

PARK CITY MUNICIPAL CORPORATION  
PLANNING COMMISSION MEETING MINUTES  
COUNCIL CHAMBERS  
MARSAC MUNICIPAL BUILDING  
OCTOBER 23, 2013

COMMISSIONERS IN ATTENDANCE:

Chair Nann Worel, Brooke Hontz, Mick Savage, Adam Strachan, Jack Thomas, Charlie Wintzer

EX OFFICIO:

Planning Director, Thomas Eddington; Planner; Francisco Astorga, Christy Alexander, Planner; Polly Samuels McLean, Assistant City Attorney

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REGULAR MEETING

**ROLL CALL**

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

**ADOPTION OF MINUTES**

September 25, 2013

Commissioner Wintzer referred to his comment on page 41 of the Staff report about using a Word program when conditions and findings are modified during a meeting so the Commissioners could read the modified language before voting. Director Eddington replied that the Staff had remembered his request and they were prepared to do that this evening.

Commissioner Hontz noted that the Work Session Minutes on page 5 of the Staff report reflected that she was in attendance when she was actually absent. She corrected the minutes to remove her name and insert Commissioner Wintzer since he had attended and his name was not listed.

MOTION: Commissioner Wintzer moved to APPROVE the minutes of September 25, 2013 as amended. Commissioner Thomas seconded the motion.

It was noted that Commissioners Hontz and Savage would be abstaining from the vote. With Commissioner Gross absent this evening, the Planning Commissioner lacked a quorum to approve the minutes. Commissioner Wintzer withdrew his motion.

MOTION: Commissioner Thomas moved to CONTINUE the minutes of September 25, 2013 to the next meeting. Commissioner Wintzer seconded the motion.

VOTE: The motion passed unanimously.

October 9, 2013

Due to the fact that the recording system had failed during the October 9<sup>th</sup> meeting, Commissioner Hontz suggested that the Planning Commission continue approval of the minutes to give the Commissioners the opportunity to review their notes to see if anything of substance was missing from the prepared set of minutes. Commissioner Hontz noted that it was a long meeting and there was a significant amount of discussion.

Commissioner Strachan thought the portion of the minutes related to the LMC Amendments were accurate in terms of the discussion and the motions. He asked if the Planning Commission could approve that section and continue the rest. Assistant City Attorney McLean stated that they could approve specific sections as long as they had a quorum.

MOTION: Commissioner Strachan moved to APPROVE Item 5, pages 77, 78, 79, and 80 of the October 9, 2013 minutes. Commissioner Wintzer seconded the motion.

VOTE: The motion passed unanimously.

MOTION: Commissioner Strachan moved to CONTINUE the remaining portion of the October 9, 2013 minutes to the next meeting, including the work session. Commissioner Thomas seconded the motion.

VOTE: The motion passed unanimously.

**PUBLIC INPUT**

There were no comments.

**STAFF/COMMISSIONER COMMUNICATIONS AND DISCLOSURES**

Director Thomas Eddington welcomed John Boehm to the Planning Department. Mr. Boehm started a full-time contract on Monday. He came to the Planning Commission from Public Works and he has a background in planning.

Chair Worel clarified that the Planning Commission would hold their November meetings on November 6<sup>th</sup> and 20<sup>th</sup>. Director Eddington replied that this was correct.

Commissioner Wintzer reported on a phone call he received from a citizen who heard Chad Root on the radio talking about the Sky Lodge and another building that was adding height. Commissioner Wintzer stated that he had not heard the radio interview and requested clarification from Staff. Director Eddington explained that the Sky Lodge was proposing to redo a stairwell that accesses the plaza and expand the plaza open space for better accessibility from Heber and Main. There is no additional height.

Director Eddington noted that Chad Root had talked about a number of restoration projects on Main Street, which included the Claim Jumper, 333 Main Street, and the Silver Queen. Mr. Root had

compiled a report for the City Council and he suggested that the Commissioners review it in online. Commissioner Wintzer asked if height was being added to any of the buildings. He was told that 692 Main was getting a fourth story and the Planning Commission had recently approved that project. Director Eddington thought the Silver Queen was getting a small height extension to utilize a portion of the roof. Planner Whetstone clarified that it was an existing rooftop penthouse that was being redone but there was no additional height.

Commissioner Strachan announced that he would be absent from the November 6<sup>th</sup> meeting.

**CONTINUATION(S)** – Public Hearing and Continuation to date specified.

916 Empire Avenue – Steep Slope CUP (Application PL-12-01533)

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

MOTION: Commissioner Savage moved to CONTINUE 916 Empire Avenue – Steep Slope CUP to November 20, 2013. Commissioner Thomas seconded the motion.

VOTE: The motion passed unanimously.

## **REGULAR AGENDA – Discussion, Public Hearing and Possible Action**

### **1. General Plan – Historic Character & Neighborhoods**

The Planning Commission reviewed the five policy statements of Goal 15 on page 84 of the Staff report. Director Eddington asked the Commissioners to agree, reject or modify each policy statements.

Goal 15 – Preserve the integrity, style, scale and historic fabric of the locally designated historic resources sites and districts for future generations.

Policy Issue 1 – Expand Park City Historic Sites Inventory to include other architectural resources within the inventory

Director Eddington stated that this goal primarily addressed the idea of extending historic preservation tactics to the ski era architecture of the early to mid-1960's to early to mid-1970's. The Staff had discussed the idea with the Historic Preservation Board and they were generally in favor. It was discussed by the City Council and while the Council did not put a moratorium on the protection of these resources, they directed Staff to bring it to the Planning Commission and to look at ways for a more voluntary approach to preserve ski area architecture.

The Staff found in their research that this type of preservation would have to be strongly incentivized. Some of the A-frames and other buildings built during that era are hard to work with as pieces of architecture. Incentive opportunities could include allowing for the building to be moved

because the structures are not as sensitive as the mining sites, and/or possibly allowing for decreased setbacks to accommodate an addition to an A-frame that would complement the architecture from that era but still provide more square footage. The Staff thought it was worth exploring. Director Eddington named other ski communities that have begun to move into a mid-century modern style of architecture.

Commissioner Savage asked if A-frames or other ski era sites would become qualified historic structures in the future. Director Eddington clarified that they might become qualified. The Staff would recommend an analysis to see which pieces of architecture might be significant to that period. He recalled that approximately 159 structures were built during a ten to fifteen year period. The Staff was trying to determine how many of those would be deemed historic or an architectural resource. Commissioner Savage asked if the criteria would be subjective. Director Eddington stated that the City would hire a consultant to do an analysis of those resources.

Commissioner Savage thought it would behoove the City to make sure there is a reasonable level of community awareness regarding the possibilities associated with this change, particularly if the opportunity exists for a moratorium on some of the structures. Commissioner Savage also thought it would be interesting to see what other communities were putting in place as far as guidelines for this era of architecture. He noted that the Historic District Guidelines do not speak to the ski era in Park City. Director Eddington believed that it would require its own set of guidelines. He noted that three eras of architecture were preserved under the current guidelines; 1) the early settlement and mining era; 2) the full mining era; 3) the mining era decline. The mining era started to decline in the early 1930's. If they choose to preserve the ski era architecture it would begin in the 1960's and 1970's.

Chair Worel asked if the wording of the policy statement was for voluntary or mandatory. Director Eddington answered that it could be both. When they started the historic sites inventory in the early 1980's, it was a controversial issue related to architectural preservation. He believed that preserving the ski era would also be controversial. He suggested that it might be best to start with a voluntary approach and see where it goes.

Commissioner Hontz did not support preserving the ski era. She thought the mining period was the era the community should celebrate. They should respect the eras that followed, but replace those structures when necessary. Commissioner Hontz stated that in terms of priority, many other things needed to be accomplished before the Planning Department spends time on this issue.

Commissioner Wintzer thought the 1960's and 1970's were an interesting time, particularly if you skied in those days. He grew up on the east coast and there were A-frame structures similar to Park City. It was interesting architecture and an inexpensive way to build at the time. Commissioner Wintzer concurred with Commissioner Hontz that the Staff resources should be focused on more important issues. He was unsure if it was worth the fight and effort.

Commissioner Thomas stated that if they were trying to reflect Park City history, they should be inclusive and not exclusive. The ski era is part of the story and the evolution of the community. Commissioner Thomas supported the notion of preserving ski era architecture. He has seen some A-frames that are intriguing and interesting and some mining era buildings that were poorly built and mediocre. If they want to tell the story they should tell the whole story of this community.

Commissioner Savage did not believe that any owner of an A-frame structure should be put in the position of being punished as a consequence of owning that type of structure. However, he thought a program to provide incentives to re-generate the charm of those types of structures made sense as it relates to the historic character and fabric of Park City. It should be done in a way that attracts people to the idea of having that character come back to the City in an attractive way rather than looking like a rundown shanty. Commissioner Savage stated that he would support that type of program because it is the nature of the early part of the history. He pointed out that Park City today is a ski town, not a mining town, and it should have some association with its ski town roots.

Director Eddington stated that when the design guidelines were updated in 2009, one of the commitments was to continue the evolution of architectural exploration and to continue to look at different eras of architecture. They would be carrying out that commitment; however, based on City Council input he believed it would be more voluntary than mandatory. The Staff still needed to explore the details but they would recommend an incentivized voluntary program.

Commissioner Strachan agreed that the early ski era is part of their evolution, regardless of whether or not you like the structures, and it should be included as part of the history. He thought the question was which box to check; agree, reject or modify. Commissioner Strachan thought the Planning Commission should send it back to the City Council because the Commissioners were split on their views. He assumed there was more agreement among the Council since they had discussed it in September and directed the Staff to move forward at a reconnaissance level.

Commissioner Hontz clarified that she was still willing to look at the ski era. She just wanted to avoid a situation that forces people to make changes. Chair Worel thought it was important to explore the issue and have the conversation.

The Commissioners agreed to agree with the policy statement.

Policy Issue 2 – Require Park City Municipal to adopt a standard to consider adaptive reuse of historic resources prior to acquisition of new construction within the City

Director Eddington stated that this policy statement suggests that when it comes time to explore new office space that they look at utilizing existing architectural resources and historic existing structures, as opposed to always building a new structure. He pointed out that Park City has done a good job in the past of utilizing existing historic resources and this policy encourages continuing that endeavor.

All of the Commissioners agreed with the policy statement.

Commissioner Hontz questioned whether “acquisition” was the proper word to use in the policy statement. Assistant City Attorney McLean recommended that they not strap the City Council if there is a financial reason not to acquire a structure. She suggested that they make the policy more “strongly encourage”. Commissioner Savage understood that the intent is to say that on an economically equivalent basis there would be a preference to restore existing buildings rather than creating new construction. He pointed out that there would have to have an economic benefit to offset the costs incurred.

The Planning Commission discussed the language in Policy 2 and agreed to remove the word “acquisition” from the policy statement.

Policy Issue 3 – Licensed Architects should be required on all Historic District Applications

Director Eddington noted that the text of the policy also suggests licensing landscape architects for some of the larger MPDs and other projects within the Historic District. He remarked that the State of Utah does not require a licensed architect for residential projects. Commissioner Hontz stated that many cities require a licensed architect; therefore, the standard is not unusual.

Commissioner Hontz supported the policy, but she felt that minor applications should not require a licensed architect. An architect is not required to replace a window or for minor remodels. Commissioner Hontz was unsure how to differentiate, but she thought some things should be exempt.

Commissioner Savage asked for the motivation behind this policy. Director Eddington replied that it was an attempt to encourage better designed applications. Commissioner Savage asked if the concerns came from the Building Department. He knows several people who do architectural work but they are not licensed. He was concerned about punishing those people without an appropriate level of justification. Commissioner Savage thought the consumer should be able to choose their architect based on the work product and not just credentials.

Commissioner Thomas noted that the City requires licensed surveyors for surveys and structural engineers for structural design work. The advantage of having a licensed architect involved with historic renovation or restoration is that they have studied and fulfilled the requirement of learning the history of the community. Commissioner Thomas believed the requirement would add a higher level of qualification and skill. The intent was not to put anyone out of business. Commissioner Savage believed that would be the result. Commissioner Hontz pointed out that the requirement for a licensed architect would only be for the Historic Districts.

Chair Worel thought it would put an undue burden on the homeowner for smaller projects. Director Eddington offered language, “Licensed architects or landscape architects should be required on all Historic District, steep slope CUP and MPD applications.” That would eliminate the smaller projects or home remodels.

Assistant City McLean asked for the qualifications for waiving the HDDR. Director Eddington replied that minor routine maintenance and/or repairs do not require an HDDR. Ms. McLean asked if that policy would capture all the projects that may not need a licensed architect. Planner Astorga clarified that there were three categories related to waiving the HDDR. One was for non-historic structures, the second was for significant structures, and the third was for landmark structures.

Commissioner Wintzer believed the Planning Commission was clear on their point of view and he suggested that the Staff draft language to clarify what would or would not require a licensed architect. Director Eddington stated that he would work with Planner Grahn on drafting language.

Commissioner Savage asked if there was precedent that indicated problems due to not requiring licensed architects. Commissioner Wintzer remarked that there have been problems in the past when reviewing certain applications. Commissioner Strachan reminded Commissioner Savage of several applications that frustrated the Planning Commission because there was insufficient information. Commissioner Hontz pointed out that the requested information was required by Code and the designer or architect failed to provide the information. Commissioner Wintzer stated that many of the designers do not have the knowledge or ability to do detailed construction plans. Director Eddington noted that the Staff experiences the same frustration in obtaining information on HDDR applications when they are not dealing with a licensed architect.

The Commissioners agreed that the policy should be modified.

#### Policy Issue 4 – Lot Combination policy and footprint maximums

Director Eddington noted that this statement talks about re-evaluating the opportunity to limit the number of lots for Old Town in terms of combinations and/or re-examining the footprint formula. He asked if the Commissioners wanted the Staff to look at potential restrictions and/or footprint.

Commissioner Wintzer thought it was imperative because it is the only way to address mass and scale. For example, instead of building four smaller homes on four lots, a person can combine the lots and build one monster house that does not fit the neighborhood. However, they need to accommodate lots that are landlocked if there was no other alternative.

Commissioner Strachan remarked that mass and scale is a constant discussion and this policy statement only suggests that they re-evaluate one of the tools they have to address the mass and scale problem. He is always open to re-evaluating tools to address the mass and scale problem.

Commissioner Hontz pointed out that when they do the LMC Code changes, a difficult issue is the connectivity of the elements. For example, at the last meeting they talked about height, which led into mass and scale and how that relates to the driveway, window wells, and scope and other functions. If they tweak a parking requirement it can dramatically impact the scale, size and mass of what people decide to put on their lot. Commissioner Hontz emphasized that there are many elements of the Code and they should try to look at the changes holistically.

The Commissioners agreed with this policy statement.

#### Goal 16 - Maintain the Main Street District as the heart of the City for cultural tourism for visitors and residents alike

#### Policy Issue 1 – Swede Alley should be similarly zoned to allow the development of storefronts similar to Main Street in order for the commercial historic district to infill internally.

Director Eddington stated that the policy question is whether to consider zoning Swede Alley to allow for storefront development that would compliment Main Street. It would likely be subordinate to Main Street but it is near the garage and parking is ideal. Some of the shops have already created a

through-way in terms of storefront design on both ends. Director Eddington believed they were starting to see an evolution.

Director Eddington believed that if they move forward on this, the concern would always be that Swede Alley is primarily used for truck delivery and product delivery for the Main Street businesses. He clarified that they would keep that option open and Swede Alley would always be the access to the parking structure.

Commissioner Thomas provided a history of this discussion prior to being on the Planning Commission and from having designed a number of buildings on Swede Alley. At that point in time the input from the Planning Staff was not to replicate Main Street because Swede Alley has always been a service corridor and the architecture should reflect an industrial feel. Commissioner Thomas thought it was important to add language to make that distinction.

Commissioner Wintzer concurred with Commissioner Thomas. Commissioner Wintzer remarked that Swede Alley is an incubator space to grow up to Main Street. Many of the shops are businesses that could not afford the rent on Main Street. He could see a problem where in ten to twenty years Swede Alley would be asking for the same improvements as Main Street. That is not what Swede Alley is and it will never be that, but they need to strike that balance.

Director Eddington agreed that Swede Alley should always be utilitarian subordinate to Main Street and it is essential to make that differentiation.

Commissioner Savage believed that Swede Alley is a diamond in the rough. He referred to the property that starts outside of the Marsac Building all the way down to the transit center and to the far end of China Bridge. He believed there was a good opportunity for the City to think about redeveloping that property in a way that solves some of the key objectives related to affordable housing and other goals. Commissioner Savage thought they should be think about this on a larger scale and a long-term basis with the understanding that some of the issues on the further side of Swede Alley would self-correct. Commissioner Savage thought this was an area where the City could proactively deal with a lot of the pressures of growth in a way that is consistent with maintaining the Old Town character. He noted that there was a significant waste of valuable space outside of City Hall. Currently there is a one level parking lot and he believed things could be done to put vibrancy into downtown that would never occur without proactive planning.

Commissioner Hontz thought the language should be strengthened to identify Swede Alley as a main support conduit and that use needs to be protected and retained. She believed that some of the areas Commissioner Savage identified would be planned and developed and those could be beneficial; but if they do not continue to support Main Street, the needs of Swede Alley would supersede those of Main Street.

Commissioner Strachan was comfortable with the concept.

All The Commissioners agreed with the policy statement.



Policy Issue 2 – Annually evaluate commercial use parking demands and impacts on the adjacent residential districts

Director Eddington remarked that his policy statement suggests that the City should do a thorough evaluation of the parking challenges as part of Main Street and how that impacts the residential district. It also looks at how the residential and nightly rental district may be impacting Main Street and/or the neighborhoods.

Director Eddington stated that if the decision is made in favor of re-evaluation and stricter enforcement of parking standards within Old Town in both residential and commercial districts, both the City Council and the Planning Commission would have to support it from a policy standpoint, otherwise it would be impossible to enforce.

Commissioner Wintzer stated that after he found out that an owner could obtain an unlimited number of parking passes for a house, it was apparent that the parking situation needed to be addressed right now. He would support anything that improves the system and benefits all the neighbors.

Director Eddington remarked that the City had re-vamped the procedure for handling the parking program moving forward.

Kent Cashel, Transit Manager, stated that the City has strict limits on number of permits. He recognized that they could argue whether the number was too high or too low. Mr. Cashel pointed out that some people are misleading and find ways to work the system. He explained that the residential parking permit program was not set up or designed to punish or social-engineer the number of cars. An owner can apply for up to five permits. Two permits and a guest pass are given without question. The ability to apply for five permits is reduced if the property has off-street parking available on-site. Mr. Cashel pointed out that the process is labor intensive because they try to access parking resources on each property. The average household with children of driving age has as many as four cars. Mr. Cashel stated that if the goal is to reduce the number of permits, it would require significant support from the City Council and the Planning Commission to stand firm when people push back.

Mr. Cashel explained that the residential permit program was set up to keep the external impacts out of the neighborhood. It was not set up to hard limit the internal demand. Limiting the internal demand would be a big shift. He was prepared to do whatever the City decides and implement a program as long as he has the needed support.

Mr. Cashel reiterated that a request for anything beyond two permits must be justified and he reviews those requests.

Chair Worel assumed from Mr. Cashel's comments that the parking was evaluated on-going rather than a formal annual review. Mr. Cashel stated that currently they do not do a formal analysis of the parking demand. It would be useful information but complicated to understand, because nightly rentals and other activity within a neighborhood would not be consistent.

Mr. Cashel understood from the policy statement that the intent was to evaluate the cross-demand in terms of commercial bleeding into the neighborhoods and the residential bleeding into the commercial district in terms of public lots. He thought they could accomplish that evaluation fairly easy.

Commissioner Strachan favored an annual evaluation and a report from Kent Cashel to the City Council and the Planning Commission with raw numbers regarding number of applications, how many parking permits were granted, the number of cars estimated to be in Old Town, number of enforcement violations, etc. He believed that information would help the public form their opinion on whether to restrict or enlarge the parking.

The Commissioners agreed with the policy statement.

Director Eddington noted that the goals and strategies on page 87 of the Staff report contained all of the task force recommendations. He stated that not every change was made but the majority of changes were reflected.

Commissioner Hontz asked if the Staff had included the requested photos. Director Eddington replied that new photos were being taken and the Staff report did not include the replacement photos.

Commissioner Wintzer stated that when he read the language he only saw one comment about ridgelines. He noted that the old General Plan was very strong about protecting ridgelines and he did not believe the new General Plan had enough ridgeline protection. Commissioner Wintzer recalled that the Planning Commission had agreed on protecting the ridgeline and wanted stronger language in the General Plan. In his opinion, the biggest issues they deal with are mass and scale and ridgelines and he would like to see the language strengthened. It should be at least as strong, if not stronger, as the last General Plan.

Commissioner Wintzer wanted the General Plan to address nightly rentals more than what was written so they have the ability to protect the neighborhoods and encourage full-time residents.

Commissioner Thomas concurred with Commissioner Wintzer, particularly regarding nightly rentals.

Commissioner Strachan stated that protecting ridgelines was a broader discussion and not just historic character. Director Eddington noted that ridgelines were also addressed in Natural Setting, and he believed there was a way to weave it to cross over into different sections throughout the General Plan.

Commissioner Wintzer suggested that they include the ridgeline map to make sure they agree on all the ridgelines. The Commissioners concurred.

Commissioner Wintzer stated that he would have a hard time approving a General Plan without seeing the maps in a larger scale. He understood that the end product would have a larger map, but he thought the Planning Commission needed to review each map to make it sure it reflected their

discussion. Commissioner Thomas requested that the Staff provide a full set of 24 x 36 scale maps and to compile one set for the Planning Commission and one set for the public.

Director Eddington stated that copies could be made available in the Planning Department.

Chair Worel understood from the proposed General Plan schedule that the Planning Commission would not see the General Plan after their meeting on November 6<sup>th</sup>. She pointed out that based on that schedule the Planning Commission would never see the whole document before it is approved by the City Council.

Director Eddington explained that the Staff was making corrections, even though it has been difficult to keep up with the changes from one Planning Commission meeting to another. The goal was to have a final edited copy of each section by November 6<sup>th</sup>.

Commissioner Wintzer thought the Staff should also provide the minutes from each meeting so the Commissioners could verify that all the suggested changes were reflected in the section they were approving.

Chair Worel asked if the Planning Commission would be asked for a vote on November 6<sup>th</sup>. Director Eddington replied that the Planning Commission would be asked to forward a recommendation to the City Council.

Commissioner Savage asked if it was realistic to assume that the Planning Commission would be ready to take action on November 6<sup>th</sup>.

Commissioner Hontz had been tracking the changes. She believed they were all included but photos needed to be added and the notes indicating the changes needed to be written out in the final language. She was not prepared to approve a General Plan until everything was included and the document was complete. Commissioner Hontz was comfortable that the Staff had accurately picked up the changes, but the Planning Commission needed the opportunity to see it implemented into one document.

Commissioner Hontz stated that she has asked several times for the analysis that Katie Cattan had prepared comparing the old General Plan to the current General Plan. She would not approve a General Plan until she sees the analysis to understand what was done for every section and could cross-reference it to the old Plan. Commissioner Hontz thought the discussions that resulted from the analysis helped change the wording in the new General Plan to match and be as substantial as the previous Plan.

Commissioner Thomas remarked that the Planning Commission needed to have that level of completeness, followed by a meeting where the public would have an opportunity to provide input on the full context of a complete document.

Chair Worel asked if it was possible for the Planning Commission to work on the General Plan simultaneously with the City Council so it would not hold up the Council's schedule. Assistant City Attorney McLean replied that State Code requires the Planning Commission to forward a

recommendation to the City Council prior to Council review. Ms. McLean remarked that the Planning Commission could forward individual sections to the City Council when each one is complete. She pointed out that the schedule was agreed to at the joint City Council/Planning Commission meeting in September. At that time the expectation was that the Planning Commission would forward the entire document to the City Council.

Commissioner Hontz did not believe the Planning Commission was causing a delay. She thought the Code was clear on the expectation of the Planning Commission to have a review, approve it and send it forward. They had already done the work and it just needed to be incorporated and compiled.

Commissioner Wintzer noted that most of his notations were not actual changes. He was asking for explanations to help him understand a map or something else. Commissioner Wintzer believed that as they get the corrections it would lead to more questions. He was unsure how they would find the time to get it done. Director Eddington acknowledged that it was challenging. Every time the Planning Commission meets, the Staff makes the changes and waits for the minutes to make sure the changes are accurate. By that time, the next Planning Commission meeting has occurred and they are week or two behind. They were trying to meet a very aggressive schedule.

Director Eddington stated that the goal for November 6<sup>th</sup> is to discuss the most final form of Small Town core value. It should include all the elements but it was important to have the discussion. He questioned whether they would be able to get through it all on November 6<sup>th</sup>.

Chair Worel pointed out that even if they do get through it on November 6<sup>th</sup>, the Staff would still have to incorporate the changes and the Planning Commission would not have the final product. Director Eddington stated that it would be the final draft and the Planning Commission would be discussing the final based on all of the input to date. However, he agreed that additional changes could come up during that meeting.

Commissioner Savage asked for clarification on the final draft the Planning Commission would see on November 6<sup>th</sup> and the final draft that would be distributed on December 5<sup>th</sup> to the City Council. Director Eddington stated that the City Council is schedule to review the document on November 14<sup>th</sup> and November 21<sup>st</sup>. There is a possibility that the City Council may make changes at their meetings.

Commissioner Savage suggested that they shorten the City Council review to give the Planning Commission a longer opportunity to review the complete final draft before they forward it to the City Council. Director Eddington stated that he would discuss a revised schedule with the City Council to make sure they could still meet the end of the year goal if they have fewer meetings.

Assistant City Attorney McLean understood that the City Council and Planning Commission would have another joint meeting. Director Eddington replied that a joint meeting was discussed but a decision was never made. He thought there may be an opportunity for a joint meeting and/or to narrow the City Council schedule.

Commissioner Thomas stated that the General Plan is a very important document and it needed to be as complete and as accurate as possible. If Director Eddington thought the schedule was questionable, Commissioner Thomas thought that should be communicated to the City Council with the understanding that it was beginning to look like a task that may not be completed by the end of the year.

Commissioner Wintzer noted that the first 90 pages of the General Plan were never discussed. He had read it and made notes, but that portion was never put on the agenda. He had issues with the introduction and some of the analysis that he felt was important to discuss. If those 90 pages are going to be part of the General Plan, they need to take the time to review it.

Director Eddington stated that he would re-work the schedule and convey it to the Planning Commission prior to the next meeting. Commissioner Thomas clarified that the criticisms were not directed at the Staff. He understood that this was a daunting task, but they needed to be realistic about the schedule.

Commissioner Hontz thought it would behoove everyone involved if time and money could be spent on public outreach on the final document that the Planning Commission sees. If there are substantive changes those could be incorporated in a final draft to the City Council and the Council would be able to finalize and approve the General Plan in a shorter time frame. She believed public outreach was important on the final document.

Commissioner Thomas recalled talking about another joint session and asked if that could be scheduled. Commissioner Strachan preferred to have the Planning Commission work through the content and not spend time in another joint meeting. Commissioners Hontz and Wintzer concurred.

Director Eddington stated that Commissioner Wintzer was the task force representative for Historic Character. In the interest of time, the Planning Commission could contact Commissioner Wintzer with any changes or comments for discussion at the next meeting.

Commissioner Wintzer was prepared to convey his changes this evening. On page 90, he preferred to keep the language that was removed from 15B. Director Eddington clarified that the language would remain. The intent is to add a better definition and/or analysis.

Commissioner Wintzer asked about the language on page 91, 15.7. Director Eddington replied that it was the same situation. The language would remain and new language would be added. On page 91, 15.10, Commissioner Wintzer suggested adding another strategy that talks about sensitive lands, ridgelines, hillsides, etc. The Commissioner agreed.

Commissioner Wintzer referred to page 94, 16B and suggested listing examples of uses they do not want on the ground level on Main Street. On page 97 and 98, Commissioner Wintzer noted that most of those pages talk about the Federal government and Federal guidelines but it does not talk much about Park City. He requested that they bring Park City into the conversation. Commissioner Wintzer referred to pictures of historic buildings on page 104. He stated that if they were going to start allowing flat roofs they should include pictures of flat roofs and what they like or do not like.

Commissioner Wintzer stated that he would take the rest of his questions and comments to the Planning Department.

Commissioner Hontz asked about the list of issues on page 120, 121 and 122. Director Eddington replied that it was a master list of issues that the Planning Commission had reviewed during the core elements discussion.

Director Eddington suggested that the Planning Commission take public input. If there was time at the end of the meeting they could continue reviewing the General Plan strategies; otherwise, they should send their comments to Commissioner Wintzer as the task force representative.

Chair Worel opened the public hearing.

Hope Melville, an Old Town resident, referred to page 91, Strategy 15.5 – expand the historic sites inventory to include historic resources built during the onset of the ski industry. She felt it was too early to have that statement in the General Plan. She understood that the reconnaissance level survey was still going on and they could decide after that. Ms. Melville noted that Director Eddington mentioned that the HPB was in favor of including the ski era, but that was not what she heard. She heard the HPB say that they supported the reconnaissance level survey and possibly voluntary preservation program incentives if it came to that. Ms. Melville did not believe the HPB would endorse the statement at this point.

Director Eddington clarified that when the Staff updated the HPB on the General Plan four months, the HPB voted unanimously for to include the ski era. That was the reason for including the statement in the General Plan. However, the Staff had a more recent discussion with the HPB after the City Council decided to look into it. The Planning Commission discussed the policy statement this evening to look at doing the reconnaissance level survey and consider the expansion. He pointed out that the policy statement changed after tonight's discussion.

Ms. Melville referred to page 92, strategy 15.13 – restrict residential parking passes within the historic district to limit the amount of on street parking. Consider public parking garages for full time residents occupying historic structures with no on-site parking and implement additional tools to restrict parking in historic districts to limit residential parking. Mr. Melville believed this strategy would discourage people from moving to Old Town. She thought it was going in the wrong direction. Ms. Melville stated that the existing rules needed to be enforced and she thought the City was doing a better job of enforcing the parking restrictions. They should not allow people to game the system and have more than they should. However, to try and encourage full time residents to park in parking structures rather than on the street would be the wrong approach.

Ms. Melville referred to page 101, Incentivizing Development on single lots. She thought reducing the off-street parking spaces from two to one was again the wrong direction in Old Town. Having two parking spots in Old Town is important for people who live there. Ms. Melville could find no reason to have to incentivize construction in Old Town. She felt it was going in the wrong direction for mass and density as well by allowing people to have more square footage. Given a choice, people in Old Town would choose to have more parking. On page 104, Ms. Melville referred to the picture at the top right and asked why there was an X by the building.

Director Eddington noted that it was an error and the Staff was fixing it.

Ms. Melville referred to a photo in the middle row of page 106. She believed it was the Centennial building but there was an X next to it. The entire building is historic and she questioned the reason for the X. Ms. Melville referred to the bottom row of pictures on page 107 and noted that the picture on the left-hand side had two garages and it was marked with a check-mark. She did not believe that should be an example for Old Town. She pointed out that two pages earlier the same building was marked with an X for another reason. On page 115, Ms. Melville noted that the title under the Distillery Building incorrectly read Fuller Paint Building.

Steve Swanson stated that he started to look at the General Plan in part for the Holiday Ranch neighborhood as a Board member. He soon realized that it was a massive document. As pointed out this evening by the Staff and the Planning Commission it is a daunting task to do this document and there is not enough time to meet the schedule. Mr. Swanson stated that he would agree that the schedule was too fast. Given its importance, he believed the citizens and citizen groups should be allowed to have a thorough review of the document. The fact that it draws on the balance growth strategy, the document is very sobering about Park City's future. Mr. Swanson commented on the importance to understand and address issues such as population projections for Park City. He thought there should be a connection between the goals, objectives and policies of the 1993 and the new plan. In looking at the population projects, the old plan always talked about Park City becoming a resident population of 10,000-12,000. He proposed that they would never reach that number. At this point the current population is 7500, which is down from the peak of five years ago. Mr. Swanson stated that the basis for making broad sweeping changes and policy decision need to be understood. Park City currently has 6600 housing units, not including the bed base of the resort economy. He thought the numbers together should be included in the discussion. Mr. Swanson thought they were moving in the wrong direction in terms of how they look at Park City regarding residents and neighborhoods and the non-resident/investor population. They have more buildings but fewer people.

Mr. Swanson stated that affordable housing is a good thing, but he wanted to know what they were really trying accomplish. He believed the triple bottom line seems more like a business strategy. He was not opposed to profit but he thought it was wrong to have the word "profit" in the General Plan. Mr. Swanson stated that TDRs was elephant in the room. There is too much of a road map for development and not enough protection for residents. Mr. Swanson commented on Form Based Code. He did not believe it was a panacea for their problems. In many case studies Form Based Coding has not produced the desired results. Mr. Swanson hoped the City would not rush to approve a document that would guide and form the LMC and be codified in a rushed manner.

Brian Van Hecke appreciated their efforts on a very important document. He concurred with previous comments that this document should not be rushed and they should take the time to do it right. Mr. Van Hecke stated that he went for a hike this morning up above Old Town and he was struck not by the sounds of nature, but by the sound of construction. He believed the sound of construction has become the backdrop of their town. He commented on the size of Treasure Hill and asked how the developer determined that it might even be approved. He wanted to know what the documents were saying to give an applicant the idea that it could potentially be approved. Mr. Van Hecke commented on proposals for Bonanza and Prospector, which could be five times the size of Treasure Hill. Outside of the city boundaries is the Canyons, which has 8 million square feet

of approved density and only 22% of it has been built. Even though it is outside the boundaries it still impacts the City. Mr. Van Hecke added to that the base of PCMR and the empty parking lots. Lower Deer Valley is still left to be built. He wanted to know how the General Plan intends to deal with the growth. In his opinion, the goal should not be to promote growth but rather how they intend to manage it. Mr. Van Hecke remarked that all the development he mentioned would change the fabric and what they love about Park City. The need to decide if that is really what they want, how they would deal with it and manage it. The General Plan needs to absolutely address those issues, which is why they need to slow down the process and get it right.

Ruth Meintsma, a resident at 305 Woodside, stated that she was still considering the General Plan as a rough plan. She thought it was better to let the Planning Commission go through and redline it and then she would read it in detail and make her comments when it goes before the City Council. Ms. Meintsma understood that footprint, parking and ridgeline protection were important issues to include in the general plan, but the specifics would actually show up in the Code. The one thing that was missing in the plan was permeable versus impermeable surfaces. She thought it should be included in historic character because paving takes away from historic character. She also noted that outdoor heating spaces needed to be addressed.

Sanford Melville, an Old Town resident, commented on expanding the Historic Sites Inventory to include A-frames. He believed that historic sites and structures were intertwined with people and events. With the historic structures on the current inventory they know the stories of the people who lived in most of those homes. They lived and worked in Park City, and some died here and are buried in the cemetery. Mr. Melville stated that a level of history was ingrained in those buildings. In his opinion, the A-frames are an architectural style but most were a second home for recreational use. He did not believe they met the same level of historic significance as the mining era homes.

Joe Tesch stated that he represents some owners in Old Town. On page 85 of the Staff report, paragraph #4 regarding lot combinations and re-evaluation the limits. He suggested that the Planning Commission move slow on that aspect. The last time they talked about re-evaluating what could be done in Old Town it caused a lot of problems. When people hear fussing about what can be done in Old Town they do one of two things. They either start putting in plans to vest on the current regulations. More importantly, it hurts the values of people who want to sell or develop their property because of the unknown. Mr. Tesch suggested that the City not publish yet that they are re-evaluating. As a first step they should request a report from the Staff to see if there are problems. If there are problems worth enforcing, they could recommend changes and then look at re-evaluating.

Chair Worel closed the public hearing.

**2. Second Amended Silver Baron Lodge Phase II, 2880 Deer Valley Drive – Amendment to Record of Survey (Application PL-13-02054)**

Planner Christy Alexander reviewed the request to amend the existing record of survey for the Silver Baron Lodge, Phase II, for commercial units 2, 13 and 18. The units are currently designated as commercial units and the applicant was requesting to convert them from commercial to common area. Planner Alexander stated that the developer was the original owner and they were foreclosed



upon due to delinquent taxes and conveyed over to the HOA. The HOA paid the back taxes and the HOA is now the owner. The intent was to convert the units to common area to be used as community rooms to serve a continental breakfast. The units were originally intended to be a spa, a gym and a real estate desk, but those were never built and the units were never used commercially.

Planner Alexander noted that the footprint of the units would not change and additional parking would not be required. The HOA would continue to utilize the existing 75 parking spaces.

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

Chair Worel opened the public hearing.

There were no comments.

Chair Worel closed the public hearing.

MOTION: Commissioner Savage moved to forward a POSITIVE recommendation to the City Council on the Second Amendment to Silver Baron Lodge, Phase II, 2880 Deer Valley Drive, amendment to record of survey, according to the Findings of Fact, Conclusions of Law and Conditions of Approval outlined in the draft ordinance. Commissioner Thomas seconded the motion.

VOTE: The motion passed unanimously.

#### Findings of Fact – 2880 Deer Valley Drive

1. The property is located at 2880 Deer Valley Drive.
2. The property is located within the Estate (E) zone and is subject to the Eleventh Amended Deer Valley MPD (DVMPD).
3. Within the DVMPD, a project can utilize either the City's Unit Equivalent (UE) formula of 2,000 square feet per UE or develop the allowed number of units without a stipulated unit size.
4. A total of 50 units were constructed with a Unit Equivalent density of 42.75 UE allowed per the Eleventh Amended Deer Valley MPD.. The Silver Baron Lodge parcels are all included in the 11th Amended Deer Valley Master plan and are developed using the LMC Unit Equivalent Formula contained in Section 10.12 of the Code, resulting in a different developed density (50) than base permitted density (42.75).
5. Silver Baron Lodge Phase II record of survey plat was approved by City Council on September 14, 2006 and recorded at Summit County on June 1, 2007. Silver Baron

Lodge Phase II plat was first amended on April 7, 2011 and recorded at the County on April 15, 2011.

6. On September 3, 2013, a complete application was submitted to the Planning Department for the second amendment to the Silver Baron Lodge Phase II record of survey plat to convert Units CU-2, CU-13, and CU-18 from commercial units to common area..

7. The total square footage of the three units being converted to common area is 4,286 square feet.

8. The existing commercial units are located within the existing building footprint and there is no increase in the footprint for this building.

9. The plat amendment does not increase the parking requirements for these units.

10. The HOA received 76.432% approval to convert these three commercial units to common space.

11. The findings in the analysis section are incorporated herein.

#### Conclusions of Law – 2880 Deer Valley Drive

1. There is good cause for this amendment to the record of survey.

2. The amended record of survey plat is consistent with the Park City Land Management Code and applicable State law regarding condominium plats.

3. The amended record of survey plat is consistent with the 11th Amended and Restated Deer Valley Master Planned Development.

4. Neither the public nor any person will be materially injured by the proposed record of survey amendment.

5. Approval of the record of survey amendment, subject to the conditions of approval, will not adversely affect the health, safety and welfare of the citizens of Park City.

#### Conditions of Approval – 2880 Deer Valley Drive

1. The City Attorney and City Engineer will review and approve the final form and content of the amended record of survey plat for compliance with State law, the Land Management Code, and the conditions of approval, prior to recordation of the record of survey.

2. The applicant will record the amended record of survey at the County within one year from the date of City Council approval. If recordation has not occurred within

one year's time, this approval for the record of survey will be void, unless a complete application requesting an extension is made in writing prior to the expiration date and an extension is granted by the City Council.

3. All conditions of approval of the Silver Baron Lodge Condominium record of survey plats as amended shall continue to apply.

**3. 508 Main Street Subdivision – Plat Amendment Modification  
(Application PL-13-02017)**

Planner Alexander reported that earlier this year the applicant received an extension to the plat amendment due to issues related to obtaining an encroachment agreement. Condition of Approval #3 of the plat amendment states that, "Encroachment issues must be resolved prior to the recording of the plat." Planner Alexander noted that the developer has tried diligently to get an encroachment agreement with Lot 3, the neighboring lot, which is Dolly's Books. She reported that the encroachments are de minimus at 2.4 inches at the front of the building and 1.08 at the rear of the building. The owner of Lot 3 is unwilling to work with the applicant and will not grant an encroachment agreement. The applicant would like to modify their plat amendment extension to remove Condition of Approval #3 so they would no longer be required to have an encroachment agreement before recording the plat.

Planner Alexander stated that the Legal Department and the City Engineer reviewed the application. Since the encroachment is de minimus and the applicant made a diligent effort to meet the requirement, it was determined that removing the condition of approval would be acceptable as long as a note was placed on the plat identifying the encroachment and that unsuccessful efforts were made to obtain an encroachment agreement.

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

Commissioner Wintzer asked Planner Alexander to repeat the size of the encroachment. Planner Alexander replied that it was 2.4 inches in the front and 1.08 inches in the rear.

Commissioner Strachan asked why the neighbor would not grant the encroachment agreement.

Bart Carlson, representing the applicant, stated that he made several attempts with Dolly's Books and they did not believe there was a need to sign an agreement because they were not legally required to do so. They were also given counsel that if they signed an encroachment agreement they would be giving up property. For those reasons the owner refused to sign.

Tom Bennett, legal counsel for the applicant, had no objection to a new condition of approval that talks about the plat note. He also had no objection to adding a plat note that discloses the encroachment. Mr. Bennett requested that the Planning Commission and the Legal Department consider revising the last sentence of Condition #4 to clarify that the encroachment agreement was not required. He replaced the last sentence with new language to read:

Park City has determined that such encroachment is de minimus and an encroachment agreement is not required.

Mr. Bennett believed the language was accurate with what the Planning Commission was being asked to approve and it would state the facts without raising questions in the future.

Assistant City Attorney McLean was comfortable with the revised language.

Chair Worel opened the public hearing.

There were no comments.

Chair Worel closed the public hearing.

Commissioner Wintzer remarked that this was a typical problem that occurs on Main Street. When the City re-monumented the town it was off by 2-inches. He asked if it was worth talking about that history in the findings of fact and stating that it was not an uncommon encroachment on Main Street.

Assistant City Attorney preferred to focus on this specific application and not be that general in the Findings.

Commissioner Savage noted that the original application had an encroachment issue that was serious enough to be addressed in a condition of approval and that situation has not factually changed since the time of the original approval. He wanted to know why the encroachment was important then, but the City was now willing to say it was no longer important because of its de minimus nature. Commissioner Savage asked if the City would be putting itself in jeopardy by removing the condition of approval that requires an encroachment agreement.

Assistant City Attorney McLean explained that the City typically makes encroachment agreements a condition of approval in order to clean up these encroachments. In the eight years she has been with the City this is the first time an applicant has been unable to resolve the encroachment. Ms. McLean stated that there would be no exposure to the City based on the fact that the encroachment is a small amount, and secondly, because this is an historic building and the encroachment has existed from the time the structure was built.

Commissioner Savage clarified that the owner of the neighboring structure would not have a claim against this applicant or the City, saying that the encroachment needs to be cured. Ms. McLean stated that she was not in a position to comment on any claims the owner may have against this applicant, but she was not concerned about a claim against the City.

**MOTION:** Commissioner Strachan moved to forward a POSITIVE recommendation to the City Council for the 508 Main Street plat amendment subject to the Findings of Fact, Conclusions of Law and Conditions of Approval stated in the draft ordinance, with the revision of the second sentence of Condition of Approval #4 to now read, "Park City has determined that such encroachment is de minimus and an encroachment agreement is not required." Commissioner Thomas seconded the motion.

VOTE: The motion passed unanimously.

Findings of Fact – 508 Main Street Subdivision

1. On January 12, 2011, the proposed plat amendment was brought before the Planning Commission for a public hearing. The Planning Commission unanimously recommended approval of the plat amendment to the City Council.
2. On February 10, 2011, the City Council held a public hearing and also voted unanimously to approve the proposed 508 Main Street subdivision plat amendment.
3. On January 30, 2012, the applicant submitted a formal request to extend the previously approved subdivision plat amendment due to issues getting an encroachment agreement from their neighbors to the south (510 Main Street).
4. On March 7, 2013, the City Council held a public hearing and voted unanimously to approve the proposed 508 Main Street subdivision plat amendment extension to February 12, 2014.
5. On August 1, 2013, the applicant submitted a formal request to modify the previously approved subdivision plat amendment due to not being able to obtain an encroachment agreement from their neighbors to the south (510 Main Street).
6. The property is located at 508 Main Street in the Historic Commercial Business (HCB) zoning district.
7. There is an existing historic structure on the property, identified as Landmark on the Historic Sites Inventory.
8. The subject property encompasses all of Lot 2 of Block 24 of the Park City Survey, and a tract of land 20 feet by 25 feet of Millsite Reservation and a tract of land 24 feet by 25 feet adjacent to the eastern boundary in the Millsite Reservation.
9. The historic building encroaches onto Lot 1 in the southeast corner by 0.3 feet (3.6 inches) and in the southwest corner by 0.1 feet (1.2 inches). The City is the property owner of Lot 1 and the City Engineer has agreed to sign an encroachment agreement with the owner of Lot 2.
10. The historic building encroaches onto Lot 3 in the northeast corner by 0.09 feet (1.08 inches) and the northwest corner by 0.2 feet (2.4 inches). The encroachments onto Lot 3 are de minimus and an encroachment agreement between the property owners of Lot 2 and Lot 3 was sought by the property owner of Lot 2 but could not be obtained.
11. The proposed amended plat would result in one lot of record of 2,975 square feet.

12. The proposed plat amendment will not create substandard lots on the neighboring property.

13. The applicant is proposing the combination of the lots to clean up property lines discovered to be at issue during Historic District Design Review and Building permit review.

14. A Historic District Design Review was approved by staff as part of exterior building modifications enclosing a second story deck

#### Conclusions of Law – 508 Main Street Subdivision

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

#### Conditions of Approval – 508 Main Street Subdivision

1. The City Attorney and City Engineer will review and approve the final form and content of the plat amendment for compliance with State law, the Land Management Code, and the conditions of approval, prior to recordation of the plat.
  2. The applicant will record the plat amendment at the County within one year from the date the City Council approved the extension of the plat amendment. If recordation has not occurred by February 12, 2014, this approval for the plat will be void.
  3. Recordation of this plat must occur prior to 508 Main Street receiving final certificate of occupancy.
  4. A note shall be placed on the plat that states that the historic building encroaches onto Lot 3 in the northeast corner by 0.09 feet (1.08 inches) and the northwest corner by 0.2 feet (2.4 inches). Park City has determined that such encroachment is de minimus and an encroachment agreement is not required.
4. **1101 Park Avenue – Conditional Use Permit for an office space in a historic structure in HRM (Application PL-14-01979)**

Planner John Boehm reviewed the application for a conditional use permit for a general office use in a historic structure located at 1101 Park Avenue. On September 6, 2013 the City received a completed conditional use application for a real estate office in an historic building located in the

HRM District. The applicant anticipates that a maximum of four employees would be working in this office at any one time. Planner Boehm noted that the use would satisfy the definition of a general office, which is an allowed use in the HRM district.

The Staff had reviewed the application and found that it met the requirements of the LMC for the HRM District, with the exception of the location and the amount of off-street parking. The applicant was requesting that the Planning Commission discuss waiving the parking requirement for the historic building as allowed per LMC Section 15-2.4-3.

Planner Francisco Astorga stated that the HRM allows a general office in the zone if the site is historic and meets specific criteria. He noted that the building has always been used for commercial types of business, primarily retail. The proposed use is general office, which is why the Planning Commission was being asked to review a conditional use permit application. Planner Astorga remarked that the Planning Commission has the purview to waive or reduce the parking requirement. He stated that this was different from the HR-1, H-2 and HRL zones which do not have the same requirement.

Planner Astorga noted that based on information obtained from the property owner that there would not be more than four employees, the Staff recommended that the Planning Commission waive the parking requirements on the fact that the use is on Park Avenue, which is more of a free-for-all type of parking. There is no designated parking on Park Avenue. Planner Astorga remarked that residential neighborhoods such as 11<sup>th</sup> Street have a parking system that requires a parking permit. He believed this applicant has the right to apply for up to three parking permits that would allow him to park on 11<sup>th</sup> Street. In addition, the Mawhinney parking lot is a block north of this site. Planner Astorga understood that two of the four employees live in Old Town and most likely would not drive to work.

The Staff requested that the Planning Commission conduct a public hearing and consider approving the conditional use permit based on the findings of fact, conclusions of law and conditions of approval in the Staff report.

Shane Herbert, the applicant, stated that he anticipated utilizing the parking lot down the street before he purchased the building. In addition, they could park two to three vehicles next to the building. Mr. Herbert noted that he and the other three employees were engaged in the real estate business, and he is typically in his office less than two hours a day. He believed that was normal behavior for the other three employees and all four would rarely be in the office at the same time. Mr. Herbert believed the traffic impact would be minimal. He had taken the extra step to speak with his neighbors and no one had any concerns. However, the neighbor directly to the north asked that they not park in front of his home. Mr. Herbert was willing to comply with that request.

Commissioner Savage asked about the parking requirements or rights of the previous owner. Planner Astorga was unsure about specific parking requirements. The Staff was able to determine from tax records and photographs that the building has been used commercially at least since the 1930's. He noted that parking regulations did not come about until the 1950's.

Commissioner Savage asked if there were any explicit parking allowances for the building prior to the new owner purchasing the building. Planner Astorga answered no. Commissioner Savage asked if parking permits had been issued to the prior owner. Planner Astorga did not have that information.

Commissioner Savage asked if the building would be used to attract people to come to look at real estate offerings. Mr. Herbert replied that it would not be a real estate gallery. It would be used strictly as a working office. He clarified that he purchased this building because his current office space was too small for four people.

Commissioner Savage asked if Mr. Herbert would be comfortable with a condition of approval stating that the building would be used as a working office and not as a sales office. Mr. Herbert was willing to accept that condition.

Chair Worel opened the public hearing.

There were no comments.

Chair Worel closed the public hearing.

Commissioner Wintzer supported the application. However, he would like the Staff to review parking complaints for a year or two or else define the use as a low visitor real estate office. Commissioner Wintzer pointed out that Mr. Herbert or his employees living in Old Town may ride their bike to work, but whatever the Planning Commission approves today stays with the building and any future tenant or owner. Mr. Herbert may not need the parking but the next person might. Commissioner Wintzer requested that a condition of approval indicate that the use is a real estate office but not a real estate gallery or something similar.

Mr. Herbert pointed out that there has only been one other business permit issued for this building, and that was in 1992 to the previous owner. However, the owner subleased the front half of the building several times and none of those businesses ever filed a business application with the City. Therefore, they did not go through this same parking requirement process. Mr. Herbert believed that when the building operated as a frame shop it would have had a higher traffic/parking impact. He was willing to comply with the suggestion to monitor the parking for a year; however, he could not control what others do in the neighborhood and he was concerned about a complaint against him that was actually committed by someone else.

Commissioner Wintzer understood Mr. Herbert's concern. He suggested that a better way to address the issue was to define the use as a low impact office building. Commissioner Savage thought the condition of approval should read that the approval was for an office of not more than five employees and it should not be used as sales office or real estate gallery.

Mr. Herbert disclosed that he was planning to do a small fund raiser for the Museum next year. It would involve an open house and it would be a joint venture. It would not be a real estate sales gallery. He hoped the proposed condition of approval would not prohibit him from having an event or



allowing the space to be used for something of that nature. Commissioner Wintzer clarified that it would not prohibit a special event because that would not be the primary use.

Commissioner Hontz had concerns with parking but she felt they were going in the right direction. She felt the impact of employees was more concerning than operating a business, because the nature of a business and people coming and going and temporarily parking on Park Avenue is less impactful than having cars parked on 11<sup>th</sup>. It pushes the impact to the neighborhood that was not previously there. She was familiar with how much parking was associated with the uses on the site for years and those businesses were not an intense use.

Commissioner Hontz referred to page 242, and stated that Finding of Fact #4 and #26 were nearly identical and one should be removed. Commissioner Hontz remarked that Findings 16, 17 and 18 were nearly identical and related to Findings 33 and 34. She thought the findings should be consolidated and rectified.

Commissioner Strachan was comfortable with the findings as written. They were similar in language but they all said something different. Commissioner Hontz suggested striking the last sentence of Finding #18, "The applicant seeks this parking waiver" and retain Finding #34, which said the same thing. Commissioner Strachan agreed with removing the last sentence of #18. However, he felt they should keep Finding #16 because it was totally different.

Commissioner Hontz was unclear why Finding #37 was necessary or applicable to this application. Mr. Herbert believed that finding was a result of him going door to door to introduce himself to the neighbors and to see if they had an issue with his business or the parking. He found that most people he talked to were either renting the house temporarily or they were just tenants. Commissioner Hontz thought Finding #37 was irrelevant and should be stricken. The Commissioners concurred.

Commissioner Hontz asked if the Commissioners were comfortable with Finding #41. She understood that the public parking lot was a fact, but it infers that employees and others have the ability to use it. She thought it was a better solution than parking on Park Avenue, but it would use a public parking space that was intended for other uses to support a business.

Commissioner Hontz requested a one-year review to see if there were any parking complaints.

Mr. Herbert referred to Finding of Fact #4, that the applicant was not requesting to expand or remodel the historic structure, and asked if the finding would prohibit him from ever applying for a grant to restore some of the façade back to its original condition. Assistant City Attorney McLean clarified that the Finding was only saying that the change of use was not an expansion of the footprint.

To address Commissioner Savage's concern, Planner Astorga added language to Condition #2 to say, "The office shall not be used as a sales gallery." Commissioner Savage preferred to expand the language to say, "nor for meetings with customers of the company." Mr. Herbert asked if he would never be able to have a client visit his office to sign papers or for any other reason. Commissioner Savage explained that the intent was to keep the office from being used to promote

walk-in traffic that would generate parking impacts on Park Avenue. Assistant City Attorney McLean stated that the purpose of a condition use permit is to mitigate impacts. This is a special situation because the use has always been retail and that is an allowed use in the zone. It was not a situation of converting residential to commercial. Commissioner Savage clarified that he was trying to avoid a real estate office that planned events that entice a lot of people to come into the office. He was not opposed to a client coming into the office to sign paperwork. Commissioner Wintzer was comfortable with the language proposed by Planner Astorga. Commissioner Savage concurred.

Commissioner Hontz added Condition of Approval #4 requiring a one-year review of the parking impacts. Commissioner Thomas suggested that the Planning Department review the parking in one year rather than have it come back to the Planning Commission. If the Staff finds significant issues, they could bring it to the Planning Commission. Commissioner Wintzer thought a review in two years rather than one year would give them a better idea of the parking impacts, because it may take the applicant six months to open the office and have it operational. The Commissioners were comfortable with a two year review.

MOTION: Commissioner Strachan moved to APPROVE the conditional use permit for 1101 Park Avenue according to the Findings of Fact, Conclusions of Law, and Conditions of Approval contained in the Staff report and as modified. Commissioner Hontz seconded the motion.

VOTE: The motion passed unanimously.

#### Findings of Fact – 1101 Park Avenue

1. The site is located at 1101 Park Avenue.
2. The applicant requests an 818 square foot real estate office within this site.
3. The property is located in the Historic Residential-Medium Density (HRM) District which allows General Office use as a conditional use in historic structures.
4. The applicant does not request to expand the existing historic structure nor a remodel of the exterior.
5. The applicant requests to separate two uses, an existing jewelry shop and the requested real estate office.
6. The site is classified in the Historic Site Inventory (HSI) as a Significant Site.
7. The oldest record in the City's Business License file dates back to 1992, authorizing a *jewelry store*, minor retail & service commercial use.
8. As indicated on the Historic Site Form, the site was traditionally used for commercial uses.
9. The site, Lot 1 of Block 5 of Snyder's Addition, has a standard Old Town configuration consisting of 25' x 75', containing 1,875 square feet.
10. The existing building is approximately 1,626.26 square feet.
11. The site is located on the corner of 11th Street and Park Avenue, a major residential thoroughfare.
12. Staff does not foresee any issue related to additional traffic outside of what is currently expected within the District.
13. Park Avenue is a major thoroughfare for local traffic and secondary access for the Main Street tourist visitors.

14. No additional utility capacity is required for this project.
15. Emergency vehicles can easily access the site and no additional access is required.
16. The requested use of the site is 818 square feet for a real estate office. The LMC office definition classifies a real estate office as an intensive office if the intensity of employees is five (5) or more employees per 1000 sf. of net leasable office space.
17. The applicant has indicated that they will have four (4) employees, therefore, the use is classified as a general office.
18. LMC § 15-2.4-3(E) indicates that the Planning Commission may waive parking requirements for historic structures.
19. The site does not require the need to mitigate for internal circulation due to its existing size and location.
20. The site is accessed from two (2) exterior doors, the main door from Park Avenue and a side door off 11<sup>th</sup> Street.
21. Fencing, screening, and landscaping are not proposed at this time.
22. The building is an existing historic structure and no expansion or exterior remodel is requested at this time.
23. The site does not contain usable open space. The building is an existing historic structure and no expansion or exterior remodel is requested at this time.
24. The applicant has submitted a Master Sign Plan to be approved by the Planning Department. This sign application is currently on hold until the use is approved by the Planning Commission.
25. The applicant shall receive approval of a sign permit in compliance with applicable codes, including the Design Guidelines for Historic Sites and Historic Districts.
26. Staff does not recognize any addition noise, vibration, odors, steam or mechanical factors are anticipated that are not normally associated within this District.
27. There are no anticipated deliveries, services vehicles, loading zones, and screening associated with the proposed use.
28. The expected ownership and management of the property is not projected to add impacts that would need additional mitigation.
29. The proposal is not located within the Sensitive Lands Overlay.
30. Staff recommends a Façade Preservation Easement as a condition of approval.
31. LMC § 15-3-6(b) indicates that a general office requires 3 parking spaces per 1,000 sf. of leasable floor area.
32. Their requested use requires that they provide three (3) parking spaces,
33. The applicant requests that the Planning Commission waive parking requirements for this historic structure.
34. As indicated on the historic tax photograph, found in the Historic Site Form for this site, this building was historically used for commercial uses.
35. Staff recommends that no more than the requested four (4) employees working at this site for the requested real estate office be a condition of approval.
36. The site at 1109 Park Avenue is their direct neighbor to the north. The site is also historic Significant Site. This site however, contains a long driveway between their structure and the subject site that according to aerial photography can accommodate approximately three (3) parked vehicles.
37. The site is adjacent to Park Avenue which allows for public parking on both sides of the street during the proposed business hours.

38. The site has direct access to the Park Avenue bus corridor.
39. The site is one block away from the Mawhinney parking lot (Park Avenue and 12<sup>th</sup> Street).
40. The site has the ability to park three (3) vehicles parallel to the street on 11<sup>th</sup> Street.
41. The Planning Department and the City Engineer do not find necessary to have the applicant provide a traffic study prepared by a registered Engineer.

#### Conclusions of Law – 1101 Park Avenue

1. The proposed application as conditioned complies with all requirements of the Land Management Code.
2. The use as conditioned will be compatible with surrounding structures in use, scale, mass, and circulation.
3. The use as conditioned is consistent with the Park City General, as amended.
4. The effects of any differences in use or scale have been mitigated through careful planning.

#### Conditions of Approval – 1101 Park Avenue

1. All standard conditions of approval shall continue to apply.
2. The use shall not support more than four (4) employees at this site for the requested real estate office. The Office shall not be used as a sales gallery.
3. The applicant shall grant a Facade Preservation Easement to the City prior to obtaining a City business license.
4. The applicant shall come back to the Planning Department in two (2) years for review of parking impacts.
5. **331 McHenry Avenue – Appeal of Compliance with the Land Management Code (Application PL-13-01959)**

Commissioner Wintzer was one of the appellants. He recused himself from hearing this appeal and left the room.

Planner Astorga reported that this item was an appeal of a Historic District Design Review at 331 McHenry. He explained that when the Staff conducts an HDDR it is primarily for compliance with the Historic District Design Guidelines; however, they also look at the current standards outlined in the Land Management Code regarding setback, height, allowed uses, etc.

Planner Astorga clarified that appeals related to the LMC are heard by the Planning Commission and appeals related to the design guidelines are heard by the HPB. The appeal submitted to the Planning Department did not focus on any of the design guidelines, but it did focus on LMC issues ranging from purpose statements in the HRL District to house size. The basis for the appeal was outlined on pages 269-275 of the Staff report.

Planner Astorga reported that the HDDR application was submitted and the Staff approved it with

redlines and changes. The applicant worked with the Staff to meet the specific items until the Staff was satisfied with the current proposal based on their interpretation of both the Land Management Code and the Design Guidelines. Planner Astorga noted that a neighborhood group commented during the public noticing period of the design review and ultimately filed an appeal of the design review application.

Planner Astorga stated that the appellant was a group of residents on McHenry Avenue. The current owner was 331 McHenry LLC, represented by Jerry Fiat and his architect, John DeGray. Joe Tesch was legal counsel representing the owner.

Planner Astorga noted that the appellants would argue that the application did not meet Statements A, B, C, E and F of the Purpose Statements. He was prepared to respond to the points outlined in the appeal if the Commissioners had questions. The Staff report listed each section of the appeal in the Staff report and addressed each concern as outlined on pages 269-275.

Planner Astorga stated that the Staff interpretation of the analysis and the appeal was that the Staff did not err in their interpretation and approval of the Design Review. The Staff recommended that the Planning Commission deny the appeal.

Merritt Hooper, one of the listed appellants, stated that she had met with Mr. Fiat that afternoon and based on their conversation Mr. Fiat agreed to certain conditions to address her concerns with regards to privacy. Her home is directly adjacent to the project at 331 McHenry. As a result of his agreeing to the conditions in a written letter, Ms. Hooper withdrew her appeal to Mr. Fiat's project.

Mary Wintzer, representing the appellants, stated that the neighbors were happy that Mr. Fiat was able to lessen the burden of his project on Merritt Hooper's side of the house.

Ms. Wintzer noted that the garage is a non-conforming use. The fact that the applicant was starting underneath the required 15' feet back from the road is a technicality for saying that the project was not increasing the non-conforming use.

Planner Astorga referred to a drawing on page 300 of the Staff report and noted that the garage does not meet the front yard setback. The applicant designed the addition to take place exactly below the existing garage, and that portion met the minimum front yard setback. Ms. Wintzer reiterated that the appellants contend that the applicant was finding a loop hole out of the non-conforming use issue because it would be expanding the non-conforming use.

Ms. Wintzer did not believe the Staff report contained the minutes from the 2009 meeting when this plat was approved. However, the minutes reflect that several times during the meeting Katie Cattan said that lower density is part of the HRL, which is purpose statement B, "provide an area of lower density residential use within the old portion of Park City." The minutes also reflect the suggestion for a site visit. If the Commissioners had gone up to Rossi Hill they would have immediately seen the integrity and the character of the neighborhood. All the houses have yards and the open space is the first thing people notice is the open space on Rossi Hill. Ms. Wintzer noted that the Planning Commission completely missed seeing the neighborhood character because the site visit was never done.

Ms. Wintzer stated that when Mr. Fiat first bought Dr. Woolsey's house the neighbors were unnerved that Mr. Fiat wanted to purchase it because he is a known developer in Old Town and his projects usually maximize the site. However, Mr. Fiat informed the neighbors that he intended to live in the house, and as a neighborhood they would have welcomed him as a neighbor. Based on the understanding that Mr. Fiat would be living in the home, the neighbors did not attend the public hearing in 2009. Ms. Wintzer noted that plans changed, which resulted in this appeal by the neighbors.

Ms. Wintzer stated that Mr. Fiat intends to put two additional houses on the lot. She believed it was the first time ever in Old Town where someone has removed a quarter of an existing house to add two other houses on the lot. Mr. Fiat intended to double the size of the existing house and push it closer towards Merritt Hooper's house to accommodate three houses on the lot. Ms. Wintzer remarked that public safety was an important issue because Rossi Hill Drive is a substandard street. In 30 years she has seen five cars go off the road and plunge down toward the railroad grade. In addition, there have been two fires and other emergency situations where it is has been difficult for emergency vehicles to access in the winter. Ms. Wintzer felt that Mr. Fiat was endangering their safety by increasing the density on 8-1/2 acres with two additional homes and doubling the size of the existing home.

Ms. Wintzer stated that Joe Tesch was a Planning Commissioner in the early 1990's, at which time he proposed placing a maximum square footage on houses in Park City. He was a great visionary ahead of his time and would have done a great service to the community if the other Commissioners had been willing to listen. Ms. Wintzer realized that Mr. Tesch was legal counsel representing the applicant this evening, but she believed he shared their concerns, even though he was in the position to argue against them.

Ms. Wintzer stated that when the Rossi Hill subdivision was done, the Planning Director required the four homeowners to limit the square footage of the houses on the four lots. The owners, including Dr. Woolsey, did not resist that requirement because their commitment was to Rossi Hill and the neighborhood. They wanted people to always have the ability to appreciate the character of Rossi Hill and to reap the benefits they have experienced through the years. Ms. Wintzer emphasized that the neighbors were very sincere about preserving the sense of community and they strongly believed this project would destroy it.

Ms. Wintzer stated that if the Planning Commission was not able to support this appeal and it was denied, she wanted it to be a clarion call to the City Council that something needs to be done to protect others in the future. She has heard repeatedly during this election that so much has been done in the last few years; however, if that were true, this appeal would not be occurring tonight.

Joe Tesch, representing the applicant, introduced Stephanie Matsumura, an attorney in his office who would be presenting their side of the argument this evening.

Ms. Matsumura thought Planner Astorga did a great job highlighting the issues in the Staff report. She intended to go through the presentation quickly since the Planning Commission had most of the background in the report. Ms. Matsumura remarked that the neighbors have the burden of proving

that the Planning Department had erred in their interpretation. The standard of review for the Planning Commission is to review the factual issues de novo and decide whether or not the Planning Department correctly applied the LMC.

Ms. Matsumura provided a brief overview of the project. The project is in the HRL, Historic Residential Low Density District. The existing structure is non-historic and its current use is a single-family dwelling. She presented photos of the home and the garage. Ms. Matsumura indicated an area on the approved plans that proposes to have an infill. From the street the existing garage would be below grade.

Ms. Matsumura remarked that several issues were raised in the appeal and she had clustered those issues in her presentation for brevity. With regard to density and use, the first question was, "do the approved plans increase the density or change the use." She believed the answer was no. Ms. Matsumura understood that the primary objection was that the project did not comply with the stated purposes of the HRL District. She pointed out that the purpose statements are not legally enforceable rules. They are intended to be goals for the HRL District and what the City is trying to achieve. Ms. Matsumura stated that under the LMC, density is a function of both number and type of dwelling units and/or non-residential units in the area. She noted that the approved plan does not change the number nor the type of dwelling unit. Ms. Matsumura stated that the LMC controls density in this District by establishing minimum lot sizes and site requirements within that district. She noted that the minimum lot size in the HRL District is 3,750 square feet, which is the size of two Old Town lots. The lots size that the approved plan sits on is 8,345 square feet and well within the requirement.

Ms. Matsumura commented on the use and whether or not this project violates a non-conforming use. She pointed out that the garage is a legal non-conforming structure and the applicant was not proposing to change the use. In addition, there is a legal non-conforming height on the structure. The addition would be ten feet behind the façade of the garage and, therefore, it meets the 15' front yard setback requirement. Ms. Matsumura reported that the Planning Director also determined that the proposal did not increase the level of non-compliance.

Regarding public safety, Ms. Matsumura stated that the issue was whether or not the proposed project threatens public safety in terms of traffic on McHenry Avenue. She reiterated that there would not be an increase in density or in use. One house exists and there would be one house with the approved plans.

Ms. Matsumura remarked that this was a single application before the Planning Commission. The replat was done in 2009 and when the Commissioners evaluate this appeal they need to look at it in the proper scope. The limited scope was this application and the approved plans on this particular property. Ms. Matsumura noted that the City Council Staff report for the plat amendment dated July 16, 2009, notes in its analysis that the Staff found good cause for the plat amendment and that the application supports the first two purpose statements within the HRL District, which is A) reduce density that is accessible only by substandard streets so these streets are not impacted beyond the reasonable carrying capacity; B) provide an area of lower density residential use within the old portion of Park City. Therefore, based on the Staff analysis, the plat amendment met those two stated purposes that were raised by the Appellants.

Ms. Matsumura remarked that the project meets purpose statement C regarding historic character because the approved plan does not alter the historic character. She stated that the approved plans as conditioned comply with the Historic District Design Guidelines. It also meets the footprint, height and setback requirements. Ms. Matsumura remarked that the approved plans modify the existing structure, which adds to the historic character because certain design elements were implemented.

With regard to scale, mass and surrounding neighbors related to purpose statement E, Ms. Matsumura stated that the proposal does not alter the structure's relationship to the neighborhood. She noted that the LMC does not limit size in overall square footage, but it does set a building footprint and height restrictions. The allowed building footprint is 2,610.7 square feet and the approved plan is 2,606 square feet. The structure is also within the height restriction. Ms. Matsumura stated that the infill plan preserves the existing home.

Ms. Matsumura presented an aerial view of the neighborhood to give the Planning Commission an idea of the surrounding homes in the neighborhood, as well as the existing structure at 331 McHenry. The intent was to show the scale of the neighboring area. Ms. Matsumura noted that the LMC does not talk about primary or secondary residence and an application had not been submitted for nightly rentals. Ms. Matsumura presented a view of the home at 331McHenry as it currently exists, and the same home with the proposed addition.

Mr. Tesch felt it was important to note that the infill between the garage and the home as it currently exists is lower than the roof of the garage. No additional height was being proposed.

Ms. Matsumura remarked that with regard to the development criteria and whether or not it was subject to Steep Slope review, the Staff report notes that a Steep Slope review is not required because it does not extend a horizontal distance of a minimum of 15' as required by the LMC to trigger a Steep Slope CUP.

Ms. Matsumura addressed the question of a vegetation impact on the environment and whether this project threatens the existing vegetation. She remarked that the project would not threaten the vegetation. Ms. Matsumura stated that the LMC requires that a development plan show all significant vegetation within 20 feet. Those plans were submitted and the approved plan has limited impact on the vegetation. She identified one tree that would be affected. Ms. Matsumura noted that the landscape plan was included in the Staff report. She stated that two significant trees on both the north and south ends of the property would not be affected.

With regard to future development, Ms. Matsumura stated that nothing in the Land Management Code allows the Planning Commission to conduct this appeal review on the subdivision as a whole. The hearing process was already held in 2009 on the replat. The scope of review for this appeal is limited to this application and the structure sitting on Lot A. Ms. Matsumura pointed out that there are 8-1/2 Old Town lots, and theoretically there could have been four lots. The existing home sits on Lot A which is approximately 4-1/2 Old Town lots. She indicated a portion was deeded to the City because it was part of McHenry Avenue.

Ms. Matsumura commented on discussions in letters about the core values. She noted that the new



General Plan was still in process and it had not been approved. With regard to the clarion call for more stringent regulations, Ms. Matsumura stated that there was a proper process and procedure to amend the LMC.

Planner Astorga stated that the design review has a one-year approval date. If the Planning Commission denies the appeal the date should be extended to one year from whenever the appeal is resolved, because the appeal process has prevented the applicant from applying for a building permit.

Chair Worel opened the public hearing.

Morgan Hole, one of the appellant's, stated that he did not have an issue with Mr. Fiat. The issue was what Mr. Fiat represented that he would do. In looking at the arrangement of the existing house and project that forward, many trees were not represented in the aerial photograph. He and his neighbors were concerned with the fact that there is currently one home, with the possibility of three homes in the future. That would be a loss of open space and old growth trees. Another home would be right next to the garage for future development. Mr. Hole understood that future development was not part of this argument, but it was still a concern for the neighborhood. Mr. Fiat represented that he would live in the home and the neighbors were excited about having one family in one home. However, regardless of whether or not it was pertinent to this hearing, the plans moving forward would have an impact on what happens in the future. Mr. Hole was concerned about keeping the integrity of the neighborhood and not making it a wall of houses. The neighbors have made the effort to maintain a neighborhood feel with open space.

Chair Worel closed the public hearing.

Ms. Wintzer provided a rebuttal. She stated that the virtual tour did not show the open space and the green trees. Her home is 2800 square feet on nine lots. The house next door is 1200 square feet on six lots. Because of how dedicated McHenry runs, the virtual tour did not represent the actual. Ms. Wintzer thought the Commissioners needed to physically visit the area to see and understand the open space. Ms. Wintzer noted that the City Council approved green roofs, but the ability to put a green roof on the existing house has allowed Mr. Fiat to expand the footprint of the side of the house towards the north where Merritt Hooper lives. He can then put stairways to the green roof. Without the green roof, Mr. Fiat would not be able to expand the footprint because he would lack sufficient room for a sloped roof. In terms of vegetation, Ms. Wintzer was unsure why they were not allowed to discuss all three structures, but she pointed out that the other trees would have to be removed to make room for the two additional houses. Those trees are more than a foot in diameter and the neighbors have kept them alive because water has been cut off to them for the last three years. Ms. Wintzer thought Ms. Matsumura had prepared a good presentation, but it did not represent the situation on Rossi Hill in terms of open space and the character of the neighborhood.

Commissioner Strachan asked Planner Astorga about the process and what would have happened if this appeal had not been filed. Planner Astorga stated that the applicant would have received a building permit and started construction.

Commissioner Strachan asked for clarification as to why the Staff decided that the Planning Commission had jurisdiction over this appeal. Planner Astorga replied that the Appellants specifically appealed the purpose statements of the LMC and other LMC relates issues. They did not appeal any of the design guidelines, which would have been the jurisdiction of the HPB.

Commissioner Hontz remarked that in both presentations the Appellant and the applicant's representative used the word non-conforming; however, non-conforming is a use. She believed the correct verbiage was non-complying because the garage is a non-complying structure. Director Eddington replied that this was correct. Commissioner Hontz noted that a description of non-complying was established on page 273 of the Staff report.

Commissioner Hontz asked if the density issue was related to the plat approval from 2009. Planner Astorga answered yes. However, the Staff did not believe there was a density issue. Commissioner Hontz understood the Staff's determination. She asked the question because she was trying to understand what the applicant and the appellants were talking about when they mentioned one to three houses. Commissioner Hontz understood that a plat was approved in 2009 and on pages 333 and 334 of the Staff report were the findings, conclusions and conditions from the 2009 City Council approval regarding the plat. Assistant City Attorney McLean stated that she had verified that it matched the actual ordinance that was passed.

Commissioner Hontz assumed that the 10-foot dedication that was referred to was an easement; and not that 10-feet of the lot was given away. She was told that this was correct. Commissioner Hontz referred to Condition #5 and asked what was supposed to be showing compliance. Assistant City Attorney McLean stated that what was discussed in the Staff report was that as part of the plat amendment, the old plat configuration was not complying with the side yard setbacks. Therefore, the plat amendment cured the side yard setback non-compliance. Ms. McLean had asked Planner Astorga to verify that currently the existing house meets the side yard setbacks. It was confirmed that it did. The structure was only non-complying as to the front yard setback, which could not be remedied without moving the structure.

Commissioner Thomas commented on the Steep Slope criteria and asked if the Staff had received a licensed certified topograph and if it was evaluated to determine that the slope did not exceed 30%. Planner Astorga clarified that the slope exceeded 30% but not in the minimum 15' as required by the LMC, and therefore a Steep Slope CUP review was not necessary.

Commissioner Savage stated that one of the reasons he loves this community is the passion and care people have for their neighborhoods. After reading the Staff report and listening to the presentations he believed the situation was clear. Commissioner Savage would support a decision to deny the appeal, with the understanding of the importance of the character of the neighborhood. He strongly encouraged Mr. Fiat to keep that in mind as he develops the rest of his property.

Commissioner Thomas stated that the Planning Commission has discussed purpose statements a lot in the past with regard to projects. He was stuck on the credibility issue because in his opinion this did not meet the purpose statements.

Commissioner Strachan asked about nightly rentals. Planner Astorga stated that nightly rental is a

conditional use in the District. The Staff had not received a nightly rental request; therefore, the applicant could not utilize the property for nightly rental until a request was submitted and approved by the Planning Commission. Commissioner Strachan asked about UEs and whether it could result in more density. Planner Astorga replied that the density is based on number of units per lot. He pointed out that there was not a maximum cap on the size of the structure, existing or proposed.

Commissioner Strachan did not believe the project complied with the purpose statements and violates them in every way. However, it was unfortunate, but the purpose statements are not binding. They are not LMC provisions that applicants must comply with. They should but they are not bound to do so. Commissioner Strachan remarked that when applicants comply with the purpose statements, the town benefits, the neighborhood benefits and it makes the review and decision easier for the Planning Commission. However, the Planning Commission cannot enforce purpose statements.

Commissioner Strachan thought the garage plan exacerbates the non-conforming structure. If they intend to dig down 15' back from the setback, it still enlarges the garage. It just enlarges it 15' back. Commissioner Strachan thought the Staff was wrong on that point. On all the other issues, they were right.

Commissioner Hontz concurred with Commissioner Savage regarding the passion of the neighborhood. She also concurred with Commissioner Thomas regarding the difficulty in matching the purpose statement for this plan. She concurred with Commissioner Strachan's statement regarding the non-compliance. Commissioner Hontz struggled because she did not agree that the purpose statements were met; however, the Planning Commission enforces those through the standards of the Code. In looking at the density issue, she believed it was a clarion call to look at whether or not an increase in size equates to an increase in density because it is a more intense use. In her opinion, more intense equals more density. Unfortunately, she was unable to make that argument based on how the current Code was written. She could make that argument and eventually change the Code to reflect what she believes, that it would be more dense, more intense and generate more impacts. Commissioner Hontz pointed out that under the current Code, the Planning Commission was not allowed to make that determination.

Commissioner Hontz believed that non-compliance was an issue. While she valued the creativity of having the addition in the setbacks, she thought it was a clear way of enhancing the non-compliance. Commissioner Hontz agreed that this was the one issue where the Staff got it wrong. Commissioner Hontz stated that other than removing the portions of the findings of fact that reflect compliance for the garage, she would support denying the appeal.

Commissioner Thomas asked if there was an increase in the number of bedrooms. Mr. Tesch replied that the number of bedrooms would remain the same.

Commissioner Strachan asked Assistant Attorney McLean for her opinion on whether or not the Planning Commission could consider the other two lots. Ms. McLean replied that the other two lots were not appealed and therefore could not be considered in this review.

MOTION: Commissioner Savage moved to DENY the appeal on 331 McHenry Avenue in

accordance with the Findings of Fact, Conclusions of Law and Conditions of Approval as outlined in the Staff report.

The motion died for lack of a second.

Planner Astorga was unsure whether Commissioner Thomas was given the correct answer on the number of bedrooms. He asked Jonathan DeGray, the project architect, to explain the expansion.

Mr. DeGray believed the comparison was made from the original building before the demolition. As part of the plat conditions, a portion of the building had to be removed to resolve an interior lot line issue. Mr. DeGray clarified that there were more bedrooms in this plan than there were in the original plan, less the demolition area.

Mr. DeGray stated that Mr. Fiat asked him to offer to the Planning Commission that if the expansion of the area under the garage is a problem, he would be willing to remove that expansion and make the garage fully compliant so that it sits within the front yard setback. The garage would be pushed back 10 feet.

Commissioner Strachan was concerned about granting the appeal without knowing the plans for pushing back the garage. Commissioner Savage did not believe that should be an issue because it was not the basis of the appeal. Commissioner Strachan replied that the Planning Commission could affirm the appeal except as to the garage. Commissioner Savage thought the Planning Commission should affirm the appeal and let Mr. Fiat work out the garage details with the Planning Department. Commissioner Strachan was not willing to do that without seeing the plan. Commissioner Savage pointed out that the plan was not theirs to approve. Commissioner Strachan suggested that they could remand that portion to the Staff.

Assistant City Attorney McLean stated that the Planning Commission could either remand it to the Staff or they could take a vote this evening, and based on the vote the applicant could come back with revised plans. Commissioner Savage understood that the Planning Commission could deny the appeal subject to the applicant providing an updated plan to the Planning Department that makes the garage compliant in terms of setbacks.

Commissioner Hontz thought they were getting closer to a solution. She clarified that the findings of fact supported denying the appeal. Planner Astorga answered yes. Commissioner Hontz noted that Finding of Fact #49 would need to be deleted. Commissioner Strachan stated that Findings 47, 48 and 49 should all be deleted.

Assistant City Attorney McLean referred to Finding #50 and noted that "twenty" should be changed to "twenty-seven". She also corrected "due" to read "do" in the second sentence. "include" was corrected to "included".

Commissioner Strachan revised Finding #24 to read, "The proposed addition, **except for the garage**, complies with the Land Management Code."

Commissioner Strachan added Condition of Approval #4, "The applicant shall submit revised plans

to the Planning Department regarding the garage in accordance with the October 23, 2013 Planning Commission's direction regarding meeting the front yard setback requirement for the entire structure including all additions below the now existing grade."

Commissioner Savage asked if the applicant was comfortable knowing that the non-compliance of the garage would be remedied with the new design. Mr. Fiat answered yes. Commissioner Savage clarified that the garage would be moved 10 feet back. Mr. Fiat replied that this was correct. Commissioner Savage clarified that the applicant would be required to submit new plans to the Planning Department that eliminates the non-compliance of the current garage. Commissioner Hontz remarked that the applicant could also leave the garage in its existing location and not build into the area that would trigger the non-compliance.

Assistant City Attorney McLean noted that the date in Condition of Approval #3 should be changed to October 23, 2014.

MOTION: Commissioner Strachan moved to AFFIRM the Planning Departments determination of compliance for 331 McHenry Avenue according to the amended Findings of Fact, Conclusions of Law and Conditions of Approval as found in the Staff report. Commissioner Savage seconded the motion.

VOTE: The motion passed unanimously.

#### Findings of Fact – 331 McHenry

1. The site is located at 331 McHenry Avenue.
2. The site is located within the HRL District.
3. The site is not historic.
4. On September 21, 2012 a complete Historic District Design Review (HDDR) application was submitted.
5. The application was deemed complete on October 3, 2012.
6. After, minor alterations were made to the original application; the Planning Department found that the submitted HDDR application was in compliance with applicable LMC requirements and Design Guidelines for New Construction on June 11, 2013.
7. On June 11, 2013 the property was posted and letters were sent out to adjacent property owners within one hundred feet (100') to notify them of the Staff determination as required by LMC § 15-1-21 and S 15-11-11.
8. The HDDR includes remodeling the entire structure.
9. The proposal includes an addition consisting of 2,344 square feet.
10. The applicant requests to add 750 square feet to the basement level, 1,111 square feet to the main level, and 483 square feet to the upper level. The existing structure is approximately 2,822 square feet; the overall square footage will be 5,399 square feet.
11. On June 21, 2013, the Planning Department received a letter from the Tom and Nancy Amandes, Ed and Debbie Axtell, Morgan Hole and Matey Erdos Hole, Merritt Hooper, & Charlie and Mary Wintzer, adjacent property owners, appealing Planning Staff's determination approving the HDDR.
12. Pursuant to LMC § 15-1-18, Appeals and Reconsideration Process, Planning Director or

Planning Staff decisions regarding compliance with the LMC are appealed to the Planning Commission.

13. The appeal authority (Planning Commission) shall act in a quasi-judicial manner.
14. The appellant has the burden of proving that the land Use authority (Planning Staff) erred.
15. The appeal authority (Planning Commission) shall review factual matters de novo and it shall determine the correctness of a decision of the land Use authority in its interpretation and application of the land Use ordinance (LMC).
16. The appellant raised the following four (4) issues to the appeal of the Planning Staff' determination of HDDR approval related to LMC compliance: Purpose of the HRL District, visioning results, non-conforming use, and full-time neighborhood.
17. Above discussion found in the staff report is incorporated herein.
18. Staff has addressed all of the comments addressed on the submitted appeal.
19. The use will remain the same as a single family dwelling.
20. The use is not changing or becoming a more intensive.
21. The size of the structure is increasing, however, in terms of density the use will be the same.
22. The Land Management Code restricts the minimum lot size within the HRL District to be 3,750 square feet, which is equivalent to two (2) standard Old Town lots (25'x75' in size).
23. The density of the HRL District is already reduced due to the minimum lot area required within the HRL.
24. The proposed addition, except for the garage, complies with the Land Management Code requirements pursuant to the HRL District and the Park City Historic District Design Guidelines as conditioned.
25. The proposed addition/remodel employs methods such as changes in wall plane and roof heights.
26. The proposed addition/remodel does not take place within slopes over thirty percent (30%) where the minimum horizontal distance is at least fifteen feet (15').
27. The neighborhood access remains the same as a dead-end, steep street.
28. Staff has not received other requests at this time regarding any future improvements, changes, to other existing adjacent property that may be owned by the property owner.
29. The LMC does not limit the overall square footage of a structure.
30. The LMC does limit the building footprint and maximum height, which can be looked at as indirect way to limit the maximum house size.
31. The proposed addition/remodel meets the maximum footprint restriction of 2,610.7 square feet.
32. The building footprint of the existing house and garage is 1,812.6 square feet, 69.4% of the maximum.
33. The proposed building footprint of the project is 2,606 square feet, 99.8% of the maximum.
34. The proposed addition/remodel meets the maximum building height including the three (3) maximum story provision.
35. The existing site is Lot A of the 331 McHenry Avenue Subdivision, which was a three (3) lot plat amendment approved by the City in July 2009.
36. When the plat amendment was approved there was no limitation to the buildable square

footage due to the indirect standards in the LMC which limit the maximum building footprint and height provision.

37. The proposed addition takes places on the area between the existing garage and the existing single family dwelling.
38. There is a small area found on the site where the addition will be located over thirty percent (30%) slopes, however, this area is not more than fifteen feet (15').
39. The LMC specifically states that in order of the site to be considered a steep slope, the measurement shall include a minimum horizontal distance of fifteen feet (15') measured perpendicular to the contour lines on the certified topographic survey.
40. The proposed addition/remodel does not trigger the steep slope CUP review and approval by the Planning Commission.
41. The applicant submitted the existing conditions survey prepared by surveyor which does include the significant vegetation within 20 feet of the proposed development.
42. The existing garage is approximately five to six feet (5' - 6') from the front property line.
43. The front yard setback is fifteen feet (15') minimum.
44. According to Summit County records, the single family dwelling was built in 1972.
45. A Non-Complying Structure that was lawfully constructed with a permit prior to a contrary change in the LMC, may be used and maintained, subject to the standards and limitations of the LMC.
46. Any Non-Complying Structure may be repaired, maintained, altered, or enlarged, provided that such repair, maintenance, alteration, or enlargement shall neither create any new non-compliance nor shall increase the degree of the existing non-compliance of all or any part of such Structure.
47. The existing structure does not meet the maximum building height of twenty-seven feet (27'). However, all of the features included in the remodel meet the maximum building height.
48. The non-compliances related to height, can remain on the structure as long as they do not increase the level of non-compliance, i.e. further expand the non-conformance.
49. Currently the applicant has not made an application to turn the single family dwelling into a nightly rental.
50. The LMC indicates that a nightly rental is a conditional use within this district.
51. Should the applicant decided to turn the structure into a nightly rental; the applicant would have to receive Planning Commission review and approval on the specific CUP criteria.
52. The LMC does not regulate the use in terms of a second home.

#### Conclusions of Law – 331 McHenry

1. The approved Historic District Design Review application is consistent with the Park City Land Management Code (LMC).
2. Approval of the Historic District Design Review application does not adversely affect the health, safety, and welfare of the citizens of Park City.

#### Conditions of Approval – 331 McHenry

1. Approval is based on plans stamped approved on June 11, 2013. Building permit plans

- must substantially comply with the approved set of plans.
2. All of the conditions of approval of the June 11, 2013 HDDR approval shall continue to apply.
  3. The expiration date of the Historic District Design Review shall be extended to one (1) year from the date of this order. A building permit shall be secured by the applicant by October 23, 2014.
  4. The applicant shall submit revised plans to the Planning Department regarding the garage in accordance to the October 23, 2013 Planning Commission's direction regarding meeting the front yard setback requirement for the entire structure including all additions below now existing grade.

**Order:**

1. The appeal is denied and Planning Staff's determination is upheld.

The Park City Planning Commission meeting adjourned at 6:15 p.m.

Approved by Planning Commission: \_\_\_\_\_