

PARK CITY MUNICIPAL CORPORATION  
PLANNING COMMISSION MEETING MINUTES  
COUNCIL CHAMBERS  
MARSAC MUNICIPAL BUILDING  
MARCH 27, 2013

COMMISSIONERS IN ATTENDANCE:

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

EX OFFICIO:

Planning Director, Thomas Eddington; Katie Cattan, Planner; Francisco Astorga, 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**

January 9, 2013

MOTION: Commissioner Wintzer moved to APPROVE the minutes of January 9, 2013 as corrected. Commissioner Thomas seconded the motion.

VOTE: The motion passed unanimously.

February 27, 2013

MOTION: Commissioner Wintzer moved to APPROVE the minutes of February 27, 2013. Commissioner Savage seconded the motion.

VOTE: The motion passed 5-0. Commissioner Thomas abstained since he was absent from the February 27<sup>th</sup> meeting.

March 13, 2013

Chair Worel noted that she was absent from the March 13<sup>th</sup> meeting. She referred to page 93 of the minutes and the discussion regarding the process and the timing of when minutes are approved versus when the items are sent to the City Council. She was unable to tell from the minutes the outcome of the decision.

Director Eddington noted that the discussion related to the challenge of taking the project to the City Council without the minutes because it goes to the Council within one to two weeks. The Staff has

tried to implement a better process for review beginning in March. He noted that the City Council typically does not receive the Planning Commission minutes and if the Planning Commission would like minutes to be part of the process it was important to understand that it would delay the current timeline for sending projects to the City Council by a week or two.

Commissioner Wintzer noted that when the Echo Spur project came before the Planning Commission it was continued. He noted that Echo Spur was listed on the next City Council agenda as an item based on the assumption that the Planning Commission would take action. He believed that was too fast. When an item is listed on the Planning Commission agenda one week and on the City Council agenda the following week it assumes that the Planning Commission votes in favor every time. He had called Planner Astorga who told him that Echo Spur would be continued by the City Council. Commissioner Wintzer thought the Staff needed to make the process less streamlined and more prudent. He was not interested in slowing projects, but when conditions or approvals are revised or the Planning Commission comments are relevant, the City Council should have that information.

Commissioner Savage asked if it made sense to rely on Staff to make a determination as to whether the subject was ambiguous or controversial enough to warrant a continuation. Director Eddington stated that the Staff schedules the City Council agenda approximately a month out in order to provide proper public notice. If an item is not ready to go before the City Council it is continued and re-noticed.

Commissioner Wintzer suggested that the Staff could ask the Planning Commission at each meeting if they were comfortable passing an item on to the City Council. That would be straightforward and the Staff would not have to make that determination. Planner Astorga remarked that the only problem with that suggestion is that once the Staff receives an application and deems it complete, they only require that the applicant submit one set of envelopes for noticing both meetings. It would be up to the applicant to decide whether or not to move forward as fast as possible with action for either approval or denial. Under Commissioner Wintzer's suggestion, the Staff would need to figure out the best way to notice the second required public hearing at the City Council meeting. Chair Wintzer stated that they could notice it for the City Council and inform the Planning Commission that it was placed on the agenda. At that point the Planning Commission could recommend that the City Council continue the item.

Director Eddington clarified that the Staff would list the item on the agenda as is and make sure the notice is sent to the neighbors well in advance. If the item goes through the Planning Commission smoothly, it would be carried through to the City Council. If not, it would be continued and the public would know to wait until the following City Council meeting.

Commissioner Hontz was still uncomfortable with that process. She recalled a time when the Planning Commission agenda had Consent Agenda items that were basically automatic approvals. The Consent Agenda was eventually eliminated because the Commissioners realized that nothing that comes before them is an immediate consent. She struggled with applications that were not meeting the requirements. Commissioner Hontz clarified that when the Planning Commission continues an item they are not slowing down the process, they are only asking the applicant to fulfill the process mandated by Code. She thought the Staff should change the current process and

automatically add one or two weeks before scheduling an item before the City Council. She thought it was absurd to expect a project with the magnitude of Echo Spur to be ready for the City Council within a week or two of coming before the Planning Commission. Commissioner Hontz believed the current process and scheduling gives the applicant a false expectation that their application is complete and ready for approval.

Planner Astorga clarified that the applicants for Echo Spur understood the process and at no time did they believe they had an approval before the City Council. Planner Astorga thought the concerns could be alleviated by two notices; one for the Planning Commission and a separate one for the City Council after the Planning Commission forwards their recommendation.

Commissioner Savage understood from the last meeting that the Staff was to come back with a recommendation and language to address their concerns with the process. He suggested giving the Staff that same direction for the next meeting.

Director Eddington believed the issue of revised findings, conclusion and conditions had been resolved by making sure that the Staff sends the revisions to Mary May for the minutes. However, if the issue is that the minutes should be sent to the City Council on controversial cases, it would significantly change the timing for moving projects forward. The Staff would come back with a proposal for discussion at the next meeting.

Commissioner Hontz noted that in addition to the minutes, a second issue is how to handle the action letters. She would prefer that action letters not be sent until after the Planning Commission reviews and approves the findings of fact, conclusions of law and conditions of approval in the minutes. She would like the Staff to include that in their proposal as well.

**MOTION:** Commissioner Hontz moved to APPROVE the minutes of March 13, 2013. Commissioner Thomas seconded the motion.

**VOTE:** The motion passed 4-0. Commissioners Strachan and Worel abstained since they were absent on March 13<sup>th</sup>.

## **PUBLIC INPUT**

Lawrence Meadows, a resident at 515 Woodside Avenue, clarified that he was the appellant in the appeal before the Planning Commission this evening; however, his comments at this time were being made as a citizen and a member of the public. Mr. Meadows stated that he first came to Park City in 1995. Before coming to Park City he was an Air Force Officer and a Military Pilot and served for six years and was also in Gulf War I. As part of his job he had to follow regulations. It is the same thing with the Land Management Code. He expects that applicants should be expected to comply with the Land Management Code the same as anyone else.

Mr. Meadows read a letter he had written and sent to Park City Municipal Corp. As the appellant in the referenced HDDR application, he reported that his property rights had been adversely affected as a result of the unethical conduct and Historic Preservation Board Member, David White, who was also a professionally license architect. The letters states that Mr. White has made HDDR

applications submission in support of the matter of the appeal being heard today, which contained material omissions and material misstatements of fact in an apparent attempt to mislead the Planning Staff in an effort to obtain unlawful final approval in violation of both the LMC and the Historic District Guidelines. In his letter Mr. Meadows states that he wrote Mr. White asking him to withdraw the application, correct his deficiencies and properly submit the application. Mr. White did not avail himself of that opportunity. The letter also states that Mr. White's HDDR approval on 505 Woodside Avenue was under review by the Utah Property Rights Ombudsman. Mr. Meadows noted that this was the second time in three years that Mr. White and the same owner have been engaged in similar unethical conduct on the same property. In his letter Mr. Meadows outlined the details of those two occasions and provided an opinion issued by the Utah Office of the Property Ombudsman who deemed that Mr. White's submissions rendered his application incomplete and therefore improper and not vested. On those occasions Mr. Meadows had refrained from filing a complaint with the Utah Department of Professional Licensing but now he was left with no choice but to do so. He had attached the DOPL Complaint to his to his letter.

Mr. Meadows further stated that when he approached the HPB regarding Mr. White's unethical conduct, instead of expressing concern he was admonished by one of its Board members, which he found to be totally unacceptable. Mr. Meadows stated that Mr. White's conduct can no longer be ignored and must not be tolerated. To do otherwise would taint the very integrity of the HPB as a whole and erode the public's trust in that body. He respectfully requested that pending the outcome of his DOPL Complaint, that Mr. White be immediately suspended from the HPB, and that PCMC individually conduct an investigation into the unethical conduct raised in his complaint. Mr. Meadows further suggested in his letter that if his allegations are supported by PCMC and/or DOPL, that Mr. White be permanently removed from the HPB and barred from any future participation on any PCMC councils, commissions or boards.

Mr. Meadows concluded his letter by suggesting that in the interim the City give serious consideration to staying the appeal of the instant application/approval. The first was based on a flawed submission and resultant flawed approval. The second was because the successive appeal provisions contained in the Park City LMC are unlawful and violate the Utah Municipal Land Use Development Act as was previously ruled by the Utah 3<sup>rd</sup> District Court in Love versus PCMC.

Commissioner Savage was unclear as to why Mr. Meadows' letter and comments were different from the appeal scheduled on the agenda. Mr. Meadows replied that he was reporting to the Planning Commission on unethical conduct by a Board Member of a City Board. His report was relevant to the proceeding that was scheduled to take place this evening.

Ann Marie Meadows, a resident at 515 Woodside Avenue, noted that the applicant at 505 Woodside was doing a green roof. Green roofs are new in town and she had done her own research.

Commissioner Thomas noted that 505 Woodside was scheduled on the agenda this evening. Ms. Woods clarified that she was referencing the design and not the appeal. Commissioner Thomas noted that she was still referencing a project that the Planning Commission would be addressing this evening. He suggested that she keep her comments more general.

Ms. Meadows reiterated that green roofs are new to the City and the Code does not address how to maintain it. Living next door, she thought there should be some Code regulation on how the roof should look and be maintained.

Commissioner Wintzer recommended that Ms. Meadows take her suggestion to the City Council since the Council had approved green roofs. The Planning Commission was not given the opportunity to provide input or make comments before the decision was made and her comments should be made to the City Council.

Mary Wintzer, representing Wintzer-Wolf Properties, intended to make comments regarding Bonanza Park.

Commissioner Wintzer recused himself and left the room.

Ms. Wintzer stated that Wintzer-Wolf Properties were owners of the Iron Horse District. When she spoke at the last public hearing Commissioner Savage had requested maps, which were provided this evening, to help them understand the area she was describing. Ms. Wintzer indicated that the first concept shown was drawn in by Rodman Jordan who used to be a partner of Mark Fischer, the developer of Bonanza Park. Rodman Jordan was eventually dismissed. As a property owner, Ms. Wintzer was tired of seeing a labeled road through their property. The Staff advised her to take her concern to the Planning Commission or the City Council and request that they direct the Staff to remove it. Ms. Wintzer preferred that it be labeled as a walking paseo or a pedestrian bike pathway, or in worst case, a "possible" road. She noted that nothing has been cited in the design and every time it appears with the road through their property, it causes her concern. It would push their buildings into non-conforming uses and they would have non-conforming structures, which would be a taking by the City. Ms. Wintzer felt it was too presumptuous and too soon at this stage of design for Bonanza Park, to have it labeled as a road.

Ms. Wintzer noted that the Staff had asked what Wintzer-Wolf Properties would like to see in their project. She asked if the Planning Commission would be interested in seeing some of their ideas for what they feel would work in their neighborhood both economically and aesthetically. They have been there 30 years and know the area better than anyone. If the Planning Commission was open to looking at conceptual designs, she would put something together that reflects what the Iron Horse District neighborhood could look like in the future as part of Bonanza Park.

Director Eddington stated that the Staff had a map available showing it as a paseo. They would present the map during the General Plan discussion this evening. Commissioner Savage felt it was unclear in terms of how much was definitive and what was conceptual. Director Eddington stated that the Staff would have better answers on May 8<sup>th</sup> when Gateway Planning comes back to the Planning Commission with a Form Based Code presentation. He believed the Commissioners would have a better understanding after that presentation.

Commissioner Strachan recommended that the Staff set aside time on May 8<sup>th</sup> to allow Mary Wintzer, Mark Fischer and other Bonanza Park Stakeholders to present their conceptual plans so the Planning Commission does not give a nod to a Form Based Code that is completely inconsistent with what might be an awesome conceptual plan. Director Eddington recommended that the

Planning Commission look at everything holistically on May 8<sup>th</sup> rather than looking at it property by property. Commissioner Strachan requested that all conceptual plans submitted by the Bonanza Park Stakeholders be attached to the Staff report as exhibits. Director Eddington asked if the Planning Commission would prefer to look at individual concept plans rather than the Form Based Code on May 8<sup>th</sup>.

Commissioner Savage thought the minutes from the last meeting reflected their discussion about looking at the big picture in conjunction with development of the General Plan. He believed there was a conceptual embracement of Form Based Code that everyone supported; however, its direct implementation within the geography of the zone is a separate issue. He thought that related to Ms. Wintzer's concern, which was representative of concerns they would hear from other Stakeholders. Unless they begin with a big picture view of what this would look like, it is hard to understand how the smaller but important details fit into that as it relates to Form Based Code. Director Eddington stated that the intent is to bring that back and to explain in detail the character zone because that was the one area that Gateway Planning had not presented in much detail. Understanding the character zones takes into account Ms. Wintzer's concern and other pieces of information heard during the initial meeting with regard to Bonanza Park and the Form Based Code.

Commissioner Strachan wanted to avoid having Stakeholders pass out additional information at the meeting that was not included in the packet and ask the Planning Commission to consider it. Commissioner Hontz wanted to be able to look at the big picture, but in her opinion the big picture was the grid. She was uncomfortable with some of the linkages at the first meeting and they were still there. Commissioner Hontz did not think they were making progress or looking at the big picture. They continue to look the details without addressing the fact that it was not working. She needs to see all the information at one time and in enough time to review it. Commissioner Strachan recommended that the Staff give the Stakeholders a deadline to submit whatever materials they want the Commissioners to consider.

Ms. Wintzer pointed out that the road only benefits Mr. Fischer's property by providing access through her property. It does not benefit the ambiance or the aesthetics or flow of residents in her property. She also realized that many residents in Homestake would be displaced and they would not be able to find homes in Mr. Fischer's project with the price point he will have. Ms. Wintzer thought those residents might be able to find homes in her neighborhood. If they renew their neighborhood they feel they were being driven towards more residential and less commercial.

Chair Worel asked if there was consensus among the Planning Commission to see conceptual plans. Commissioner Thomas felt the more conceptual ideas they could see and include in the process the better it would be, particularly when it is inspired by someone who has lived in the community for 30 years. He thought they should hear it earlier rather than later.

Commissioner Wintzer returned to the meeting.

David White responded to the accusations made on his character. He has been a licensed architect in the State of Utah since January 1973. He has worked in his profession from that time until now with joy and diligence and he has never had his honesty, professionalism or integrity questioned. Mr. White stated that as he has traveled the last 40 years in his profession he can always think

back and said he made mistakes or wished he had done something different on a specific project. However, he can say that he has never been dishonest. Mr. White noted that the appellant had accused that he received special treatment from the Planning Staff with regard to the project on appeal this evening. He has worked with the Park City Planning and Building Departments, the Planning Commission, and the City Council over the last 30 years and he has had many disagreements with all of them. He prides himself on the fact that at the end of the discussion they all have a small and a handshake rather than animosity, and knows that they came up with a solution that benefits everyone concerned. Mr. White noted that on page 64 of the Staff report, the appellant falsely accuses him of issuing fraudulent submissions of fabricated historic photos containing material omissions and misstatement of facts. He remarked that this was a blatant misrepresentation of his integrity. He invited the appellant to provide real proof of his accusations. Mr. White stated that he has worked with the Planning Department and the City Historic Preservation throughout this entire project and some of the photos and information were supplied to him by their offices, which he deemed to be correct. Mr. White remarked that the survey used for the project was supplied by a license professional surveyor. Mr. White pointed out that the appellant also recommends that he step down from his term with the HPB and that he be barred from every participating with any other City Board, Commission or Council. The only way he would leave his termed duties would be to have his fellow Board members, the City Council and the Planning Director vote him to step down. He invited anyone on the above Boards or Council or anyone from the public who has questions or concerns about this matter to meet with him in public or private to discuss it.

Commissioner Wintzer felt it was very important to understand that sometimes people have a conflict in a small town. He wanted to make sure that they do not preclude professional people from sitting on these Boards because it is important to have architects, engineers and contractors. He has never seen it to be a problem and those with conflicts always recuse themselves. Commissioner Wintzer stated that Jack Thomas' knowledge of architecture is very important to the Planning Commission and Mr. White's knowledge is equally important to the HPB. Commissioner Wintzer clarified that he was not taking sides on this particular issue, but he was taking a side on the importance of having professional people in this small community involved on these Boards.

Commissioner Wintzer stated that in the last couple of weeks people have questioned him about MPDs in Old Town. He noted that the Planning Commission previously discussed MPDs in Old Town and gave the Staff direction. The Staff came back with different direction and the conversation stopped. Commissioner Wintzer thought the matter needed to come back to the Planning Commission for continued discussion and it should be done in a timely manner.

Commissioner Strachan remarked that the discussion of allowing MPDs in Old Town should take place independent of the Kimball Arts Center potential application. He agreed that the conversation should take place soon. They have already done a lot of work and instructed Staff on drafting specific language. Commissioner Strachan thought they were very close to making a decision.

Director Eddington noted that the Planning Commission had forward a recommendation to the City Council on LMC changes for other Chapters. The MPDs in Old Town was the only change still outstanding. The Staff intended to schedule that discussion after the General Plan was completed. Director Eddington anticipated that the item would be on the agenda for the second meeting in April.

Planner Astorga remarked that the Staff would also bring back the height parameters that were revised per their discussion. That should also be the second meeting in April.

Commissioner Strachan understood the delay if it was due to Staff workload. He wanted to make sure that the Staff was not holding the MPD discussion until the Kimball Arts Center submitted a formal application. Director Eddington assured him that it was a workload issue.

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

Commissioner Wintzer disclosed that he is recused from matters related to Bonanza Park, which was why he left the room when his wife, Mary Wintzer, spoke during Public Input.

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

1. **505 Woodside Avenue – Appeal of Staff decision regarding Steep Slope Conditional Use Permit determination and that a Conditional Use Permit for retaining walls is not necessary at this time. Application # PL-13-01871**

Chair Worel announced that the Planning Commission was only looking at the LMC requirements and whether or not a Steep Slope CUP was required for the retaining walls.

Planner Astorga clarified that Kirsten Whetstone was the project planner on this application and the author of the current Staff report. Planner Whetstone was unable to attend and he was representing her this evening. Planner Astorga stated that since this was not his project, he may not be able to answer all their questions; however, he would do his best to find the answers.

Planner Astorga reported that the Planning Commission was reviewing a quasi-judicial appeal at 505 Woodside Avenue. The site is owned by Woodside Development, LLC, represented by Jerry Fiat. The appellant was Lawrence Meadows, representing Casa Di Lorenzo. Mr. Meadows resides at 515 Woodside Avenue.

Planner Astorga reviewed a brief background contained in the Staff report. In September 2012 the Planning Department received an application for a Historic District Design Review for an addition to the structure at 505 Woodside. The structure is currently listed on the Park City Historic Sites Inventory as a significant site. The Staff began reviewing whether the proposed addition would trigger the mechanism to require a Steep Slope CUP. At that time the Staff made a determination that the proposed addition and access to the structure as proposed would not trigger the Steep Slope CUP requirement. Planner Astorga noted that per the LMC, "Construction or an addition placed on a slope that is 30% or greater must come before the Planning Commission for review."

Planner Astorga noted that the HDDR application was approved on February 4, 2013. Within ten days of that approval the City received an appeal indicating that the Staff had erred in that determination.



Planner Astorga reported that the Staff had received additional documents from both the applicant of the HDDR and the appellant. The applicant had submitted three separate documents; one from Alliance Engineering, one from David White, and another from Bradley Cahoon with the law firm Snell & Wilmer, L.L.P. All three documents were professional opinions indicating the Staff had not erred and that the addition and access were not on slopes 30% or greater. Copies of the three documents were provided to the Planning Commission. A copy was also provided to the Secretary to be filed with the minutes as part of the record.

Planner Astorga reported that the appellant had submitted a Planning Commission Exhibits Package for consideration related to the appeal. It was also provided to the Planning Commission.

Planner Astorga read from page 112 of the Staff report, "The retaining wall issue was addressed with a number of conditions of approval, reiterating that all retaining walls shall comply with the LMC requirements, including review of an administrative conditional use permit if warranted." He noted that by writing that language, Planner Whetstone indicated that she would honor the Code which indicates that if a retaining wall in the front yard setback ranges from 4'-6' it would require an Administrative Conditional Use Permit. Planner Astorga stated that this was not part of the appeal, but he wanted the Commissioners to know that it would be addressed through the standard procedure. If the retaining wall was over 6 feet it would come before the Planning Commission through the standard conditional use permit process.

Planner Astorga reported that relative to the appeal as indicated by the appellant, the Staff found that the areas where the addition was being placed in both the front and the rear and including the access in the front, did not measure 30% or greater slope. The area measured did not meet the required minimum horizontal distance of 15 feet.

Planner Astorga read the Conclusions of Law on page 117 of the Staff, "The existing grade of the lot, in areas proposed for the addition and driveway, does not meet the requirements for applicability of a Steep Slope Conditional Use permit. The existing grades are not thirty percent (30%) or greater when measured for a minimum horizontal distance of fifteen feet (15') in areas proposed for development." He clarified that the Planning Commission was required to make a determination on whether or not the Staff erred in their determination.

Commissioner Strachan asked Planner Astorga to walk through the process of how they take the measurement of the 15' feet horizontal from the time they get on site, the tools used, etc. Planner Astorga stated that the Staff uses the specific criteria outlined in the Code. The determination is based on the appropriate complete submittal required from the applicant, which includes a survey produced by a licensed engineer with 2-foot contours. That is the most critical piece of this type of analysis. Planner Astorga stated that the second submittal required is where the architect or designer overlays the proposed site plan on that specific survey. The next step is to identify those areas where the slope is greater than 30% and indicate whether the addition or new construction would be on a slope 30% or greater. Planner Astorga stated that it is sometimes difficult to conduct a field inspection depending on weather and amount of snow on the ground. However, the analysis made on the survey and the proposed site plan should be appropriately drafted to help make that specific determination.

Commissioner Strachan understood that 15 feet of the proposed construction has to be on the 30% or greater slope before a Steep Slope CUP is required. He verified that at least 15 feet of the structure has to touch the 30% or greater slope in order to require a CUP. Planner Astorga replied that this was correct. Commissioner Strachan asked for the determination of how many feet at 505 Woodside was on 30% or greater. Planner Astorga replied that according to Planner Whetstone's analysis the addition never reached 30% in its proposed location.

Commissioner Hontz referred to page 111 of the Staff report, under the Appeal heading and interpreted that to say that the appeal was not limited to just the Steep Slope Conditional Use Permit. The appellant had also challenged other things, including the retaining wall as a Land Management Code issue, and that would be relevant to their discussion. Assistant City Attorney McLean understood that currently the retaining wall was not shown to be greater than 6 feet. Commissioner Hontz clarified that the Planning Commission could still discuss the retaining wall. Ms. McLean replied that they could discuss it in terms of height and whether it would trigger a CUP. They should not discuss the design of the retaining wall.

Commissioner Hontz noted that language on page 111 states that revised plans were submitted. She asked if the revised plans in any way changed the Steep Slope analysis. Director Eddington answered no.

Lawrence Meadows, the appellant, stated that he is an adversely affected property owner. He has developed real estate over the last ten years and six of the homes are on the 500-600 Block of Woodside Avenue. He is very familiar with the area surrounding the subject property.

Mr. Meadows felt that David White should be recused from this proceeding. Assistant City Attorney stated that Mr. White did not need to be recused because he was not a member of the Planning Commission. Mr. Meadows pointed out that the City disagreed with his position and believes that this appeal piggybacks on to the HPB appeal from last week. If this is one appeal as the City argues, and not a distinct and separate proceeding, then Mr. White is a party to the appeal and should not be in the room because he is an HPB Board member. Ms. McLean reiterated that Mr. White is not a member of the Planning Commission and she advised Mr. White that there was no reason for him to be recused.

Mr. Meadows duly noted Assistant City Attorney McLean's advisement and would log an objection.

Mr. Meadows contended that this was a successive appeal. He was being forced to appeal his issue to two separate municipal bodies, which clearly violates the Utah Management Land Use and Development Act, and has been borne out of a Third District Court Ruling. He would not forfeit his rights and refuse to move forward with these proceedings, but he would do so under protest. Unless the City elects to stay these proceedings pending the outcome of the Ombudsman Complaint, he would move forward.

Mr. Meadows was told to proceed.

Mr. Meadows addressed Staff report issue. On one hand the Staff says that Steep Slope is not part of the HDDR process. He argues that it is. He noted that LMC 15-11-10 states that, "The Planning

Department shall review, approve, approve the conditions or deny all Historic District Site Design Review applications involving allowed use or a conditional use, which would mean a Steep Slope permit. In his opinion, for the Staff to not process this at the HDDR level was improper.

Mr. Meadows stated that LMC 15-1-18, Appeals and Reconsideration, states that the appeals of decisions regarding design guidelines for Historic Districts and Historic Sites shall be reviewed by the Historic Preservation Board, period. Not by the Preservation Board and the Planning Commission. There was no other body designated to appeal to other than the Historic Preservation Board. Mr. Meadows felt this was selective enforcement. The Historic Preservation Board took it upon themselves to review LMC issues such as the retaining wall, significant vegetation, roof issues.

On one hand the Historic Preservation Board was perfectly fine evaluating issues under the LMC, but they did not want to deal with the Steep Slope and instead pushed it off to the Planning Commission. Mr. Meadows stated that as an adversely affected party, the process put him on a path of two appeals.

Mr. Meadows walked the Commissioners through each page of the Exhibit packet he had provided. Page 1 was the applicant's topographic exhibit submitted in support of this meeting. He believed it was an overlay on top of the certified survey. Mr. Meadows had broken down the two areas on Page 1A. Area A was the front area around the driveway. He contends that the driveway is too steep and exceeds 14%, and that the area under the driveway is a steep slope that exceeds 30%. He also contends that Area B in the northwest corner of the property was a steep slope, which is the area contained within the new addition.

Mr. Meadows noted that page 2 of his submittal was LMC Chapter 15-3-2, paragraph 4, which clearly states that driveways must not exceed 14% slope. Page 3 was the site plan submitted by the applicant. The applicant has asserted that there is 31 feet of run from the curb to the garage door threshold. Based on the survey, it rises from 7110 feet to 7114 feet. Mr. Meadows pointed out that the first 15 feet was within the City right-of-way. Per the City Engineer and the LMC, it cannot exceed 10% slope in the City right-of-way. Mr. Meadows used his own calculations to show that the driveway slope was 15.635%.

Page 4 of the submittal was LMC 15-2.2-6, Development on Steep Slopes. Mr. Meadows read from the language which states that a conditional use permit is required for any structure in excess of 1,000 square feet if the said structure or access is located upon existing slope of 30% or greater. Mr. Meadows understood that Planner Astorga had based the slope evaluation on the submitted survey. Planner Astorga clarified that Planner Whetstone had done the analysis. Mr. Meadows asked if it was field measured or based on the survey. Planner Astorga believed it was based on the survey. Mr. Meadows contends that the survey and the site plan did not match up.

Mr. Meadows read from the LMC, "The Code must be interpreted according to the literal plain meaning of the word, and the Code shall be evenly and fairly applied consistently from case to case". He believed there was subjective interpretation of these rules and everyone has their own opinion. However, it is clear that the measurement shall quantify the steepest slope within a building footprint and driveway. The language clearly states that the measurement is a minimum distance of 15 feet horizontally. It does not talk about averages or exclusions. Mr. Meadows felt a problem with the Code is that each individual Code item can be interpreted individually and subject to distortion.

He believed there was a sliding scale standard of review and applicants are evaluated differently depending on who they are.

Mr. Meadows referred to page 10 of his exhibits package which showed the streetscape that was submitted by the applicant. He pointed out that the structure at 505 Woodside was far above the stringline between the ridge tops, which is a common violation for visual massing. Mr. Meadows stated that his personal house is next door at 515 Woodside and he pointed out that the northernmost end of his gable roof clips the stringline of the streetscape. He was asked to cut off his roof and make a hip roof to it would not violate the stringline. Mr. Meadows complied. Now this applicant can pierce the stringline by eight to ten feet without it being a problem. He pointed out the structures that have been designed within the Code over the last ten years. Mr. Meadows remarked that the Code was not being applied the same.

Commissioner Wintzer informed Mr. Meadows that the Planning Commission was asked to address steep slopes and not roofs. Mr. Meadows believed his comments were relevant to steep slopes because visual massing of the stringline is part of the analysis. Commissioner Wintzer clarified that the Planning Commission was trying to determine whether a steep slope CUP was necessary. They did not have enough information to evaluate the steep slope.

Mr. Meadows stated that page 5 was a site plan submitted by the applicant. Page 5A was the site plan with the topo overlay. Mr. Meadows had added everything shown in red and black. Referring to Area A, Mr. Meadows had provided his own calculations to show that the retaining wall was taller than the 4-foot Mr. White had implied to evade the CUP process. Mr. Meadows stated that on a field measurement, the existing wall was 5'9" tall. Using the certified topo lines on the site plan provided by the applicant, Mr. Meadows again used his calculations to show that the grade under the driveway was 58.8%. From the base of the stairs the grade climbs up to 60% grade. Using the same calculations, Mr. Meadows determined that the building footprint for the new addition was at 60% grade on the right and 40% grade in the center and to the left. He clarified that the calculations were based on the elevations shown on the applicant's submitted site plan with topographic overlays.

Page 6 was an aerial survey performed by the Sweeney master plan and encompassed 515 Woodside, 505 Woodside, and Lots 6 and 7. Mr. Meadows had calculated the numbers and noted that the aerial survey showed the same 60% and 40% grade. He contends that it is accurate.

Mr. Savage asked if the information presented this evening had been submitted to the Planning Department in advance of this meeting. Mr. Meadows answered yes. Mr. Savage clarified that all the recommendations made so far were been made with the full understanding of Mr. Meadows' analysis and interpretation. Mr. Meadows replied that this was correct. The exhibits provided were either his or from the applicant.

Mr. Meadows stated that he built 515 Woodside, 503 and 503-1/2 Woodside, all of which are steep lots. Yet somehow the Lot at 505 Woodside was deemed not to be steep. He found that to be a problem. Mr. Meadows presented a full size survey from Dominion Engineering that was performed when the 5<sup>th</sup> Street tunnel was built. He believed it corroborated everything on the aerial survey. Mr.

Meadows contends that all the elevation lines he used were based on factual record and what the applicant had submitted, and they are all fact supported.

Mr. Meadows stated that in addition to steep slopes, retaining walls and vegetation were important issues for the Planning Commission to consider. Chair Worel requested that Mr. Meadows focus his comments on the Steep Slope. Mr. Meadows once again logged an objection because he had exhibits to show that the project would require a 6-foot wall in the front yard and a 6-8 foot wall in the driveway. A significant vegetation issue was brought before the HPB and one of the biggest points of contention was a large tree in the northeast corner in the City right-of-way. An arborist and engineer are trying to decide what to do with the wall to protect that tree. As an adjacent property owner Mr. Meadows wanted to make sure the significant vegetation is preserved and loss mitigation is provided.

Mr. Meadows stated that he has a lot of experience with the Land Management Code. He has been put through the ringer and he was happy to meet all the Code requirements. He follows the Code, his word is his bond, does not lie and he is honorable. Mr. Meadows believes everyone should be treated the same. While this applicant is bypassing the Steep Slope review, the owner at 543 Woodside has been put through the ringer for three years and he still did not have an approval. The process is inconsistent and the Code is selectively enforced. It should not be that way. Mr. Meadows appreciated the Planning Commission giving him this time. He apologized if his comments were heated, but this subject was close to his heart and his personal interest.

Commissioner Strachan asked which lots besides 503 and 515 were deemed to be steep slopes. Mr. Meadows replied that it was 503, 515 and 503-1/2. Commissioner Strachan asked if Lots 6 and 7 were served by the tunnel. Mr. Meadows answered yes. Commissioner Strachan noted that those lots are not on Woodside proper. Mr. Meadows clarified that the lots were steep but they were not put through a Steep Slope CUP because they required CUP due to the Sweeney master plan. Commissioner Strachan asked which lots were on Woodside proper. Mr. Meadows stated that it was 515 Woodside, 519 Woodside, 521, 543, 605 and basically all the lots because the whole street is the same steep topography. Commissioner Strachan pointed out that steep was a subjective term. He wanted to know which lots actually required a Steep Slope CUP. Mr. Meadows stated that 515, 519 and 521. He noted that 543 Woodside was tied up due to steep slope issues.

Jerry Fiat, representing the applicant, disputed the measurements Mr. Meadows had calculated and presented. Mr. Meadows had measured the driveway to the front of the deck, which is why it measured 15.9% grade. The garage actually starts two or three feet behind the back of the deck. Mr. Fiat remarked that there was an extra 8 feet before reaching the garage door. He knew for certain that Planner Whetstone had done a number of field visits and had taken the measurement numerous times. He recalled that Planner Whetstone had measured the driveway at 12.9%. Mr. Fiat stated that if the Planning Commission thought that was too steep the driveway could be changed. He explained that the intent was to raise it as much as reasonable so that from the primary right-of-way the historic house would not be overwhelmed by a big garage.

Mr. Fiat noted that Mr. Meadows had mentioned that the top of wall would be over 6 feet. He noted that the wall is an existing concrete wall with a flat stone veneer. Commissioner Wintzer asked Mr. Fiat to focus on the steep slope issue.

Mr. Fiat noted that Mr. Meadows had stated a 60% grade. However, everyone who looked at it, including several people from Alliance Engineering and the Staff, made the determination that the grade was less than 30%. Mr. Fiat noted that the main level has a walkout in the back where you can walk out to the back of the lot.

Mr. Fiat referred to Mr. Meadows' comment about everything on Woodside being a steep slope. He pointed out that the road is perfectly flat and then it drops off on the north side of 505 Woodside. He presented a historic photo to show the street and commented on the different lots.

Commissioner Strachan understood from Mr. Fiat that 501 Woodside was not a steep slope. He asked how Mr. Fiat knew that. David White stated that he was the architect for 501 Woodside and it was corroborated by the Planning Staff. There is no record that 501 Woodside went through a Steep Slope CUP. Mr. White recalled that 501 Woodside was renovated in 2005.

Chair Worel opened the public hearing.

There was no comment.

Chair Worel closed the public hearing.

Mr. Meadows referred to page 3 of his submittal. He noted that none of the plans submitted by the applicant had dimensions and everything had to be scaled. He pointed out that the driveway scales out to a 31' driveway run from the edge of the curb to the garage threshold, 15' of which is in the City right-of-way. Mr. Meadows contested Mr. Fiat's claim regarding the driveway.

Mr. Meadows noted that the retaining wall has to support the existing tree. In some shape or form an engineered wall will be required because a dry stack stone will not hold up a 40' spruce tree. The plans do not have cross sections or retaining wall designs and that was a major issue for him personally. Mr. Meadows remarked that the main level has a walkout to walk out to the back because the grade is being raised four feet in the back to accommodate the slope.

Mr. Meadows stated that anyone who could read a survey and understand the topo lines would know that the grade of the road does not change. He pointed out that road grade is not addressed in the Code. Mr. Meadows knew that 501 Woodside was not subjected to a Steep Slope CUP, but he never knew why. However, the fact that David White was the architect did not surprise him.

Commissioner Thomas referred to the aerial survey on page 6 of Mr. Meadows' submittal and noted that as an architect he has never used an aerial survey to establish slope. He has always used a license surveyor or engineer to evaluate slope. In his opinion there is a big difference between an aerial survey and an actual survey. He does not use aerial surveys because they are not accepted by the City and they are inaccurate.

Commissioner Wintzer stated that the Planning Commission was being asked to make mathematical decisions and review a set of plans; however, he did not think the application had enough information to make those decisions. Commissioner Wintzer recommended that the

Planning Commission not get involved in trying to resolve disputing maps. He thought the City should hire an independent professional to measure the lot and come back with a ruling.

Commissioner Hontz stated that the information provided in the Staff report was illegible. She believed there should be a certain agreement on a point of measurement based on the Code. She thought the Staff should have done the same analysis that was done by the appellant. When she reviewed the Staff report there was some analysis that identified various slopes, but it did not talk about specific points in the appeal that they needed to respond to. Commissioner Hontz did not think this should be an argument. They should all be able to agree on the elevations based on the certified survey. She noted that the LMC provides clarity regarding the measurement of slope. "The measurement of slope shall quantify the steepest slope within the building footprint and the driveway". That may have been done but it was not reflected in the Staff report. Commissioner Hontz understood from her reading that the measurement was done using a ruler on paper rather than in the field. She supported Commissioner Wintzer's suggestion to identify specific points from where the measurements should be taken. Commissioner Hontz had done the math and it was right, but the answer should have been clear without confusion.

Commissioner Wintzer felt the matter would be appealed regardless of their decision this evening. For that reason, he preferred to involve an expert. Director Eddington noted that the drawing on page 168 of the Staff report reflected most of the analysis that started to examine any place that would cross over 15 feet. Commissioner Hontz stated that it was unclear who had provided that drawing and she was unaware that it was the Staff analysis. Director Eddington reviewed the drawing and explained the analysis. He identified the area of the new addition and noted that none of that area crosses over 15 feet perpendicular to the slope. He pointed out where non-historic existing additions were being removed. There are no steep slopes underneath the existing structures because those have already been altered and have foundations. Director Eddington emphasized that the area of new construction was very small.

Director Eddington stated that field measurements are helpful. Planner Whetstone had been to the site a number of times. In 2009 Brooks Robinson and Katie Cattan had been to the site and also conducted an analysis.

Commissioner Hontz pointed out discrepancies regarding the length of the driveway. Director Eddington noted that the distance was 14 feet to the retaining wall. At that point the slope was 28%. However, based on a technical measurement to the property line, the distance was closer to 8 feet. Commissioner Hontz clarified that Director Eddington agreed that the distance over 15 feet was 28.6% between the existing structure and the existing retaining wall. However, the analysis that takes it all the way to the road and only allows it to be 10% had not been done. Director Eddington explained that it stops at the retaining wall. By definition, if they go beyond the retaining wall it would hit a 90 degree grade.

Commissioner Hontz understood the explanation. However, in reading the Code regarding driveways and steep slopes and the distance that the driveway would have to impact, she was still trying to understand the argument completely. She pointed out that the driveway would not stop at the retaining wall. Director Eddington agreed, but noted that beyond the wall was fairly flat asphalt parking space. The driveway would meet grade at the retaining wall but the driveway would go all

the way to the curb for access. Commissioner Hontz thought the measurement should be taken from the curb to the elevation of the garage.

Commissioner Wintzer asked for a section drawing. Mr. White presented a drawing of the south elevation showing the driveway. The Commissioners reviewed the drawing. Planner Astorga summarized for the record that Mr. White had shown the Planning Commission that the distance from the wall of the proposed garage to the back of curb was 31 feet and that the elevation was 7114.

Commissioner Savage did not understand the motivation associated with trying to cause this application to go through a CUP process. Mr. Meadows clarified that it was based on his property right. Commissioner Savage stated that to the best of his understanding they had objective criteria for measuring and determining steep slopes with respect to the LMC. What he was hearing and seeing from the packet was that the applicant used qualified surveys and validated through the Planning Department and through other firms that this application did not require a Steep Slope CUP. Commissioner Savage understood Mr. Meadows' measurements and calculations on the graphs, and he respects Mr. Meadows' background, but it did not give him the same sense of validation. The Planning Commission had seen a number of conclusive demonstrations indicating that this was not a steep slope requirement, but he had not seen the same level of scrutiny applied on the side of the appellant.

Commissioner Thomas stated that the slope of the driveway, based on the drawing presented by Mr. White showing that the driveway is 31 feet long with the section from the garage door to the property line being less than 14% was possible; and from the property to the street being possible. He asked for the City regulation on the maximum slope from the property line to the back of curb for a driveway. Director Eddington replied that it is typically 10%. He believed it could go up to 14%. Planner Astorga stated that the 14% Mr. Meadows had indicated was within private property, and it was to the discretion of the City Engineer since he controls any development on the rights-of-way.

Mr. Meadows stated that Matt Cassel had confirmed 10% yesterday. Commissioner Wintzer recalled from a personal experience that 10% was the City guideline. Mr. Meadows remarked that he wanted everyone to interpret the Code the way it is written without subjectivity. He was very frustrated with the process and their comments because the Code is very clear.

Commissioner Thomas understood that the maximum slope from the garage doors to the property line was 14%. If it was at 14%, then the segment from the property line to the back of the curb would be 11.875%, not 10%. Therefore, if there is a restriction of the segment from the back of the curb to the property line of 10%, it exceeds the City requirement.

Commissioner Savage asked if the analysis of the driveway was relevant to the decision as to whether a Steep Slope was required. Director Eddington replied that the analysis for the driveway would take place when the applicant applies for a building permit. The City Engineer would have to field verify that the requirements are met. It is different from the CUP because the Planning Department looks at what exists.



Commissioner Hontz noted that a separate issue related to the driveway is that the area under the driveway has to be considered when determining whether it is a steep slope. A measurement needs to be taken underneath the steepest part of the driveway as illustrated by Staff. The question is at which point it should be measured from. Director Eddington noted that per Code it is for current existing grade and not what is proposed. The slope would have to exceed 30% as it exists in order to classify it as a steep slope.

Commissioner Strachan deferred to the expertise of Commissioners Wintzer and Thomas.

Commissioner Thomas stated that in his profession he always leaves the site analysis to a licensed engineer. If the engineer indicates that he is over a certain slope anywhere in the context of the footprint then he deals with it. Commissioner Thomas was less concerned about the slope under the structure, but he was still confused about how to deal with the 14% driveway if there is a restriction between the property line and back of curb. He requested clarification on whether or not that would weigh into the decision regarding steep slope. Commissioner Wintzer believed it was a separate issue from the CUP.

Commissioner Thomas stated that in his opinion, the scaled drawings clearly showed that the slope did not exceed 30%. He trusted the judgment of Alliance Engineering.

Commissioner Wintzer concurred with Commissioner Thomas. He was not prepared to say that a licensed engineer was wrong. He did not have the personal ability to do it and he also trusted Alliance Engineering. Unless another licensed engineer disputed it, he would agree with the determination.

Commissioner Wintzer informed the Staff that the Staff report was incomplete and difficult to read. The Commissioners should have been provided with drawings that could be easily read. After seeing the larger drawings he did not think the Planning Commission should be involved in this issue.

Assistant City Attorney McLean read from the LMC 15-3-3, General Parking Area and Driveway Standards, "Driveways must not exceed a 14% slope". Commissioner Wintzer clarified that the driveway had nothing to do with the issue of whether or not a Steep Slope CUP was required. It was a separate issue to be addressed at a later time.

Commissioner Hontz stated that in interpreting the drawing on page 168 of the Staff report, the area under the driveway currently reaches 28.6%. It is an interesting application because the way the new additions and the home were laid out was clever in that it never impacts 30% by utilizing the existing structure. Without seeing the entire packet and the surrounding houses, it appears to speak to an application that they would typically see as a Steep Slope CUP. Commissioner Hontz found the situation to be frustrating because the project might be better under a Steep Slope review, but based on the analysis provided she could not make that determination.

**MOTION:** Commissioner Savage moved to DENY the appeal of the Staff determination on 505 Woodside Avenue, according to the Findings of Fact and Conclusions of Law.

Mr. Meadows informed the Planning Commission that this was a de Novo review and they needed to follow procedure. De Novo review was as if it had never happened at the Staff level. The Planning Commission was supposed to look at this application with fresh eyes.

Commissioner Wintzer seconded the motion.

VOTE: The motion passed unanimously.

Findings of Fact – 505 Woodside – Appeal

1. The single family residence located at 505 Woodside Avenue is located in The Historic Residential (HR-1) zone.
2. 505 Woodside is listed as a significant site on the Park City Historic Site Inventory.
3. The historic home is located on Lot 1 of the 505 Woodside Avenue Subdivision. Lot 1 is approximately 4375 square feet in lot area.
4. The applicant is proposing to restore and preserve the original exterior walls of the historic home and construct an addition to the rear and north side, after removing non-contributory additions.
5. The existing house contains approximately 2,081 square feet of floor area. The proposed house design contains approximately 3,603 square feet of floor area. The historic footprint is 829 sf and the existing footprint is 1,653 sf. The proposed footprint is 1,707 sf.
6. The historic home will remain in the original location and elevation.
7. A basement and garage are proposed to be constructed beneath the historic house.
8. A certified topographic survey was prepared and certified by a licensed surveyor. There are 2' contour intervals on the survey. The survey was submitted with the HDDR application.
9. Based on the certified survey the existing grade of the lot, in areas proposed for the addition and driveway do not meet the requirements for applicability of a Steep Slope Conditional Use permit. The existing grades are not thirty percent (30%) or greater when measured for a minimum horizontal distance of fifteen feet (15').
10. Based on the certified survey and proposed site plan, the proposed driveway slope is 12.9% (4 feet in elevation change from the garage floor

elevation to the street for a distance of 31 feet).

11. Retaining walls that are 4 feet in height or less in the front yard setback do not require an administrative Conditional Use Permit. Retaining walls that exceed four feet in height but are less than six feet (6') in height require review by the City Engineer
12. Once the front retaining wall design is determined, and a report from the applicant's engineer and the city arborist are received from the applicant, staff will review the wall design and make a determination as to whether an administrative Conditional Use permit is required for the walls, based on the height of the proposed walls.

Conclusions of Law – 505 Woodside – Appeal

1. The existing grade of the lot, in areas proposed for the addition and driveway, does not meet the requirements for applicability of a Steep Slope Conditional Use permit. The existing grades are not thirty percent (30%) or greater when measured for a minimum horizontal distance of fifteen feet (15') in areas proposed for development.
2. If the front retaining wall is redesigned to be greater than six feet (6') in height, then an administrative conditional use permit will be required prior to issuance of a building permit for construction of the front wall.

Order

1. The Planning Staff did not err in the determination that a Steep Slope CUP was not required for the proposed additions or new driveway for 505 Woodside Avenue.
2. The Planning Staff did not err in the determination that the driveway slope does not exceed 14%.
3. Appellant's request for a reversal of the Planning Staff's decision to not require a Steep Slope Conditional Use Permit is denied.

The Planning Commission adjourned the regular meeting and moved into work session to discuss the General Plan. The work session discussion can be found in the Work Session Minutes dated March 27, 2013.

The Park City Planning Commission meeting adjourned at 9:00 p.m.

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