PARK CITY MUNICIPAL CORPORATION
PLANNING COMMISSION MEETING MINUTES
COUNCIL CHAMBERS
MARSAC MUNICIPAL BUILDING
JULY 25, 2012

COMMISSIONERS IN ATTENDANCE:

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

EX OFFICIO:

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

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REGULAR MEETING

ROLL CALL

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

ADOPTION OF MINUTES

July 11, 2012

MOTION: Commissioner Hontz moved to ADOPT the minutes of July 11, 2012 as written. Commissioner Worel seconded the motion.

VOTE: The motion passed unanimously by those who attended the meeting on July 11, 2012. Commissioner Strachan abstained since he was absent from that meeting.

PUBLIC INPUT

There were no comments.

STAFF/COMMISSIONER COMMUNICATIONS AND DISCLOSURES

Director Eddington reported that potential dates for a joint meeting with the Snyderville Basin Planning Commission would be sent to the Commissioners the following week. The dates would be late August or early September.

Commissioner Savage asked if there were expectations or recommendations related to Planning Commission participation with the City Tour. Director Eddington noted that the Planning Commission had already been invited and he hoped several Commissioners would be able to attend. Anyone interested in participating should contact Patricia Abdullah. Chair Wintzer remarked that questions regarding the City Tour should be directed to ReNae Rezac. Director Eddington stated that the tour this year included projects in Las Vegas and Brian Head.

CONTINUATION(S) – Public Hearing and Continue to Date Specified

30 Sampson Avenue – Steep Slope Conditional Use Permit
(Application #PL-12-01487)

Chair Wintzer opened the public hearing. There was no comment. Chair Wintzer closed the public hearing.

MOTION: Commissioner Thomas moved to CONTINUE 30 Sampson Avenue – Steep Slope CUP to a date uncertain. Commissioner Worel seconded the motion.

VOTE: The motion passed unanimously.

543 Woodside Avenue – Steep Slope Conditional Use Permit
(Application #PL-12-01507)

Chair Wintzer opened the public hearing. There was no comment. Chair Wintzer closed the public hearing.

MOTION: Commissioner Thomas moved to CONTINUE 547 Woodside Avenue Slope CUP to a date uncertain. Commissioner Hontz seconded the motion.

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

Chair Wintzer opened the public hearing. There was no comment. Chair Wintzer closed the public hearing.

MOTION: Commissioner Thomas moved to CONTINUE 916 Empire Avenue – Steep Slope CUP to August 8, 2012. Commissioner Worel seconded the motion.

VOTE: The motion passed unanimously.

REGULAR AGENDA - DISCUSSION/PUBLIC HEARINGS/ POSSIBLE ACTION

1. 1103/1105 Lowell Avenue – Plat Amendment
(Application #PL-11-01339)

Referring to the work session discussion, Chair Wintzer believed this application was a perfect example of why the Planning Commission needs to be involved in the General Plan. This area needs help with zoning and the only people who would recognize that are the ones trying to work with it.

Planner Astorga reviewed the request for a plat amendment. An existing duplex was built in the early 1980's. The policy at that time was to build over property lines rather than to allow for lot

combinations. The City required that the property was owned in common ownership and the properties were under the same tax ID number. That policy has since changed and the applicant was requesting a lot combination through a plat amendment to combine the entire portion currently owned by the same property owner. The owner has indicated a desire to add more units behind the duplex in the future; however, that was not part of this application.

Planner Astorga noted that the plat amendment would create a large lot of record at 8,680 square feet, which would yield a maximum footprint of approximately 2,665 square feet. He pointed out that the duplex is not historic and could be demolished. The maximum floor area, minus the 10' setback required in the HR-1 under height, and minus any articulation, would be approximately 8,000 square feet.

The Staff recognized that there were no historic structures on Lowell Avenue. On the east side of the street there are smaller scale buildings that follow the pattern of 25' x 75' lots. There is a pattern of condominiums and duplexes on the west side of the road. The proposed lot size is consistent with the pattern of larger homes. Understanding that this is a unique neighborhood in the HR-1 District, the Staff would work on finding appropriate zoning for the west side of Lowell Avenue when updating the General Plan.

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.

Commissioner Thomas assumed the slope of the property was over 30%. Chair Wintzer asked if this property would come back to the Planning Commission for a steep slope CUP. Planner Astorga replied that it would come back if construction takes places on slopes 30% or greater.

Chair Wintzer opened the public hearing.

Rich Heatherington stated that he is the owner immediately to the south on Lot 1 of the North Star subdivision, and they share the common access easement with 1103 Lowell. He noted that Mr. Van Hecke had sent an email expressing concerns with density, and he echoed those concerns. Mr. Heatherington remarked that the issue is with the access road that is shared by the two houses to the immediate south. He noted that the current condition of the road is dilapidated and the current density is close. In addition, the parking access where the structure is built blocks snow plow access and emergency vehicle access. Mr. Heatherington noted that if the plat amendment creates a lot over 8500 square feet they could eventually fit four units on the lot. The LMC requirement of two parking spaces per unit would add eight cars. He pointed out that in its current condition the road is nearly impassable with two cars. Mr. Heatherington was concerned about the access coming off of Lowell that accesses the lots in North Star. He asked if the road would be repaired, if the grade would be changed, or if better access would be created if density occurs in the future.

Chair Wintzer clarified that access for the lot was off of Lowell and not the subdivision. Planner Astorga replied that this was correct. Access was over the subject property. There is an easement and he believed the users would be responsible for maintaining the access easement and not this

applicant. He would verify that with the recorded easement and share the information with the neighbors. If the easement does not identify the responsible party, that would need to be worked out among the neighbors. It is not something the City could enforce. Planner Astorga remarked that three different easements were shown over the property, but he was unsure who owned it. Chair Wintzer assumed it would be owned by Lots 1, 2 and 3.

Assistant City Attorney McLean stated that the proposed plat had four recorded easements listed.

Commissioner Savage understood that the easements were physical descriptions of the right-of-way and who holds them. Therefore, the combination of the lots would have no impact on the location of the easements. Planner Astorga replied that this was correct. Commissioner Savage clarified that this evening they were only talking about the combination of the lots; and that the existing easements would stand going forward, subsequent to the combination of lots.

Chair Wintzer believed this subdivision was done at a time in Park City's history when there was not a lot of follow through. He suggested that Mr. Heatherington do his own follow up to find out who owns the easements and what they entail. Planner Astorga had the recorded documents in the file and he offered to provide copies to Mr. Heatherington. Director Eddington noted that the recorded easements should describe the parties and their responsibility.

Chair Wintzer closed the public hearing.

Chair Wintzer remarked that the question for the Planning Commission was whether a possible 8,000 square foot house was appropriate in this neighborhood. He thought the answer was ambiguous in the purpose statement of the zone; but the size was clearly inappropriate when looking at the character of the neighborhood.

Commissioner Worel clarified that if the Planning Commission allows the plat amendment to create one large lot, the options would be to build an 8,000 square foot house or to divide the lot into two smaller lots. Chair Wintzer remarked that once the lot combination occurs, the applicant would have to come back to the Planning Commission to request a subdivision. He did not believe it would be subdivided because the intent of the plat amendment was to clean up the lot line under the existing structure. Planner Astorga stated that the lots could not be subdivided unless the duplex was demolished.

Commissioner Savage asked if when the Planning Commission is faced with the question of recommending a lot line combination to the City Council, whether they have the purview to delve into the intended use of the property subsequent to the lot line combination and stipulate constraints on what can be done. He asked if the applicant would be subject to constraints imposed by the Planning Commission that would not exist if that lot combination were already in existence.

Assistant City Attorney McLean stated that good cause is one criteria for a lot line adjustment or plat amendment. In the past the Planning Commission and the City Council have considered the neighborhood and the compatibility of what could be built. The use itself cannot be controlled if it is a use permitted by Code, but they can place constraints on size if there are findings of good cause for compatibility with surrounding properties in the neighborhood.

Commissioner Hontz stated that she used to live on Lowell Avenue and when she walks the street now, it appears that the western portion of the street is relatively consistent in larger structures. Of all the places in Old Town, the western portion of Lowell is more compatible with larger structures. However, the eastern side has a unique smaller lot focus. She believed the Staff's analysis was accurate in terms of what occurs on Lowell Avenue. Commissioner Hontz stated that the subject lot and the existing structure were in need of attention and she felt it would benefit the neighborhood to have that cleaned up. On the other hand, an 8,000 square foot structure is very large and she had a hard time envisioning that for Old Town.

Commissioner Hontz referred to Findings of Fact #13 and #18 in the Staff report. She noted that #13 states that the current use of the property is considered legal non-conforming. However, #18 states that the current building on the site is non-complying. She assumed that the building itself was non-complying and the use was non-conforming. Director Eddington replied that this was correct.

Craig Elliott, representing the applicant, thought a duplex was an allowed use in the HR-1 zone. Planner Astorga explained that a duplex is allowed through a conditional use permit. The existing duplex did not go through the conditional use permit process.

Assistant City Attorney McLean explained that the duplex pre-dates the conditional use process, which is why it is considered a legally non-conforming use. She stated that if the duplex use stopped for more than a year, the applicant would be required to submit a CUP application for a duplex.

Assistant City Attorney McLean referred to Exhibit F, the neighborhood vicinity map, and asked Planner Astorga to comment on what each area represents in terms of square footage. Planner Astorga did not have numbers on the other properties; however, the subject property is a total of 3100 square feet for the entire structure. He recalled that the duplex was approximately 46' x 25', which was similar to the structure to the north. The structure sizes increased as they moved further to the north and the south.

Commissioner Strachan pointed out that one of two things could logically be done in the zone. An applicant could either apply for a zone change or the Planning Commission could put a limitation on the square footage of the structure. In his opinion, there is no way to meet the purpose statement of "encourage single family development on combinations of 25' x 75' lots". Commissioner Savage understood that the intent for delineating the footprint size in the Code as a function of the combination of lots was to make sure that as lots got bigger, houses did not scale linearly. Commissioner Savage agreed with the intent, but he was unsure whether this application could meet that requirement if the lots were combined. In this case, if the lot gets bigger the structure also gets bigger and out of proportion with the rest of the homes. Another issue is that an 8,000 square foot structure would not meet the purpose statement of "encouraging construction of historically compatible structures and keeping with the character and scale of the Historic District". Commissioner Strachan did not believe the "shoe" fits within the zone. He favored the idea of a zone change because larger houses belong in that area. However, large houses are not acceptable under the current zone structure.

Planner Astorga pointed out that if the applicant requested a zone change it would have to be supported by the entire neighborhood. Commissioner Strachan did not think that was unrealistic.

Commissioner Savage clarified that under the current zoning, the LMC specifies that if this lot combination is approved, an 8,000 square foot house would be allowed based on the resulting footprint. He was told that this was correct. Commissioner Savage pointed out that the applicant was requesting a lot line combination without any additional benefits that would not exist if the lot already existed inside the zone.

Craig Elliott reiterated that the intent of the plat amendment was to clean up the property. The owners could then come back for the conditional use permit process. Mr. Elliott believed the Planning Commission would get their questions answered through the CUP process and have the opportunity to discuss design options and compatibility.

Chair Wintzer remarked that an 8,000 square foot structure would not be allowed without the lot combination. The dilemma for the Planning Commission is what doors would be opened if they allow the plat amendment. This was their only chance to address the issues before making that decision.

Commissioner Strachan still supported a zone change as the appropriate process. Mr. Elliott stated that the applicant did not have the opportunity to make an application for a zone change as an individual because it would involve dealing with 40 or 50 property owners. Mr. Elliott believed a zone change should come from the City. Commissioner Strachan agreed that a zone change would not be an easy process; but without the zone change the applicant may be limited on the size of the structure because the Planning Commission and City Council could limit the lot size if they grant the lot combination. Mr. Elliott believed that would be significantly inconsistent with that side of the street. Commissioner Strachan pointed out that it would be consistent with the language of the zone. Mr. Elliott argued that the zone language was irrelevant in that location because it does not relate to what already exists. Mr. Elliott did not believe the applicant would follow through on the plat amendment if the lot size was reduced. It would not make sense to agree to a reduction on the property when the intent is to make the current non-conforming into a legal piece of property. He believed the local architects do what is best for the community in terms of size and design. Commissioner Strachan questioned the greed of property owners; not the skill of the design professionals. An owner could ignore the architect's recommendation and direct him to build the house he wants.

Commissioner Worel asked if the lot combination needed to be approved before the CUP, or if they could come together. Director Eddington stated that an applicant would have to have a buildable lot before applying for a CUP. Commissioner Thomas stated that the Planning Commission has seen applications that show the CUP and the plat amendment on the same agenda. The lot line adjustment is reviewed as the first item, followed by the CUP if the lot line was approved.

Commissioner Worel favored a concurrent process because the Planning Commission would know what the applicant intended to do with the property after the lot line adjustment. Mr. Elliott remarked that a concurrent process requires the applicant to go through the time and expense of approaching

a design on a piece of property that may not exist if the plat amendment is denied. It is a risk that goes beyond what the City requires.
Assistant City Attorney McLean stated that in terms of legal defensibility, this application was challenging because in looking at the tax records, the two units were platted over four lots and two parcels. In terms of consistency, not allowing this property to do what other properties have done along that same side of the street would be difficult to defend.

Commissioner Thomas stated that historically the Planning Commission has approved multiple lot combinations. He noted that the Code does not place a limit on the number of properties that could be combined. For that reason he believed this application was reasonable. Commissioner Thomas recognized that this lot combination would create a large lot, but they have already set precedent for allowing multiple lot combinations. Commissioner Strachan clarified that his preference for a zone change did not dispute past approvals by the Planning Commission. He was only trying to point out that a zone change would codify that lots of that size are allowed in the zone. Without the zone change, the current zoning stipulates that larger lots should not be allowed and that small lots are encouraged. He understood that the facts did not match the zoning and that large structures exist, which suggests that the lot lines should be combined and that a large house could be built. He believed the correct process would be to change the zone and then allow the home; rather than violate the current zone and allow the house because precedent was already set.

Commissioner Strachan thought the Planning Commission could grant the lot line combination this evening, and at the same time caution the applicant that when the CUP application comes forward, the lot size may be more significantly restricted in size than it would be if he obtained a zone change.

Commissioner Hontz referred to Finding #19 in the Staff report and revised the language to read, "The area of the lot combination is consistent with the lots on the western side of Lowell Avenue". Commissioner Hontz referred to Condition #4 and added the word "foot" after 10 to read, "A 10-foot wide snow storage easement will be required along the front of the property".

MOTION: Commissioner Savage moved to forward a POSITIVE recommendation to the City Council for the plat amendment for 1103 Lowell Avenue, based on the Findings of Fact, Conclusions of Law and Conditions of Approval found in the draft ordinance and as amended. Commissioner Thomas seconded the motion.

VOTE: The motion passed 3-2. Commissioners Savage, Strachan and Thomas voted in favor of the motion. Commissioners Hontz and Worel were opposed.

<u>Findings of Fact – 1103/1105 Lowell Avenue</u>

1. The site is located at 1103/1105 Lowell Avenue.

2. The site is within the HR-1 District.

3. The property owner requests to combine all of Lot 1 and Lot 2, portion of Lot 3, 30, 31 & 32, Block 34, Snyder's Addition into one (1) lot of record.

4. The area is currently identified by Summit County as parcel No. SA-321-A.

5. Currently the site contains a three (3) story duplex.

6. The structure was built in 1978.

7. The subject area contains portion of Lot 30, 31, and 32 do not have access to a right-of-way.

8. The proposed subdivision plat creates one (1) lot of record consisting of 8,680 square feet.

9. The minimum lot area for a single family dwelling is 1,875 square feet.

10. The minimum lot area for a duplex is 3,750 square feet.

11. When the structure was built a two-family building (duplex) was an allowed use.

12. Currently a duplex is a conditional use.

13. The current use of the property is considered legal non-conforming.

14. The minimum lot width allowed in the district is twenty-five feet (25').

15. The proposed width is sixty-two feet (62').

16. The proposed lot combination meets the lot and site requirements of the HR-1.

17. The duplex does not meet current LMC standards for side setbacks and building height, i.e. vertical articulation.

18. The current building on the site is considered legal non-complying.

19. The area of the lot combination is consistent with the lots on the western side of Lowell Avenue.

20. The use is also consistent as this portion of Lowell Avenue has various duplex and condominium on the north and the south of the subject site.

<u>Conclusions of Law – 1103/1105 Lowell Avenue</u>

1. There is good cause for this Subdivision Plat as the lot lines going through the building will be removed, remnant parcels will become part of the legal lot of record. And the proposed lot will be consistent with the Lowell Avenue west portion of the street.

2. The Subdivision Plat is consistent with the Park City Land Management Code, the General Plan, and applicable State law regarding Subdivision Plats.

3. Neither the public nor any person will be materially injured by the proposed Subdivision Plat.

4. Approval of the Subdivision plat 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 – 1103/1105 Lowell Avenue

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 (1) year from the date of City Council approval. If recordation has not occurred within one (1) year's time, this approval for the plat will be void, unless a request for an extension is made in writing prior to the expiration date and an extension is granted by the City Council.

3. All new construction will require modified 13-D sprinklers.

4. A 10-foot wide public snow storage easement will be required along the front of the property.

2. 80 Daly Avenue – Plat Amendment (Application #PL-12-01488)

Planner Astorga noted that the Planning Commission previously reviewed this application for a plat amendment to combine two lots on April 11 and May 9, 2012. On May 9th, the Staff was directed to provide lot areas and footprints to the Daly Avenue comparison study. They were also directed to eliminate vacated Anchor Avenue from the footprint calculation. Planner Astorga stated that the revised study included all structures on Daly Avenue, separated by uses, the existing square footage according to Summit County Records, the lot size of each lot, and the calculated maximum footprint on each lot allowed per the LMC. Since it was impossible to physically measure every footprint, Planner Astorga informed the Planning Commission that the maximum footprint on the study was calculated from a formula using the square footage of each lot.

Planner Astorga reported that the applicant had provided a model as requested by the Planning Commission at the meeting on May 9th. The applicant also submitted an approximate footprint calculation for each of the proposed Lots A and B, as well as massing elevations.

Following the May 9th meeting, the item was continued several times to allow the Staff and the applicant the necessary time to obtain the requested information.

Planner Astorga reviewed an exhibit on page 52 of the Staff report, which was created to identify the owners of the Daly Avenue lots and the associated discrepancies. Planner Astorga commented on the remnant parcels. He noted that 60 Daly Avenue and the Daly Doubles Condominiums had been re-platted and were no longer an issue. Planner Astorga stated that if for any reason in the future the applicant, Mr. Anderson, or the property owner at that time, and Carlene Riley wish to remodel their structures, they would be required to go through the same re-platting process to consolidate the remnants and remove the lot lines to match the true ownership of the property. The Staff anticipates that the lots would meet the minimum requirements of the LMC; however, that analysis was not part of this application because they had not received the survey to verify the information.

Planner Astorga explained that lots like 68 Daly Avenue are called flag lots because of their unique situation regarding the minimum width. The City recognizes that lot as a buildable area because a building permit was issued in the late 1970's or early 1980's. Planner Astorga clarified that he would refer to it as a buildable area rather than a buildable lot, because the lot itself is identified as Lot 9.

Planner Astorga presented an image showing the plat amendment currently being reviewed. He noted that the Planning Commission previously requested that the applicant provide a model to show possible mitigation of impacts to Lot 68 for solar access and view mitigation.

Planner Astorga reviewed the history of plat amendments on Daly Avenue and how an average size was calculated to compare the house size to the footprints along Daly Avenue. He was very familiar with the project on 313 Daly Avenue, at which time the Staff recommended adding a limitation of the maximum house size per the study done at that time. That recommendation was supported by the City Council and the Planning Commission. Prior to that, records indicate that a limitation was placed in the HR-L District. Planner Astorga stated that approximately four months ago the Planning Commission and the City Council added another cap that was imposed by the property owner that limited the floor area to 2,000 square feet. The cap was included on the plat amendment. Planner Astorga believed the precedent had been set and they could move forward with it in this unique portion of the HR-1 District.

Planner Astorga reviewed the table on page 55 of the Staff report showing the ratio of the maximum house size to the allowed footprint for both Lower and Upper Daly Avenue. He noted that the numbers were supported by the analysis. He noted that the gross floor area of all structures on Daly Avenue was approximately 141% of the average maximum footprint allowed. Based on previous restrictions for Daly Avenue, the Staff recommended a cap of 200% for 80 Daly, which means that the proposed footprint would remain the same, but only two floors could be built. The proposed limitation would keep the house size more consistent with existing houses in the neighborhood, and still allow the applicant the flexibility to shift the structure one way or the other.

Planner Astorga clarified that the limitation would only apply to Lot B. The area of Lot A is 1875 square feet, which is the equivalent of a standard Old Town lot of 25' x 75'.

Commissioner Strachan requested clarification of the ratios identified in the table on Page 55. He asked if the house built on the footprint is 141% percent larger than the lot footprint. Planner Astorga answered yes.

Jonathan DeGray, representing the applicant, presented the massing model. The entire ownership of Lot B was represented as a 1,540 square foot footprint, including the Anchor Avenue portion. Eliminating Anchor Avenue from the calculation reduces the footprint from 1540 square feet to 1,384 square feet. Mr. DeGray noted that the applicant was still willing to exclude Anchor Avenue from the footprint. It was included in the massing model to show the worst case scenario.

Mr. DeGray remarked that Lot A was 1,875 square foot with an 844 square foot footprint. It is a two-story structure. He noted that the buildable portion of Lot A is the flat area to the front. There would be a 10-foot front yard and 10-foot rear yard setback, which would occupy a great extent of that steeper slope going up to the house behind. Mr. DeGray presented a photo taken from the front of Lot A looking at the building to the rear. He indicated the duplex to the right and stated that the garage elevation was the single story. The deck above with a window to the rear was the second story. The wall plates would be that height with a roof above. Mr. DeGray remarked that the roof of the proposed building would probably be into the sightline of the windows from the back, but no higher than 27' because of the elevation change from the front of the property to the rear.

Mr. DeGray reported that the applicant's position had not changed regarding the recommended building size. They would like to move forward with the reduced footprint at 1,384 square feet that excluded Anchor Avenue, and go through the Steep Slope CUP process to determine the appropriate square footage based on the setting. Mr. DeGray stated that 2768 square feet represents a building size that does not take into account the topography of the lot. A third to a half of the building would be buried and 2,768 square feet would be less usable than it would be if it were built somewhere else. Mr. DeGray felt there was unfairness in the evaluation that one number works and another number does not. He requested the ability to move forward with 1,384 square feet of footprint and let the Steep Slope CUP process play out.

Commissioner Strachan wanted to know how much smaller the proposed structure would be if the Planning Commission accepted the 200% ratio restriction. Mr. DeGray replied that the structure shown on Lot B at a 1540 square foot footprint represents a building that slightly exceeds 4,000 square feet with a garage. Commissioner Strachan asked for the ratio under the recommended 200% restriction. Mr. DeGray stated that under the 1500 square feet of footprint the ratio would be 2.7. He noted that 1384 square feet at 2.4 would be approximately 3300 square feet of structure. Mr. DeGray believed that under the Steep Slope CUP, a 3300 square feet house would work on the site and fit with the surrounding buildings, and still be sensitive to smaller non-historic structure to the south. He estimated that at least a third of the structure would be underground.

Chair Wintzer opened the public hearing.

Carlene Riley, a resident at 84 Daly Avenue, asked if they would cut off access to Pete Henderson's property. Mr. DeGray replied that the applicant was proposing to allow easement agreements that maintain the access and the deck extensions.

Ms. Riley wanted to know how close they would build to her house. Mr. DeGray stated that it was a 40-foot wide lot which requires a 5' side yard setback. The Staff had recommended a 7-foot side yard on Ms. Riley's side and the applicant agreed to that.

Ms. Riley asked about the intended distance from the road. She noted that her home was only 7' back from the road. Mr. DeGray calculated 15' as the required setback based on the lot width. Ms. Riley was not happy about removing the trees.

Brent Gold, legal counsel representing Pete Henderson, the owner of Lot 68, stated that during the meeting on May 9th considerable objections were raised by several of the Commissioners regarding the impacts of this proposal on Lot A, which is the lot immediately in front of Mr. Henderson's property. Concern was also raised regarding the issue of what constitutes a lot of record and whether it was permissible to proceed with this request when the only lot of record is Lot 9. Mr. Gold recalled from the discussion that it was a problem. He referred to comments by Planner Astorga in describing the events that took place in connection with construction on a portion of Lot 68. Mr. Gold remarked that it was a different time, a different day and a different world. What they are dealing with today is Lot 9, which is the only lot of record. How to handle a lot of record is not addressed in the Code for the type of subdivision that occurred many years ago under an entirely different Code.

Mr. Gold reiterated that the issue was raised by the Planning Commission on May 9th, but it was not addressed in the current discussions. Mr. Gold also recalled from the discussion a suggestion for a possible variance based on undue hardship on the applicant. He did not believe that issue had been resolved to this point. Mr. Gold remarked that on May 9th, Commissioners Pettit and Hontz had raised objections to the height and the impact on Lot 68. He noted that Mr. DeGray had provided new information that would seemingly limit in all respects the height of the structure to two floors. However, the proposed ordinance cites limitations on Lot B, but there are no limitations reflecting the conditions of the height proposed. In addition, there was no limitation on the allowed square footage. Mr. Gold calculated what he believed was the accurate square footage and reviewed illustrations to address the height. He noted that the space above the roof line, which extends the entire distance of Lot A in front of Mr. Henderson's property, covers all but approximately 2-1/2 to 3 feet of the first floor and entirely covers all of the windows on the first floor. It appeared that the second floor was not obstructed by the roof. Mr. Gold stated that this was a problem due to the nature of the District and the concerns raised by former Commissioner Pettit and Commissioner Hontz. Mr. Gold requested clarification of the height. He noted that one document references a 26'-4" height limitation, and that limitation was not referenced in the ordinance. Mr. Gold believed the issue needed to be rectified.

Mr. Gold stated that in the survey provided by the applicant, the survey line shows the property boundary being used by the applicant for the top portion of the stairs appears to cover slightly more than half before it tapers down. The piece on the bottom was a concrete pad. Mr. Gold remarked that those improvements were built in 1981 and 1982. They were built according to a survey provided at the time the house was built. On May 9th, Commissioner Wintzer mentioned the re-monumentation in Park City in the early 1980's. That re-monumentation moved property lines anywhere from a few inches to several feet. His client emphatically claims ownership of that piece and an easement agreement would not suffice. Mr. Gold was prepared to provide all necessary

verification to support his claim. Based on the assumption that his client owns that property, the applicant adjusted the property boundaries from the adjoining Lot B so they could get the 1875 square feet required under the Code. If that line moves a fraction, they would be under the required square footage. He pointed out that they could still move the lot line farther into Lot B, but that would change the entire configuration and the entire proposal.

Mr. Gold stated that the applicant makes the argument that Lots 10 and 11 are buildable lots, and that the current solution renders a better resolution of the problem. Mr. Gold felt the better resolution remained to be seen. He did not believe all the problems with Lot A had been remedied. It was the general consensus that the Planning Commission has the authority and power to impose conditions and restrictions that cause the resolution of all problems rather than creating greater problems in the future. He suggested that they were not finished with this plat amendment process.

Chair Wintzer closed the public hearing.

Wade Budge, legal counsel representing the applicant, responded to the issues raised by Mr. Gold. With respect to whether a variance might be appropriate, Mr. Budge pointed out that the proposal meets what is required to create a lot in this area, including the required square footage. If Mr. Gold's point is an inappropriate use, that could not be solved through a variance. A use variance is prohibited by Utah law and therefore it is not applicable. Mr. Budget believed the focus should be whether or not the applicant meets all the requirements from a size perspective. A certified survey and Mr. DeGray's drawings show that both of the proposed lots were sufficient size for the zoning district.

Mr. Budge agreed that a condition had not been proposed for Lot A. The reason is that the natural size of the lot creates its own restriction due to the setback and height restrictions of the zone. They had presented the worst case scenario and understood the maximum footprint. A condition was not needed, but they would not be opposed if it was required because they already know that 844 square feet is the maximum footprint.

Mr. Budge commented on the encroachment issue. He believed the neighbors needed to work out the issue among themselves and not involve the Planning Commission. He proposed modifying Condition #4 and handed out proposed language that he had drafted. The revised condition would read, "Prior to plat recordation, an encroachment agreement or an encroachment license must be either agreed to or granted to allow the existing encroachments from 68 Daly Avenue to continue as they presently exist." Mr. Budge believed the revised language avoids involving the Planning Commission on the issue and allows the applicant the ability to work with Mr. Henderson to come to an agreement. If they cannot come to an agreement, it would be presented to the City with a proposal that would allow Mr. Henderson to continue using what the applicant views as his property. Mr. Budge stated that if there was a true dispute over ownership, the burden would be on the neighbor to come forward with evidence of ownership. He clarified that the ultimate goal was to keep the encroachments in place and allow them to continue as they exist.

Mr. Budge responded to the issue of square footage and setting a maximum for Lot B. Their strong preference would be to defer that to the Steep Slope CUP process. The architect could come forth

with an actual plan and under the CUP ordinance a number of criteria could be applied to determine whether the plan presented makes sense for the neighborhood. He pointed out that the Planning Commission makes the final decision on a CUP. If they forward a recommendation to the City Council specifying a size, the City Council would make the final decision and possibly set the size since they ultimately approve the plat. Mr. Budge stated that if the concern was making a future buyer aware of the size restriction, the applicant was willing to add a plat note stating that the actual size for Lot B would be determined through the Steep Slope CUP analysis process or a similar zoning process.

Mr. Gold requested time for a brief rebuttal. Mr. Gold remarked that there was a subtle difference between "must be agreed to" and "granted to allow". It is the difference between unilateral and bilateral. If the two owners cannot agree, Mr. Budge's client could dictate what the grant would be. His client was amenable to working out a solution with his neighbor, but it needs to be a bilateral process. If the Planning Commission approved the condition as proposed by Mr. Budge, it would be strictly unilateral.

Commissioner Savage asked if Mr. Gold had evidence that Mr. Henderson owns the property. Mr. Gold answered yes. Commissioner Savage wanted to know why the information had not been presented to the other side. Mr. Gold stated that the evidence was a survey that was done when the original house was destroyed by the tank that rolled down the hill.

Commissioner Savage asked Planner Astorga for the City's position related to the lot. Planner Astorga stated that he had searched for all records related to the reconstruction of the structure and the staircase, and he did not find any plans or surveys in the City files. He was happy to accept any information Mr. Gold could provide on the matter. Commissioner Savage clarified that the City's official position is that the property belongs to the applicant. Planner Astorga replied that this was correct, because the applicant had submitted a certified survey stamped by Alliance Engineering. Commissioner Savage believed the question was the record of property line. It appears that the City's record of property line indicates that the steps were built on their property and the applicant was willing to grant an ongoing, perpetual right for 68 Daly to have access to that staircase.

Mr. Gold respected Commissioner Savage's position; however, there were legal documents related to ownership of the property that goes beyond what is shown on City records.

Assistant City Attorney McLean clarified that the City relies on stamped surveys to form their position. If there is a dispute between property owners and each has a different survey, it is up to the property owners to litigate their dispute outside of the City forum. In this case the City has a licensed, stamped survey and they are required to rely upon that survey.

Commissioner Savage understood that for the purpose of the discussion this evening, the Planning Commission should assume that the property in question belongs to the applicant. Commissioner Hontz pointed out that the survey was stamped by the surveyor but it was never recorded at the County. Mr. DeGray stated that it would not be recorded until the plat was recorded.

Assistant City McLean stated that once a survey is stamped, the surveyor declares that they are certified based on their professional license and that the survey is accurate. Even when things are not recorded as a plat, the survey is filed with the County.
Commissioner Hontz disclosed that she lives on Upper Daly Avenue, which is not in the vicinity of this property, and it would not affect her comments or decision this evening.

Commissioner Hontz appreciated the work Planner Astorga and the Staff did on the Staff report, particularly since they tried to find a creative solution and a compromise. However, she respectfully disagreed with this particular solution. If they allow two units to be built at the proposed size, the whole community loses. Commissioner Hontz believed her comment from the May 9th meeting still stands today. If the Planning Commission allows what is proposed, they create harm by creating new impacts and issues related to snow storage, traffic, view shed, parking, etc. All harm would be caused directly from this application and not by anything that currently exists around it. Commissioner Hontz pointed out that in addition to exacerbating the existing problems, the proposal creates its own additional problems.

Commissioner Hontz referred to Conclusion #1, which asked if there was good cause. She appreciated the massing study because it demonstrated exactly what they would not want to see occur and how the impacts would be thrust upon this part of the neighborhood.

Commissioner Thomas concurred with Commissioner Hontz. In looking at the massing diagram, he believed one of the problems with the comparative analysis of density and massing was that the measurement was taken against buildings that were built historically; and those structures would not be allowed today. They would be averaging up in terms of size and massing with that approach and he did not believe that was the intent. Commissioner Thomas thought the Planning Commission was looking for commonality with the historic components of the community. Visual Aid 102 demonstrated massing that was dramatically out of scale with the adjacent historic home. Commissioner Thomas also struggled with the image on page 52 of the Staff report, which showed the scenario of ownership. He felt it was practical to have three units on three properties. A lot combination would add density and more negative impact to the neighborhood and adjacent property owners. Commissioner Thomas stated that he had issues with the application and he could not support it.

Commissioner Worel concurred with her fellow Commissioners. She also had an issue with the easement for the stairs. In her opinion, if the neighbors could agree on an easement it would have been done by now. Both sides were claiming ownership and she did not think the Planning Commission could approve the plat amendment without conclusively knowing who legally owns the property.

Commissioner Thomas stated that he would be able to support an application that had a smaller house in the center of Lot 10 that had a relationship with the house on Lot 11, and left the building pad alone in front of the other lot. He offered that alternative if the applicant was interested in that approach. It would allow him to build on his property and create a no-build zone on the adjacent property below the existing house. Commissioner Thomas believed the result would be a building configuration that is more consistent with Old Town.

Commissioner Strachan concurred. In his opinion, Lot 10 is the classic Old Town buildable lot. He recognized the unfortunate circumstance that at some point in the past Lot 9 was subdivided. He believed that when the subdivision occurred the property owner of all of Lot 9 assumed that he would make two buildable lots out of one. Commissioner Strachan agreed with Commission Thomas that a lot combination would increase the density. The increase is not envisioned by the current lot sizes and the history of applications on Daly Avenue that have come before the Planning Commission. He also agreed that the ownership issue needs to be resolved. He believed an approval could be conditioned on having an encroachment agreement; but that problem combined with the other problems already stated would not allow the Planning Commission to approve the application.
Commissioner Savage felt the application had gone through a rigorous Staff analysis and that the applicants had done their work sufficiently. Assuming that the survey is valid, he believed the applicant was entitled based on the Code and the precedent to create the realignment. Commissioner Savage thought it was an unfortunate situation for the neighbor behind, but when that neighbor built his house he was aware of the lot in front. Commissioner Savage felt strongly that when people purchase real estate they need to consider the rights of the surrounding property owners. Commissioner Savage supported the application as proposed and he would forward a positive recommendation to the City Council.

Chair Wintzer asked if the applicant wanted a vote this evening or if they preferred another continuation. Mr. DeGray stated that his client was not willing to make Lot 9 open space. Based on the comments this evening, he did not believe he had the ability to do what the Commissioners were asking. Mr. DeGray suggested that the Planning Commission should vote on the application this evening.

Assistant City Attorney McLean clarified that a negative recommendation would be based on their comments this evening. Findings of fact and conclusions of law would not be required because they were not recommending the plat amendment.

MOTION: Commissioner Thomas moved to forward a NEGATIVE recommendation to the City Council for the plat amendment for 80 Daly Avenue based on the comments expressed by the Planning Commission this evening. Commissioner Hontz seconded the motion.

VOTE: The motion passed 4-1. Commissioners Hontz, Thomas, Strachan and Worel voted in favor of the motion. Commissioner Savage was opposed.

The Park City Planning Commission meeting adjourned at 7:45 p.m.

Approved by Planning Commission: _____