

PARK CITY MUNICIPAL CORPORATION  
PLANNING COMMISSION MEETING MINUTES  
COUNCIL CHAMBERS  
MARSAC MUNICIPAL BUILDING  
JULY 31, 2013

COMMISSIONERS IN ATTENDANCE:

Chair Nann Worel, Brooke Hontz, Stewart Gross, Mick Savage, Adam Strachan, Charlie Wintzer

EX OFFICIO:

Planning Manager, Kayla Sintz; Francisco Astorga, Planner; Polly Samuels-McLean, Assistant City Attorney

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The Planning Commission met in work session prior to the regular meeting to discuss LMC amendments to the HRM District. The discussion can be found in the Work Session Minutes dated July 31, 2013.

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 Thomas who was excused. Commissioner Gross arrived later in the meeting.

**ADOPTION OF MINUTES**

June 16, 2013

Commissioner Hontz referred to page 45 of the Staff report, page 5 of the minutes, Findings of Fact 11 for 30 Sampson Avenue. She noted that the minutes indicate that the Planning Commission made changes to the findings, but those changes were not reflected in the Findings of Fact.

Assistant City Attorney McLean clarified that the Findings of Fact, Conclusions of Law, and Conditions of Approval listed in the minutes should accurately reflect any changes discussed by the Planning Commission.

Commissioner Hontz recalled that months earlier the Planning Commission encountered this same problem and they were concerned that the applicant and the City Council were receiving incorrect Findings of Fact, Conclusions of Law and Conditions of Approval because they were not changed according to the discussion.

Commissioner Hontz remarked that there were two issues. The first was that the minutes were incorrect because the findings did not reflect what the Commissioner had done. Secondly, she

understood that the Planning Department had addressed the problem when the concern was initially raised.

Commissioner Savage asked if it was possible to address the problem by sending the draft minutes to the Commissioners within a short time period following the meeting rather than waiting until the packets are distributed. He was told that preparing a set of minutes required more time than a few days.

Commissioner Strachan could not see a problem with Findings 11. Commissioner Hontz replied that her concern with Finding 11 were minor wording changes. In her opinion the ongoing problem was the bigger issue.

Assistant City Attorney McLean remarked that when the Planning Commission addressed this problem months ago, the process was changed to delay the amount of time for sending an item to the City Council until after the Planning Commission reviewed and approved the minutes. However, the Project Planner to affirmatively review the minutes to make sure it accurately reflects the discussion.

Mary May explained the new process that was implemented by Staff. She prepares the minutes and sends them to the Planning Staff as early as possible on the Wednesday after the meeting and two days prior to sending the packets. It takes several days to prepare a set of minutes this extensive and detailed, particularly if the meeting is long, and she tries to return them to the Planning Department by Wednesday morning at the latest.

Mary clarified that she does not write findings of fact, conclusions of law, and conditions of approval. If the Commissioners specifically read into the record the way the new language should be written or the change is minor, she will include it. If it is vague, she contacts the Planner and asks him/her to write the Finding or Condition and send it to her to be included in the minutes. She pointed out that some Planners are better at responding than others, and some automatically send her the changed language the morning after the meeting.

Commissioner Strachan understood that the Planner was sending Mary the changes to the findings and conditions based on notes taken during the meeting and not from the minutes. Mary replied that this was correct. There have been occasions when the Planner has missed a change and she notices it when doing the minutes. In those cases, she corresponds with the planner and the revision is included. Commissioner Strachan thought the minutes should control. Commissioner Hontz suggested that the Commissioners should try to verbalize the change exactly how they want it so Mary would have the exact language on the recording for the minutes.

Commissioner Wintzer asked if it was possible for the planner to write the changed findings or conditions as it is being discussed and put it on the screen so the Commissioners could make sure it is correct during the discussion. He thought that would help the Planning Commission come to a consensus on the revision and it would help the Staff. The Commissioners concurred.

Assistant City Attorney McLean stated that if they took that approach the final revision should be read into the record for clarity.

Commissioner Hontz referred to page 50, page 10 of the minutes, second paragraph from the bottom, and corrected neighborhood to correctly read **neighbor**. She further corrected the sentence to read, "Therefore, the **neighbor** would have to go through the process to build the fence on their **own** property.

Commissioner Strachan referred to 25 of the Staff report, page 3 of the Work Session minutes, fifth paragraph and changed KCPW to accurately read **KPCW**.

MOTION: Commissioner Hontz moved to APPROVE the minutes of June 26, 2013 as amended. Commissioner Savage seconded the motion.

VOTE: The motion passed.

#### July 10, 2013

Commissioner Hontz referred to page 79 of the Staff report, page 13 of the minutes, second paragraph, third line, and corrected show shed to read, **snow shed**.

Chair Worel referred to page 80 of the Staff report, page 14 of the minutes, last paragraph, and corrected green room to read **green roof**.

MOTION: Commissioner Hontz moved to APPROVE the minutes of July 10, 2013 as amended. Commissioner Savage seconded the motion.

VOTE: The motion passed. Commissioners Worel and Strachan abstained since they were absent from the July 10<sup>th</sup> meeting.

#### **PUBLIC COMMUNICATIONS**

Preston Campbell with Go West Construction and the builder for the Lot 21-32 Echo Spur Subdivision project had a brief presentation for the Planning Commission on behalf of Sean Kelleher.

Planner Astorga explained that the applicants were scheduled on the July 10<sup>th</sup> agenda; however, he had informed them that the Planning Commission would not have a quorum and they did not attend. When he later realized that there would be a quorum he was unable to reach the applicant in time for the meeting. The applicant was very disappointed and Planner Astorga suggested that they give their presentation during the public input portion of this meeting. He noted that the applicants were aware that the Planning Commission would not be able to comment on the project this evening.

Assistant City Attorney McLean stated that typically the Planning Commission hears input on item that are not scheduled on the agenda, but the comments are usually information items or issues that the public would like the Planning Commission to address. However, this item is an open application and it was not publicly noticed for the Planning Commission meeting this evening. Since the public was not aware that a presentation would be given, Ms. McLean recommended that the applicants

wait to give their presentation until the project could be scheduled as an agenda item, in accordance with the Open Public Meetings Act.

Commissioner Strachan was not interested in taking input without public notice because it puts the Planning Commission in a dangerous legal position. The Commissioners concurred.

Mr. Campbell stated that the intent was not to put the Planning Commission in a dangerous legal position. They were only trying to provide information on a project that has taken two years. It is a frustration process for someone who lives 2,000 miles away and wants to live in Park City. Mr. Campbell understood their position and offered to come back with the presentation at a future meeting.

Planner Astorga noted that the project was scheduled for work session on August 14<sup>th</sup>.

#### **STAFF/COMMISSIONER COMMUNICATIONS AND DISCLOSURES**

Chair Worel asked the City Engineer for an update on the Deer Valley Drive construction. She noted that it is very frustrating and difficult to maneuver for both locals and visitor. City Engineer, Matt Cassel stated that the road portion would be completed by October of this year. The project is on schedule as planned.

Commissioner Hontz asked if there was a way to make it look better because it is not pleasant for visitors to drive through.

Assistant City Attorney McLean asked if it was possible to put another flagger on the roundabout. When the roundabout backs up it backs up traffic on Marsac. Mr. Cassel replied that backed-up traffic in the roundabout has been one of the biggest problems. Construction is now far enough away from the roundabout that stacking could occur on Deer Valley Drive.

Commissioner Strachan remarked that the road needed to be repaired and it was an inconvenience they would have to live with until October. Commissioner Wintzer agreed. He remarked that any effort to make it easier for people to move around only slows down the project.

Planning Manager Sintz reported that the General Plan Task Force meetings were completed. The Staff had tentatively scheduled the first joint City Council/Planning Commission meeting for either Thursday, August 22<sup>nd</sup> or Friday, August 23<sup>th</sup>. She would notify the Planning Commission once the date and time were finalized.

Commissioner Wintzer noted that he would be out of town from August 15<sup>th</sup> to September 1<sup>st</sup>. Commissioner Strachan stated that Thursday, August 22<sup>nd</sup> was a better date. Commissioner Hontz would be available on August 22<sup>nd</sup>; but not the 23<sup>rd</sup>.

Assistant City Attorney McLean informed the Planning Commission that an appeal was filed on the 30 Sampson Avenue conditional use permit, and it was scheduled before the City Council on August 15<sup>th</sup>. Commissioner Wintzer recalled that Commissioner Thomas had made some strong points during their review of 30 Sampson Avenue, and he suggested that they ask Commissioner Thomas

if he was interested in representing the Planning Commission at the City Council meeting on August 15<sup>th</sup>. If he could not attend, the Planning Commission would send another representative.

Planner Astorga stated that the tentative agenda for the August 28<sup>th</sup> meeting is very heavy and the Planning Commission should plan for a long night. Chair Worel asked about the possibility of starting the meeting earlier. Planner Astorga stated that as the Staff finalizes the agenda they could consider an earlier start time if necessary. They would know the agenda three weeks prior to the meeting when the legal notice is published. Commissioner Wintzer asked the Staff to forward a copy of the legal notice to the Planning Commission so they could see the agenda in advance of the meeting.

Assistant City Attorney McLean pointed out that since the legal notice is posted so far in advance, sometimes items on the legal notice drop out before the meeting.

Commissioner Savage reported that he would be absent from both Planning Commission meetings on September 11<sup>th</sup> and 25<sup>th</sup>. Commissioner Hontz stated that she was unable to attend the September 25<sup>th</sup> meeting. Chair Worel reported that she would also be absent on September 11<sup>th</sup>. Commissioner Strachan stated that he was unable to attend on September 11<sup>th</sup> and 25<sup>th</sup>. Planning Manager Sintz would check with Commissioner Thomas to see if he could attend both meetings to make sure they have a quorum.

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

Land Management Code – Amendments to Section 15-1-21 Notice Matrix,  
Chapter 2.24, Chapter 9, and Chapter 15.

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

MOTION: Commissioner Wintzer moved to CONTINUE the Amendment to Section 15-1-12, Chapter 2.24, Chapter 9, and Chapter 15 to September 11, 2013. Commissioner Gross seconded the motion.

VOTE: The motion passed unanimously.

**REGULAR AGENDA - DISCUSSION/PUBLIC HEARINGS/ POSSIBLE ACTION**

**1. 489 McHenry Avenue, Echo Spur – Plat Amendment  
(Application PL-12-01629)**

Planner Francisco Astorga reported that the Planning Commission previously reviewed this application on June 26, 2013. During that meeting he was directed to come up with a Planning Department interpretation for discussion on ridgeline development and vantage point analysis. He noted that there were two Staff reports for this item. The first was a short Staff report outlining the

Planning Department interpretation of ridgeline development construction as shown on page 91 of the Staff report. The second was the Staff report from the June 26<sup>th</sup> meeting, which was unchanged. Planner Astorga clarified that due to the late hour the discussion on June 26<sup>th</sup> was continued to this meeting

Planner Astorga noted that the language from the Land Management Code was reflected in the Staff report dated July 31, 2013. The language indicates that the Planning Commission may place restrictions when reviewing subdivisions due to the character of the land. He noted that the Planning Commission interpreted that the site of Lots 17, 18 and 19, also known as Echo Spur, is on a ridgeline. Planner Astorga remarked that the Staff wanted to move forward with the language from another part of the LMC as outlined in the second paragraph of the July 31<sup>st</sup> Staff report, which indicates that ridges shall be protected from development, and which development would be visible on the skyline from the designated Vantage Points in Park City.

Planner Astorga noted that the Staff report also included the definition of a vantage point, as well as the ten vantage points listed as A through K. Planner Astorga stated that he had personally visited all the reasonable vantage points to see what could be viewed from the site to be developed. The only vantage point that applies is (K), which is the Across Valley View. He asked the Planning Commission to keep in mind that Across Valley View could be multiple points.

Planner Astorga presented an example of the Copper Top Structure on Masonic Hill, and he understood from the contractor that it was a controversial project when it was built in 1981. The contractor told him that the home was originally intended to be bigger and taller. Planner Astorga stated that it was difficult to pinpoint the specific structure from vantage point (A), the Osguthorpe Barn, and the Staff finds that the structure breaks the skyline when viewed from this specific vantage point. He noted that the Staff found that the Copper Top House also breaks the skyline from vantage point (C), Heber Avenue and Main, and (D) the Park City Ski Area base. The copper top house also breaks the skyline from the intersection of Thaynes and State Road 224.

Planner Astorga presented Exhibit A, the Topography Analysis, included in the Staff report. He noted that the contour lines were taken from an aerial photograph and only estimated. It was not intended to replace an actual survey. Planner Astorga noted that the base elevation was approximately 7130 feet. As shown in the July 26<sup>th</sup> Staff report, the applicant, Leeto Tlou, had taken photographs from the opposite side. Planner Astorga explained the topographic features and contour lines and he used the photographs provided on June 26<sup>th</sup> to confirm the elevations and topographic features. He stated that taking a photograph from the same elevation, the Staff finds that the structure would not break the skyline and; therefore, it would not meet the specific regulations stating that "the ridgeline shall be protected from development when the development breaks the skyline." Planner Astorga noted that Park City is an interesting place topographically and there are set points throughout town to protect the ridgelines so they do not see development like the copper top house on the Aerie.

Planner Astorga reiterated that on June 26, 2013 the Staff was directed to come back to this meeting with interpretation and clarification related to vantage points, ridgelines and skyline analysis. Based on that interpretation and analysis the Staff recommended that the Planning Commission conduct a public hearing and consider forwarding a positive recommendation to the City Council

based on the findings of fact, conclusions of law and conditions of approval found in the draft ordinance in the June 26, 2013 Staff report.

Scott Jaffa presented photos of the property with the proposed house inserted into the images. Another photos imposed trees to minimize the concrete retaining walls. Additional photos showed houses that meet the current Code that would be built on the adjoining lots at a 28' height with the appropriate setbacks. Mr. Jaffa pointed out the house proposed for this applicant in relationship to the other homes. Mr. Jaffa stated that landscaping was added on top of the retaining wall as requested by the Planning Commission. He showed photos of the wall with and without landscaping.

Mr. Jaffa stated that the proposed house was designed to sit low and hug the topography so it would not stand out.

Planner Astorga pointed out that this was a plat amendment application to combine three lots into one. Development of the home would necessitate a conditional use permit for construction over steep slopes due to the access.

Chair Worel asked for the square footage of the proposed house. Mr. Jaffa stated that it was calculated to at 2,701 square feet.

Commissioner Gross asked if the applicant would have the ability to put landscaping in front of the retaining wall. Mr. Leeto stated that it is a right-of-way and he did not have the ability to make that decision without discussing it with the other developers and the City.

Chair Worel opened the public hearing.

There were comments.

Chair Worel closed the public hearing.

Commissioner Wintzer thought the pictures of the Copper Top house on the Aerie that Planner Astorga presented as examples shows why the Planning Commission needed to be very careful. If a previous Planning Commission makes a mistake it sets a precedent that cannot be taken back. He noted that the house and City were involved in lawsuits over the design and 7-feet was eventually cut off the top of the house. Commissioner Wintzer felt strongly that precedent was the reason for paying close attention to the ridgeline.

Commissioner Wintzer believed this was a ridgeline and that it met the definition of a ridgeline. He read from page 6 of the General Plan, "New development should not be allowed on ridges." He found similar language on pages 57 and 148. Commissioner Wintzer stated that he was still uncomfortable with the idea of allowing a subdivision on the ridge that would increase the ridgeline encroachment by allowing the applicant to build further down the hit. If the encroachment could be mitigated with different setbacks, etc., he would be willing to consider it. However, he could not support it as proposed.

Planner Astorga understood that there are set ridges that were part of the Sensitive Lands Overlay. The SLO indicates protection for waterways and steep topography, including ridges. He presented a zoning map showing that everything outside the red line was part of the sensitive lands overlay. Planner Astorga had found a map that was utilized historically in the Planning Department that had the nine vantage points and identified which ridges were important. When that map was compared to the zoning map the Staff realized that it was a pattern for the Sensitive Lands Overlay. Based on that information, the Staff was able to determine that no construction is allowed on ridges in any circumstance in terms of the Sensitive Lands Overlay analysis. Planner Astorga recognized the sections of the General Plan that Commissioner Wintzer mentioned; however, the Staff interpretation is that the Sensitive Lands Overlay does not apply to this particular site and development. Planner Astorga noted that the house on the Aerie was on the Sensitive Lands Overlay. He believed it the SLO was adopted to keep other developments from breaking the skyline.

Commissioner Wintzer took exception to the Staff interpretation. He did not believe that any ridge in Old Town should be jeopardized. In addition, this ridge is the entrance corridor and the proposed house would be extremely visible from Deer Valley Drive and the roundabout. He thought the ridge should be protected. Commissioner Wintzer pointed out that the General Plan does not address Sensitive Land Overlays, but it does talk about ridgelines. He was concerned that allowing this development would weaken the Code for other ridgelines in Old Town.

Commissioner Strachan incorporated his comments from the June 26<sup>th</sup> meeting. He could not find new information that would change his interpretation of the Code. He respected the Staff's interpretation of the Code, but he interprets it differently. Commissioner Strachan thought the photograph of the Aerie House was comparing apples to oranges because that house was an obvious ridgeline break. The subtle ridgelines are the only ones left in Park City that are being threatened. He agreed with Commissioner Wintzer that the Planning Commission needs to look at the ridgelines very carefully. In looking at a topo map, he believed this was clearly a ridge.

Commissioner Hontz concurred with Commissioners Strachan and Wintzer. She also incorporated her comments from the June 26<sup>th</sup> meeting because nothing had changed her mind. Commissioner Hontz thought that Exhibit A, the Topography Analysis, did a great job of indicating the ridgelines. She counted three or four other ridgelines in Old Town that would be set up for failure. Commissioner Hontz understood that the Aerie house was the catalyst for creating the SLO regulations and at one point it was supposed to include all of Old Town. That was changed because the SLO regulations were so restrictive it would have made a significant number of lots outside of ridgelines unbuildable in Old Town. In terms of setting precedent and because it is a ridgeline, Commissioner Hontz was not persuaded to change her initial opinion.

Commissioner Savage appreciated the work Planner Astorga had done in trying to clarify the underlying topographical facts associated with the site. He noted that the Planning Commission was reviewing an application that is subject to the current Land Management Code, and he believed this situation called for the Planning Commission to take a careful look the Land Management Code and craft a definition for ridgeline that could be applied across the range of different ridge situations. In his opinion this was not a ridgeline based upon the current LMC and a reasonable interpretation of the definition of a ridgeline. He thought the evidence presented showed that the proposed house



had no issues with breaking the skyline, which he believed is the definition of the ridgeline that is pertinent to protecting the view corridors. On that basis, Commissioner Savage supported the application.

Commissioner Savage remarked that often times the Planning Commission is faced with situations that are marginal in terms of fitting the definition. The problem is that the LMC does not provide a meaningful definition of a ridgeline that eliminates subjective interpretation. He encouraged the Planning Commission to consider implementing a process to review the LMC Code for the purpose of creating a definition for ridgeline that could be properly applied in future situations. Commissioner Savage pointed out that if they do not take that step, these situations would be repeated.

Commissioner Gross understood the vested lots a little better than before; however, he believed the issue was still the ridge. Commissioner Gross noted that the LMC does define ridgeline and specifies 150 feet on either side of it. In his opinion, the definition as written would eliminate the entire lot all the way up and anything else in Echo Spur. Commissioner Gross stated that in his opinion it is clearly a ridgeline as defined in the LMC. The applicant may be able to mitigate the impact through landscaping and other measure, but he was concerned about the ridgeline and the fact that there were very few left.

Leeto Tlou stated that he could see a bit of subjectivity in the discussion. He remarked that when the LMC document and the professional opinion of the Planning Department support the application, he wanted to know how much that little bit of subjectivity weighs into the decision. Mr. Tlou also heard in previous meetings that the Legal Department advised the Planning Commission to carefully consider a negative recommendation because it would be difficult to defend.

Mr. Tlou stated that if this is a subjective decision, he wanted clarity on how they would move forward with ridgelines in the future. He understood that Commissioner Savage had touched on that issue, and he was looking for clarity himself. If the Planning Commission believed this was a ridgeline, then what would not be a ridgeline.

Planner Astorga clarified that the Staff was not disputing the ridgeline in their interpretation. They were simply saying that under 15-7.32(d), it does not break the skyline, based on their interpretation of the language, "Ridges shall be protected, which development will be visible on the skyline from the designated vantage points."

Commissioner Hontz asked the City Engineer if there were updates to the status of the road. Mr. Cassel stated that the road would close for request of vacation of Fourth Street, but that would not impact Echo Spur Drive. When it went before the City Council the Council has that a few things be done before they would consider dedication. Mr. Cassel remarked that from an engineering perspective the road meets Code. He noted that the full intent was to take it back to the City Council for a decision.

Commissioner Hontz pointed to the minutes from a previous meeting regarding a different application on the same road, where statements were made regarding the process with the City Engineer, which did not coincide with the history as she remembered it. Commissioner Hontz requested that the City Engineer read the minutes to make sure the statements were correct or

correct them if necessary so they have accurate information in the record if that application comes back. Mr. Cassel stated that he had not read the minutes but the road was built to City standards.

MOTION: Commissioner Savage moved to forward a POSITIVE recommendation to the City Council regarding the plat amendment for 489 McHenry Avenue. The motion died for lack of a second.

Commissioner Strachan noted that Exhibit A, the topography analysis, was the only new information presented this evening and it should be incorporated into the findings.

MOTION: Commissioner Strachan moved to forward a NEGATIVE recommendation to the City Council for the plat amendment application for Lots 17, 18 and 19 of the Echo Spur Development replat, and direct the Staff to craft Findings of Fact and Conclusions of Law consistent with the motion.

Commissioner Hontz seconded the motion, with suggestions for potential places to look for information when drafting the findings. The previous minutes contain a lot of support for the different concerns; specifically good cause, significance of the HR-1 District, neighborhood impacts, precedents for ridgelines and for number of lots, and issues with health, safety and welfare. Another source is LMC Section 15-7.3-1 regarding safety.

Commissioner Strachan suggested that Commissioner Hontz provide the stated direction to Staff in written format to make sure it is accurately included in the findings. Commissioner Hontz handed Planner Astorga a written copy.

Planner Astorga asked about process and whether the Staff needed to schedule a public hearing when the Findings and Conclusions are ratified. Assistant City Attorney McLean replied that the item would be scheduled for ratification of findings, and there would be no public input. She explained that the evidence had been collected and the Staff would memorialize it for City Council review. There would be an opportunity for public hearing at the City Council level.

VOTE: The motion passed 4-1. Commissioner Savage voted against the motion.

The Park City Planning Commission meeting adjourned at 7:50 p.m.

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

