact Sheet with the SPMP itself, and with the Woodruff drawings and other exhibits reference therein. And nothing more is allowed or required.

Again, the applicant's demand that the Staff ignore the 1985 Fact Sheet and the Woodruff drawings is directly contrary to the mandatory language of the SPMP. Had the Fact Sheet truly been, quote, "rejected by the City" as the applicant now claims, it most certainly would not have been expressly reference in and incorporated as an exhibit into the SPMP approval.

A few words about this Exhibit 3, the Sweeney Properties Master Plan application that is also reference in the SPMP approval. Although, the applicant makes no mention of this document in its November 3rd response, it appears that the document might actually be included in the attachments, starting at around Page 220. There, there is a document that is titled Sweeney Properties Master Plan application. Again, there's no declaration that this is the case. No statement to that effect. But it appears that it may be that document. And if it is, it is no wonder that the applicant didn't call it to anyone's attention given that it likewise claims only 19,000 square feet of support commercial space for the project; and therefore, further supports the Staff's conclusions in that regard.

Now turning to the Staff report itself. We would like to express our agreement with virtually all of the conclusions reached by the Staff in its report, starting with Item 1 – Density and Support Commercial. Again, we agree with the Staff's conclusions as to the 19 maximum approved support commercial UEs. We also agree with Staff that Refinement 17.2 exceeds that amount by 18.81 UEs. Now, the applicant's argument in their position statement is that they are actually entitled to 10% more support commercial under Section 10.9(i) of the 1985 LMC. That appears to be a new argument and is, I think, contrary to what we heard tonight, that they only got the 5% that's set forth under 10.12. And 10.9 certainly doesn't apply here. 10.12 does because that refers to the hotel support commercial space. But again, as we've talked about tonight, and I think as Commissioner Joyce pointed out, the MPD does declare the 19,000 to be the maximum allotted. And so we don't even get to 10.12.

Even if the applicant could claim this additional 5% or 10% of support commercial under the LMC as it variously contends, those provisions expressly provide that such support commercial must be quote, "oriented toward the internal circulation of the development for the purpose of serving the needs of the residents or users of that development; and not the general public or persons drawn from off the site". And this is consistent with the mandatory language in the SPMP that Francisco rightly pointed to earlier. And keep in mind that the comments that were made earlier stated that the only thing that was required in the SPMP was that this support commercial be oriented to those residing in the project. But that cuts off, as I think Francisco noted, the next two clauses of the SPMP, which again say not only must they be oriented to, but they also must provide convenient service to those residing within the project, and not designed to serve off-site or attract customers from other areas. Yet, the applicant directly admits on Page 8 of its position statement that the proposed commercial space is quote, "designed to primarily provide service to guests of the project, and not attract customers from other areas". Primarily is not good enough. The SPMP says that it must not be designed. And so by that admission alone, we see that they are not in compliance with the SPMP. And as we---and as has been noted repeatedly in other hearings, even that statement of primarily designed is really inaccurate based on the applicant's own parking projections for off-site visitors and the sheer amount of square footage of commercial space claimed.

We heard tonight, also, that the applicant is somehow trying to get around the maximum commercial UEs by arguing reliance on statements made by various City employees over the last number of decades. But under Utah law it is clear that you have no claim against a City based on representations made by any City employee, even if those statements were negligent or intentional. So we do not have a reliance argument that can be made here.

Lobby space. We believe, again, that Staff is absolutely correct, that the 16,214 square feet of so-called meeting space claimed by the applicant in Refinement 17.2 is merely a subset of the 17,500 square feet of lobby space claimed by the applicant in his Fact Sheet. And in fact, the applicant's own definition of lobby space in that Fact Sheet expressly includes meeting space. The Staff is also absolutely correct in concluding that if the applicant elects to use 16,000 square feet of its allotted lobby space for meeting space, then it would be left with only 1286 square feet for all other types of lobby space claimed in the Fact Sheet. And by applicant's own definition, that includes weight rooms, recreation rooms, saunas, administrative offices, storage and guest ski storage spaces---or excuse me, areas. And this is true regardless of how the applicant characterizes such space in Refinement 17.2 whether as accessory space, common space, or otherwise. Because the applicant has not provided any detail as to what each of these categories of space actually contain, it is impossible at this stage to determine how much of that square footage they claim in each category, and how much of that falls within the limit on lobby space. So regardless, at the end of the day, the lobby space, meeting rooms, weight rooms, administrative offices, and so forth that are included in the applicant's definition of lobby space in its Fact Sheet, cannot exceed 75---excuse me, 17,500 square feet. And that must be a condition of approval.

As for circulation space for hallways. The applicant goes to great lengths in its November 3rd response to attack the Staff for purportedly concluding that the lobby space referenced in the Fact Sheet includes circulation space for hallways. In fact, the Staff reached the opposite conclusion. On Page 76 of the recent Staff report, the Staff stated that it does not consider hallway circulation space to be included in lobby space. So that argument of the applicant in its position statement can simply be disregarded at this stage.

Regarding Item 4 - The Limits of Disturbance and Building Area Boundaries. Contrary to the applicant's claim tonight, the Staff has never said that Sheet 22 defines the limits of disturbance. They have said correctly that it defined the building area boundary. And they are now proposing that the limit of disturbance not be outside of the building area boundary, not because that is dictated by Sheet 22 or defined by Sheet 22, but because that is how the limits of disturbance have historically been defined by the City based on what the building area boundary is set at.

And as for the other projects where the limits of disturbance were purportedly set outside of the building area boundary. I think on the slide we saw tonight the applicant says that this has been consistently done otherwise. And yet when asked about what consistently means, we heard about three housing situations, residential houses, in the last 30 years. And I think if you look closely at those you will find that there are, these are very, these are not analogous to the current situation. And so we encourage you to not simply take those statements at face value, but certainly dig into what has been presented and, and is the case with respect to those.

THINC also agrees with the Staff's conclusion that the cliffscapes features and retaining walls cannot be located outside of the building area boundary as they are shown in Refinement 17.2. And additionally, the cliffscapes and enormous retaining walls now featured in Refinement 17.2 are nowhere reflected in the SPMP approval, including in the Woodruff drawings, and are entirely inconsistent with the project as approved. They also run afoul of numerous CUP criteria, including mass, scale, and respect for the existing grade and, therefore, create impacts that cannot be mitigated. Consequently, the proposed cliffscapes and retaining walls cannot be permitted at all, much less permitted outside the building area boundary.

As for the Recreation Open Space. THINC does not disagree that some placement of excavated material over the property zoned as ROS was contemplated in the approval in the areas specifically identified and for the sole purpose of regrading ski runs softly, as Francisco mentioned. That is not what the applicant now proposes. The enormity of the excavation, transportation and dumping of rock and soil that is now called for in the applicant's plans and was aptly, I think, illustrated by Arnie's slides tonight, was never contemplated under the SPMP. It is also entirely consistent with the open space ROS zoning designation and with the relevant SPMP

provisions. Those provisions imposed a requirement that the open space quote, "preserve the mountain substantially intact and pristine". What we saw tonight is not pristine or substantially intact. The SPMP also requires that it be used in a manner that would avoid cutting and removing significant evergreens existing on the site. That also, obviously, cannot be done under the current plans. And as Staff rightly concludes, whatever is done on this recreation open space must be done in a naturally occurring manner, which preserves its natural look, feeling, views, openness, etc.; or in such a way to enable the newly graded---the newly regraded sites to look natural. To maintain open land covered with vegetation. Again, that is not reflected in anything that we have seen in Refinement 17.2.

The applicant's new argument that it has the right to place whatever excavated material on the recreation land that it chooses is contrary to the plain language of the deed, which is relies on its position statement. That deed merely states that the applicant may, quote "use the open space parcel as a depository for excess fill generated from construction in conjunction with the Sweeney Master Plan". So that deed does not replace the SPMP conditions and requirements; it is expressly subject to them. And although the applicant ends its quote there in its position statement the deed further imposes a condition to this use; namely that it, that it---namely, it states provided that any resulting damage to the open space parcel shall be repaired. So it's only for excess fill. It's only in conjunction with the SPMP. And it is only allowed provided that the resulting damage can be repaired.

Refinement 17.2 is not in conjunction with the SPMP. The SPMP contemplated many magnitudes. Less excavation and fill, with most of it being hauled off site. And the SPMP showed the excess fill left on site being placed only on a fairly discreet area of the open space parcel, and use only to regrade the ski runs. So when the deed talks about only excess fill being placed on the open space land in conjunction with the Sweeney Master Plan, it is no blank check for the applicant to place all of the exponentially larger excavation fill than was ever approved in the SPMP anywhere it wants on the open space parcel. And in doing so, not only regrade the ski slopes but also completely fill in natural gulches and clear cut forested hillsides. Clearly, that would damage the open space in ways that could not possibly be repaired, and which would also be directly contrary to the conditions established in the deed for placing fill on site.

Item 5 – Setbacks. As quoted in the Staff, the SPMP stated with respect to the Hillside properties that the buildings have been setback from the adjacent road approximately 100 feet, and a comparable distance to the nearest adjoining residents. And also, that the Hillside properties provide substantial 100-foot plus setbacks from the road with buildings cited considerably farther from the closest residents. THINC respectfully disagrees with Staff that Refinement 17.2 complies with this 100-foot plus setback requirement. Drawings S4, S5, S6, S7 and S8 each show buildings for the project located at best 20 feet from the road, and possibly closer. And certainly not substantially further from the nearest residence, which is the Vernagaard's house which is very close and directly adjacent to this property.

We understand the Staff's arguments that the MP---that the Master Plan sets these setbacks from the, from the road as it was rather than the road as it is, but that's not what the language of the SPMP states. It also does not state that it's to be setback only from the residences that existed in 1985. We believe at the time---part of this, at the CUP phase we've got to look at the existing conditions. The existing road, the existing residences and determine that these buildings are set back 100-feet from those.

Item 8 is Employee Housing. We agree with Staff that Refinement 17.2 does not satisfy the affordable housing requirements under the Land Management Code. In 2009 Staff calculated the affordable housing requirements for the project based on the 19,000 square feet of support commercial approved for this project. And make note that this is yet another example of where all parties agreed that there would only be 19,000 square feet of commercial space. Had the applicant or the City believed that the applicant was entitled to another 5% or 10% of the total area in support commercial---the total floor area in support commercial, then that additional amount would have been included in the affordable housing calculation, and it was not. And the applicant said nothing. So based on the applicant's claim to just 19,000 square feet of support commercial space, the applicant was required to provide 22,775 square feet of affordable square footage for the property. Of that, the applicant has proposed only 6,660 square feet of employee housing on site, despite the fact that the City Housing Authority directed the applicant to provide all of the affordable housing on-site. And if the applicant is approved for any more than 19,000 square feet of support commercial, which, which was the basis for the 2009 calculation of 22,775 square feet, then that calculation must be redone to include all of the support commercial space

required, or that would be approved for this project; and then impose the affordable housing requirements accordingly as a condition of approval. And that will, of course, tremendously expand the requirements for affordable housing on-site and elsewhere.

The information that's not been provided is noted also in detail in the recent Staff report. And regarding that, the applicant's vague and non-committal responses to the long list of items that Staff as compiled as to outstanding information is very illustrative. In lieu of the specific detailed and written plans that have been repeatedly requested by the Commission and Staff, the applicant provides a few high-level bullet points. And this does not come close to providing the information necessary for consideration of the remaining items, much less approval of the applicant's CUP.

The applicant has said tonight that they have been required to provide far more than comparable projects, and this is simply not true. The projects that they have cited are very, very different than this one, including the Montage and other similar projects. None of those were located in the middle of Old Town. None of those are located adjacent to small homes in small neighborhoods on tiny streets that are virtually impassable in the winter as it is. Given the fact that these are apples to oranges comparisons, there is ample reason to treat this project very differently than those projects, and frankly, anything else that's been proposed in the City in a very long time. There's serious issues with neighborhood compatibility and the historic nature of Old Town that have to be fleshed out and addressed to make sure that this project, this project is not a greater impact than it absolutely must be.

We also disagree, with respect to the applicant's statements, that all the Planning Commission needs to do is to look at the 15 CUP criteria, see what impacts there are, and then impose mitigation requirements. Again, the first step of all of this is to look at the MPD and make sure that what is proposed complies with the conditions of that document. That's the first step before we ever get to those CUP criteria. And there are long lists of areas where this project does not comply with the MPD. And that's before we even get to these CUP criteria.

Finally, the applicant has claimed in a recent newspaper interview that the community is trying to, quote "undo it's 1980s approval". Nothing could be further from the truth. We are here to make sure that the applicant is held

to the conditions of its 1980 approval. And that they are held to the commitments that they made in order to obtain that approval. This is not about mere public clamor, as was suggested tonight. This is about public accountability. And we appreciate the opportunity to help provide that accountability to the Commission.

Thank you very much.

Commissioner

Suesser: Thank you.

Chair

Strachan: Nikki, while we've, while we've got you here, is it THINC's position that if the application fails to comply with the MPD in any regard whatsoever that the whole project has to be denied? Or can a piecemeal approach be taken where a finding of compliance with one part of the MPD is then juxtaposed with non-compliance of another part?

Nikki

Deforge: I think that's difficult to answer in the abstract. It's not my understanding that that is what the applicant has requested. I don't see any, you know, piecemeal approval being requested to this project. It is the project. And so to the extent that they would request that, I guess you'd have to look at that on a case by case basis. But, frankly, I don't see how that happens in, in the SPMP. But if they can, if they can cut off pieces that comply and they want to get approval for those pieces, that's one thing. But I don't see how you adjust from a global project based on, you know, this area versus this area. It all has to comply or they can carve off discreet areas that they want approval on, and that area must comply.

Chair

Strachan: And walk me through again your analysis of Exhibit 1 to the special warranty reverter deed. Why do you think that does not permit deposition of, of excavated materials in the ROS?

Nikki

Deforge: So let me start with, again, the language from that deed. And if you've got that. I should have brought a, a slide with me to help illustrate that. But the deed says that they may, quote "use the open space parcel as a depository for excess fill". So that's the first issue. "only excess fill generated from construction". And then it talks about in conjunction with

the Sweeney Master Plan. And then the next piece is a condition that any resulting damage to the open space parcel shall be repaired. So our position is that, number one, what they are proposing as far as excavation goes is not, is not done in conjunction with the Master Plan because it is nowhere contemplated; this extent, this scope, this magnitude of excavation that they're now proposing. Nor was it contemplated or addressed anywhere here that all of that be taken and placed up on the mountainside. And certainly not in the areas that they're proposing. Like filling in basically Creole Gulch or creating huge mounds on top of the mountain. The SPMP identified a couple of discreet areas, like over the Payday Run where some fill, some excess fill from this project could be used to regrade the ski slopes. And that is not what they're proposing here. So, we're not doing it in conjunction with the SPMP. And it's not limited to excess fill. This is all of the fill from the project. Under the SPMP most of this was getting trucked off-site with some put up on-site in order to regrade. Again, that's not what we have here.

And then this third condition, although the applicant says this deed is unconditional, here's a condition that any resulting damage to the open space parcel must be repaired. I think you've seen from Arnie's slides tonight what the extent of the damage would be to this parcel if, if they're allowed to do what they're proposing; both in terms of building roads all the way up that slope, cutting them across horizontally through the forested areas, and then, and then dumping a million, a million and a half cubic yards of rock, you know, with a conservative estimate I think is to the fill factor over the entire slope. And covering up trees and cutting them down and replacing all of the, the top soil and whatnot. Again, that is not a simple, here let's put some excess fill up here to regrade some ski slopes in these discreet locations. This is a massive excavation, transportation, and dumping of over a million cubic yards of fill.

Chair

Strachan: John, wait your turn.

John

Stafsholt: Can I, can I address this for a second?

Chair

Strachan: Yeah, but do it after she's done.

John
Stafsholt: Oh, I'm sorry.

Chair
Strachan: Thanks.

John
Stafsholt: No problem.

Chair
Strachan: You wouldn't like it if somebody interrupted you, right?

John
Stafsholt: Never. [Laughs.]

Chair
Strachan: So, enlighten us as to how we determine what is fill versus excess fill.

Nikki
Deforge: I think you look to the SPMP documents, just like it tells you to do in this deed. This deed is subject to that document. And that document shows you, you know, what was contemplated; which is we're removing most of this fill. We're going to deposit some of the excess up on to the ski slope in this location. Not, we're taking all of it and here it goes. And hope and cross our fingers that it doesn't just slide right back down.

Chair
Strachan: Okay. All right. Thank you.

Nikki
Deforge: All right. I'll defer to John.

Chair
Strachan: Just state your name again for the record.

John
Stafsholt: Hi, John Stafsholt. I just wanted to comment on your question there about the fill and how it's going to be done. So, those of us who have been doing this a long time know that there used to be about 960,000 cubic yards that were going to leave by dump trucks. Then they went to conveyor belts. And most recently they've gone to dump trucks going up

the side of the mountain. But to address your point directly, that part of the mountain is ROS. It's resort open space. And if you saw the switchback look there---and anybody who's skied down there, like probably all of you have, realize you're going to take out tons of trees on every single switchback run; which they're not allowed to do in ROS. And they're not allowed to build those road, even if they're temporary, in the ROS. So I just wanted to bring that point up. That's all. Thank you.

Chair

Strachan: Thanks. All right. Anyone else from the public wishing to speak? All right, we'll close the public hearing.

End of Public Comments

Chair

Strachan: And start with the Commissioners' comments. Let's move left to right and we'll start with Commissioner---my left. Start with Commissioner Campbell.

Commissioner

Campbell: I don't have anything new that I haven't asked already.

Chair

Strachan: All right. Great. Commissioner Suesser?

Commissioner

Suesser: I want to start off by saying that I thought the Planning Department's presentation at the last meeting of this Commission, the comparison of Refinement 17.2 and the MPD Sheets, and Staff's analysis and comparisons between the '85 Master Plan and the current Refinement 17.2, was extremely helpful and instructive. And I found the side-by-side comparison tonight also very helpful for our analysis.

So working through some of the questions in the Staff report, I agree with Staff that the Master Plan provided clarity in terms of the approved allotted residential UEs. The approved number was 197 and the proposed residential UEs for the project is 196.7. So the applicant has, is within the parameters of the MPD with respect to the residential UEs proposed.

We've talked a lot tonight about the, the MPDs maximum number of commercial UEs for the project as 19, as specified in the Fact Sheet and

the exhibits to the MPD. And the applicant has proposed 34.58 commercial UEs in its, in its application. And while I think there's a little ambiguity there, I think the overall analysis by Staff that the, that the commercial UEs approved for this project is 19 is hard to refute.

With respect to the lobby space and the dispute between accessory space and common space proposed by the applicant, which totaled 254,819 square feet versus the 17,500 square feet of lobby space, and the sort of the undefined amount of accessory space allowed. I think the amount of accessory space that the applicant has proposed is completely out of whack with what was anticipated in the original MPD. I agree with Staff that the impact of the amount of space proposed in the application conflicts with the mitigation measures of the Master Plan and, therefore, would increase the detrimental impact of the project on the community. I think the square footage of the project, particularly the amount of the accessory and common space proposed by the applicant needs to be significantly reduced to comply with the terms of the MPD.

And I agree with Staff's recommendation that the proposed cliffscapes, retaining walls, should be within the delineated building area boundary/development boundary. I don't think that the applicant supported its position tonight that the City has consistently permitted development outside the building area boundary. And I don't agree that the building area boundary is the building envelope, as proposed; as suggested by the applicant tonight.

I think it is appropriate to take some of the excavated material and place it on the mountain as long as it's done in a manner which preserves the natural look and feel of the mountain. The excavation plan proposed by the applicant dramatically alters the hillside. And the method proposed for cutting in broad trucking roads and trucking it up the hillside is inconsistent with the dedication of the ROS, which the applicant now proposes to dramatically alter.

I agree with Staff's analysis regarding the designation of the front setback area as the same as the maximum building height area. I think what has been proposed by the applicant for the employee housing is woefully inadequate. And I, I think this Commission has taken into consideration the evolution of this project since 1986, and has not ignored the entire record at all.

And I just want to point out to the applicant that we've read the applicant's position papers. The suggestions that we haven't is insulting. Thanks.

Chair

Strachan: Thank you. All right. Commissioner Joyce?

Commissioner

Joyce: For once I've actually got a short [inaudible], or I've got a short list. And in fact, it's all kind of questions. When I was reading through---I, I'm struggling with the Fact Sheet. And you guys used the phrase that it was patently absurd or something along those lines. That the 17-1/2 thousand square feet can't begin to cover what was listed. And yet, I'm trying to get, I'm trying to put myself in your shoes and figure out what that was. And you guys said that was a proposal that we brought that was later amended and stuff. But help me---and I don't know whether this is a Sweeney answer or whatever, but I'd love to get something tonight of, you know, what was it that---I mean, you guys clearly put together a proposal that was 17-1/2 thousand square feet with some pretty specific list of things that were included in it. And it wasn't about some just generic idea. It was about this proposal. I mean, it was about Treasure. Can, can you help me with---I mean, how can it be both absurd and be your proposal for some other alternative. How, how does that fit in? Can you---

Chair

Strachan: I guess.

Commissioner

Joyce: You don't have to answer tonight, I guess. But I'm just trying to figure out how. You guys keep asking us to ignore it, and yet it's a thing that you guys proposed.

Pat

Sweeney: Steve, it's a world that you're imagining that didn't exist back then. And I will leave it at that, and I'll leave it to what Brandon's wrote, and what we will write in the next few weeks.

Brandon

Mark: Since we're given the opportunity I might as well take it. You know, this was addressed fairly extensively in the latest---Brandon Mark, again---in the latest position paper. And if you go back and look at the history, and we're still compiling it. And I take a bit of umbrage at the, you know,

personal attacks that have been leveled against the attorney's tonight, because frankly we don't have, and we're trying to get our hands around all of the documents that are referenced in the SPMP, which is why we asked the City for a copy of that months ago. And we still haven't received it and we're still working to try and get that. But, you know, I think everybody right now is operating in a bit of information deficit. But if you go back and look at what we know now, and again, as we put in the position paper. It's preliminary because we don't have everything. But if you look at what the May 1985 Fact Sheet says and the proposal that is, that is, you know, put forth in that Fact Sheet and the broader submission. And I also take umbrage of being labeled that we were doing slight-of-hand by calling it the May 1985 submissions, because it's quite clear in the position paper when we're referring to just the fact sheet and the longer submission, which is a much longer submission. And you can tell that the Fact Sheet is excerpted from this longer submission. So we know exactly what this Fact Sheet relates to, and it doesn't look anything like what is approved in the SPMP. And more critically is the number of discussion, the additional proposals that were submitted by the applicant after that May 1985 Fact Sheet. And there are many of them. And we've tried to document as many as we now know in the position paper. But we know that just months after that was submitted, the City wanted to have a different discussion about a different set of plans.

The Fact Sheet itself was part of, like I said, a broader submission that had two different, massively different proposals. One had a development on the hillsides where you had Creole and Mid-Station as basically two completely separate developments separated by a 550 Road. And it also had a proposal of extending a road, building a road from Lowell to Norfolk. So we had, you know---

Commissioner

Joyce: But you still had 400,000 square feet of space and a proposal that had 17,500 square feet that covered weight rooms and lobby and blah, blah, blah, blah. And I'm just, I'm just trying to---I mean, if it wasn't so explicitly brought out as part of the agreement, if it was just one more page we found somewhere in an old folder or something, yeah, okay. But I'm just trying to figure out. You guys have said it's an absurd document. It can't be real from a standpoint of numbers. And you went through the example on the lobbies and how, you know---or not the lobbies, the corridors. But I'm just trying to figure out, then what, what was it. And it doesn't, it

doesn't sound like there's a clear answer to that. And maybe that's what we're left with.

Brandon
Mark:

Well, I think it's, I mean again, it's describing the development that is proposed. We've put the site plans into the record so that you can take a look at that. And if you---just looking at the site plans, it is a very, very different proposal than what was originally, or eventually approved. And so I don't, I mean, again, you know, my understanding is that this was made with a rudimentary computer simulation, you know, program, based on this very different proposal. And so maybe 17,000 square feet of lobby space worked in that. But that was not the proposal the City wanted. The City said come back and make it bigger. Make it---cluster the density more. Put it together more. We want it less spread out. We want it different. We want heights. We want, you know.

And, you know, the proposal in the May 1985 Fact Sheet is very different. And to minimize it to say, oh, well, it was just a little bit higher. No, what was eventually proposed by the Planning Commission was twice the height of what was, what was asked for in the May 1985 Fact Sheet. It is a very different animal, what is proposed in the May 1985 Fact sheet, than what was eventually approved in the SPMP. And that's what you gotta focus on. And again, the Woodruff drawings---nobody's saying that they are, that they don't matter. What we're saying is that they matter for the purpose that they were appended to the MPD, which was again, according to the Staff, the Staff's own opinion, to test volumetrics. Can we put 875,000 square feet on the hill? And the answer was yes. And you're not committed to that.

And I just---sitting back there, you know, twice, at least twice in the SPMP it is very, made very clear that all that was approved was a general concept in the SPMP. And the eventual developer had flexibility to design it in a whole bunch of unit configurations. Right? That's, that's the express narrative of the SPMP.

Commissioner
Joyce:

So, so I've read through that. And thank you, that helps me a little bit. And let me just lead into the next question then, because you're kind of going right towards it, which is---well, well let me just start. Once thing I've heard a couple of times is that, you know, Woodruff was just conceptual and it doesn't even include all the thoughts about lobbies and meeting

space and all that kind of stuff. And I just have to kind of differ with that a little bit. And maybe it didn't have specifics at all, but at some level you have roughly 400,000 square feet of residential plus commercial. You had about 250,000 square feet of parking. And you guys did an estimate and said it was 875,000 feet; and you just said that again. I mean, we've heard that number over and over again. I don't think anyone's disputing that. So the quick math says there's 225,000 square feet of other that's built into those drawings. So just so that we're in sync, because you guys keep using that number, let's not talk about Woodruff like it was just the rooms; and by the way, if we were really doing it we would have added a lot of stuff. Somebody added 225,000 square feet of space into those volumetric drawings anyway. So there's a lot of other cooked into those things.

And that kind of leads me to this thing. I know it's conceptual. I know it's not exact. But when I've gone back through and read through all the meeting notes and all the Planning Commission discussion, the City Council meetings, there was so much thought about the alternatives that were there. I mean, they were looking. And you just went through another batch of them as you kind of said, hey, it could have been separate things with a road connecting them. There was a lot of thought into the position, the height. I mean, look at the restrictions on, you know, 25' here, 35' there, and 45' here, and a maximum height here. There was a tremendous amount of thought of this alternative versus others. And not just this alternative, but how it fit and how high it could be, and what the visual impacts would be. And it wasn't like it was just a hey, can you jam 875,000 square feet on here. There is just documentation everywhere that talks about how this thing fits under the hill and fits into the neighborhood. And so I'm still stuck with, you know, sometimes you guys tell us it's just, it was kind of a quick chop to see what we can do. But when I look back through the documentation I see something completely different. And it really looks like there was considerable discussion, and that's why those things were included. If they were just a swag at can we slap it on the hill, I don't think we would have seen 20, you know, panels of description included as part of the---explicitly included as part of the approval. So---

Brandon
Mark:

Let me read you from the SPMP. The applicant requested that only general development concept and density be approved at this juncture.

Final unit configuration and mix may be adjusted by future developers at the time of conditional use review.

Commissioner

Joyce: So, but---

Brandon

Mark: That's all that was requested. General development concept and density.

Commissioner

Joyce: So if, if you take that to its extreme, then you could go build something that's higher, that's in a different location. I mean, you could come to us with anything at this point. Because if that's the entire thing, I mean, are ignoring all the restrictions on height and location and all that kind of stuff. Is that---

Brandon

Mark: No, no, of course not. But I'm saying that Woodruff is not controlling. I mean, I think you're giving too much credence to what Woodruff is, or what, how Woodruff controls this process, when the people who wrote the SPMP didn't envision that. Right. They never, nobody thought that the final design is going to look a lot like what---

Commissioner

Joyce: No, I, and again, I want to be careful that you're not picking at words. I'm not talking about final design. But I think if you look at Woodruff and the, the impacts that have to be mitigate from that design versus the design that we're looking at today for 17.2, it's not like you tweaked Woodruff to fit something. I mean, that's, that's a very different project with very different impacts. And I think that's our struggle. I mean, we started this thing off with discussion about how much space did the LMC allow you to have. And things like resort accessory, there's no cap in our LMC. So you could walk in here with a gazillion square feet and guess what, you can't mitigate a gazillion square feet. And you probably can't fit it into the height restrictions and everything anyway. So there's other things that constrain it. And I think that, that's where we get back to---I say we, I can't speak for everybody else. Where I get back to is when we look at the size and look at the design, the impacts that it has are much bigger than what I think they were going through when they---I mean, you read all the words about how they were trying to preserve the hillside and protect that area so it wouldn't get carved up with roads and things like that. And how they

wanted most of it to go to recreational open space. And you read all of that information. It, it just---I don't see how you kind of just wash that away and go hey, it's a guideline. And that's what it kind of feels like. And let me, let me go back to one other thing. You guys, I think, I think everybody's actually agreeing on one piece, which is, there is a building boundary. And I think everybody kind of knows that there's a building boundary. And the dispute seems to be where's the limits of disturbance. And I think everybody agrees that the documents say that at time of CUP we can set the LOD. Assuming that everybody's still in sync on that, have you guys got a proposal for what you think the limits of disturbance should be, should look like? I mean, we've heard from Staff that said, hey, you know, it ought to be the building boundary. Do you guys have kind of recommended counter proposal that we could evaluate or---?

Pat

Sweeney: Steve, it's, it's what Tim Jones and Troy Thompson presented about a month ago. Tim from Robinson Construction and Troy from Big D. And it's the exhibits that were part of that presentation.

Commissioner

Joyce: Boy, I, I sat through that presentation. I can't think of what you guys showed us for limits of disturbance. I mean, I showed you, I saw lines all over the mountain, but does that mean the whole thing is---

Pat

Sweeney: Well, first of all, in detail it needs to be determined at the time of building permit process.

Commissioner

Joyce: It actually says very specifically in the documents that the limits of disturbance will be confined at the time of condition use permit.

Pat

Sweeney: I said in detail.

Commissioner

Joyce: Okay. Well, well I---

Pat

Sweeney: And I would, I would just briefly remind you what Ron Ivie said, who spent prob-, other, well even more time that I have here. That all these things

evolved and changed through that process to some extent just because of reality. But in general, it's those exhibits that we provided you with the presentation from Big D, Troy Thompson, and Tim Jones from Robinson Construction.

Commissioner

Joyce: So, so let me just ask. If I go back and look, will, will I see something that's some little line somewhere or something that's limits of disturbance or something, or---because I just don't remember it. I'm sorry, if it was there.

Pat

Sweeney: I don't know if we specifically called it that, but we showed a line that indicated where the fencing would need to be.

Commissioner

Joyce: Okay.

Pat

Sweeney: In which the operations would occur and would---and the purpose of that fence would be to protect the public. And it's also in essence the limits of where we would be working.

Commissioner

Joyce: So if I went back and looked at the fence lines that were as part of that proposal, that's kind of a rough cut at your recommendation?

Pat

Sweeney: And I, I would give you another example. I've already repeated it, or going to repeat it, I'm sorry. When I built my small house, 1500 square feet, and a garage 1000 square feet, total of 2500 square feet, my limits of disturbance was approximately four acres. Just so you're aware of that.

Commissioner

Joyce: Okay. Okay, thank you. Appreciate it.

Chair

Strachan: I think that was the October 25th, 2017 meeting.

Commissioner

Joyce: Okay.

Chair

Strachan: I'll go back and look for that, too. Commissioner Band?

Commissioner

Band: Okay. I agree with Commissioner Joyce. I was just looking at the very same line here, "general development parameters have been proposed for Master Plan approval with the detailed definition of limits of disturbance deferred until conditional use review", which is now. So I think you've heard a majority of the Planning Commissioners say that the cliffscapes should really be inside that limits of disturbance. At least that's my point of view.

Mr. Ferrin said earlier, just because we may not agree with what's written in the position statements doesn't mean that they are wrong. I would like to counter that just because the applicant doesn't agree with the Staff's interpretation or conclusions on this does not mean they are wrong. Which kudos again to you, Francisco, for a fantastic application.

There is reason that the Commission has over and over again given Francisco the kudos that I just did. And that's because Staff has consistently provided the level of detail we're asking for. I'm not---I don't think any of us are trying to shoot things down, but St. Regis, Montage were brought up as similar projects. And while they may be similar in size, neither project is in a residential neighborhood in the heart of our Historic District. Conditioning and reasonably mitigating in an area filled with residents and businesses is not only what we can be doing, it's what we should be doing. And it should be looked at differently. So, I invite the applicant to give us that level of detail that we've received from our Staff. And we can judge it accordingly.

I do agree with Francisco's and the Staff's points here in the packet. Definitely Housing Authority and Staff, that affordable housing should be kept on-site, unless I see anything that states otherwise. And with the setbacks---and I do think I would like to look at this a little more closely I guess. THINC brought up an interesting point, the THINC's attorney, on the affordable housing being based on the commercial square footage. And if it had been anticipated that there was going to be especially the amount that has been proposed, I think there would have been a lot more affordable housing. So that's a great point and I would like to look at that a little further.

And I think that's it.

Chair

Strachan: Commissioner Phillips?

Commissioner

Phillips: Let's see. Let me think. How much do I want to do here? Well, I agree with the Staff's determinations. And basically, at this point both sides are still presenting and it's up to us to decide once we have all the information and facts, which I will be looking forward to receiving. I will be prepared to make my decisions once we have all that information. And I also hope that we have time to digest that and give input back and forth as the clock is ticking.

I will be looking closer at the ability to draw in outside traffic and how the parking has been calculated, and all those discussions tonight. So, you know, I don't specifically have a comment on that other than I will be looking at all the information that's been presented to us.

I'm not sure how the mass and scale fits in, especially with the additional excavation compared to the Woodruff drawings, because I believe the Woodruff drawings are there to help us determine the anticipated impacts. So you can look at individual parts, but I think if you look at them as a whole it's the, the impacts that were anticipated. And if I just look at the broad picture of Woodruff versus what we're looking at now, in some cases there are much larger impacts than what were represented in those drawings. So that's, that's, you know, one of the things that I will also be looking at.

The limits of disturbance and the building are and how it is impacted by the excavation. The cliffscapes, the setbacks. That all I have.

Chair

Strachan: Thank you. I don't have much to add. I will say it's, it was a very, I think, enlightening discussion tonight. This was a good robust discussion that I think really moved the ball. And I appreciate the applicant's comments and the give and take. And I think this discussion shows that we are close to ready, if not ready, to think about the timing of when we're going to issue our decision. And I think that spills over into a discussion of scheduling and timing. And Pat, I'd like maybe your input on this to the

extent you can provide it. But I'll just tell you that I think what we're going to need is another meeting in December to at least give the Planning Commission time to digest all of this, and do a work session and kind of start going through it as a Commission, as a body. I haven't bounced that off all the other Commissioners. I based that on your representation in the last meeting that you would be finished by November 29th, the next meeting. And I think it's going to take us at least two more meetings after that point to digest all of this and give Staff, of course, the time to go through everything.

So, what my proposal is, is that we consider an additional meeting on December 6th, as well as the meeting we have currently scheduled on December 13th, with the hope being that December 6th is a work session for the Commissioner to go through this. And then December 13th being the potential date when we would issue our opinion. And although I'm open to other suggestions on the timing of that, I note that December 20th is a date I'm not available, and December 27th is, of course, in between Christmas and New Year's.

So, I guess I'd like to hear, Pat, from your point of view how you think that scheduling is; whether it's acceptable or just a non-starter.

Pat
Sweeney: Well, Adam, first of all I appreciate your willingness to have another meeting on December 6th

Chair
Strachan: Well, I, I am. I don't know---

Pat
Sweeney: And I know that it's---

Chair
Strachan: If we've got buy-in, but I think we might.

Pat
Sweeney: That---I'm just speaking to you personally. So, if we could do that and wrap up on the 13th we'd be fine with that. I think we need to have a discussion with Bruce and other Staff as to, as to when you need our final materials. I, I would---in that scenario I would hope we still have all but a few, a few dotted I's and crossed T's by the end of next week. And then

we can take the 29th, the 6th and help you digest is somehow. Talk about it, whatever.

Chair

Strachan: I think if that's the way it plays out where you may be submitting material before and up to even the 13th, as long as it's not, you know, game changing, absolutely brand new analysis, hold the phone, stop the presses type stuff, we're, we'll take it, you know, and we'll consider it.

So it sounds like we're at least on the right track in terms of the scheduling from the applicant's point of view. What do you guys think? December 6th meeting? All right. Staff, Francisco, Bruce? I mean, does that bind you guys up.

Planner

Astorga: Yeah, Bruce needs to get a babysitter for me. I'm alone with my three kids. So we'll have a daycare in the back on December 6th.

Commissioner

Band: Add mine to that, too.

Chair

Strachan: Yeah, I know.

Commissioner

Band: Go in on the babysitter.

Chair

Strachan: Maybe we can all pool our resources. John's got some kids. Anybody in the public want to babysit.

Director

Erickson: Mr. Chairman, we're comfortable discussing the 6th of December meeting and the logistics for that, and we'll have an answer back to everybody here by Monday.

Chair

Strachan: Okay. I think we can make the noticing requirements for the State Statute, so we shouldn't have a problem there. You know, frankly, Bruce, not to force your hand, but I see very little other way it can be done other than jamming in a December 6th meeting.

Director

Erickson: No, I'm just trying to be a little considerate to the personnel matters. Francisco, despite your joy and pleasure in working with him is replaceable and we have some other folks that can cover off.

Chair

Strachan: He's not replaceable and that's a different discussion that we'll have to have off the microphone. All right. So that's, let's plan on that. And let's plan on that decision timeframe. And unless there's anything else from the Commissioners or the Staff, I think we ought to entertain a motion to continue.

MOTION: Commissioner Joyce moved to CONTINUE the Treasure Hill application to November 29th, 2017. Commissioner Phillips seconded the motion.

VOTE: The motion passed unanimously.

The Park City Planning Commission Meeting adjourned at 9:15 p.m.

Approved by Planning Commission: _____