

One Utah Center, Suite 800  
201 South Main Street  
Salt Lake City, UT 84111-2221  
TEL 801.531.3000  
FAX 801.531.3001  
www.ballardspahr.com

Mark R. Gaylord  
Tel: (801) 531-3070  
Fax: (801) 321-9070  
gaylord@ballardspahr.com

July 7, 2016

## Via Federal Express

Park City Planning Commission  
445 Marsac Avenue  
PO Box 1480  
Park City, Utah 84060  
Attn: Adam Strachan, Chairman

Re: Objections to Alice Claim Subdivision and Ridge Avenue Subdivision (Shari Levitin and Lee Gerstein)

Dear Planning Commission:

This firm represents Shari Levitin and Lee Gerstein, residents of Old Town whose home is located at 135 Ridge Avenue (the "Residents"). We are writing this letter on behalf of the Residents to raise their concerns and objections to the proposed development of The Alice Claim Subdivision ("Alice Subdivision") and the proposed Ridge Avenue Development ("Ridge Subdivision" and, together with the Alice Subdivision, the "Subdivisions"). The Alice Subdivision is being developed by King Development Group, LLC (the "Alice Developer"). The Subdivisions are adjacent to the Residents' home and they are deeply concerned about the impact the Subdivisions will have on them and the neighborhood.

Specifically, the Residents believe that: (i) the Alice Subdivision cannot be developed as planned because the Alice Developer does not have legal access necessary to connect the Alice Subdivision to King Road ("King Access Road"); (ii) the proposed location of the King Access Road will result in excessive road cuts and have a negative visual impact within the neighborhood and Ridge Road (directly behind the Residents' property); (iii) the construction of the King Access Road at the Access Point is dangerous and violates Chapter 7.3 of the Land Management Code ("LMC"); and (iv) construction of Ridge Road directly behind the Residents' home for the Ridge Development will result in the Residents' property fronting three streets in violation of the LMC. For the foregoing reasons which are discussed in further detail below, the Residents object: (i) to the proposed Alice Subdivision site plans (the "Alice Site Plans") attached hereto as Exhibit A and requests that the Commission reject the Alice Subdivision as currently designed; and (ii) to the proposed Ridge Development and requests that the Commission reject the Ridge Development as currently designed. The objections raised herein were previously raised in a letter to the Park City Planning Commission dated September 4, 2009. As the new proposal for the Alice Subdivision has not materially changes, we again raise the following objections.



**I. No Legal Access (Alice Subdivision)**

As shown on the Alice Site Plans, the Alice Developer proposes that the point (“Access Point”) where the King Access Road will connect the Alice Subdivision to King Road be located approximately 50 feet west of the horseshoe where King Road and Ridge Avenue intersect (the “Horseshoe”). The Alice Developer does not have an easement over the diamond area (the “Diamond”) shown on Exhibit A and does not have the right to construct the King Access Road at the Access Point. Page 11 of the Planning Staff Work Session Notes dated March 11, 2009 (“2009 March Staff Report”) state that legal access for the Access Point is “gained through the platted but unbuilt Sampson Avenue (aka King Road) right of way.” The exhibits to the May 25, 2016 planning packet (the “Planning Packet”) appears to show the same access over the Access Point through Sampson Avenue. However, contrary to the Planning Staff’s conclusion, there is not a public right-of-way over the Diamond because Sampson Avenue/King Road was not established in accordance with the 1887 plat attached hereto as Exhibit B (“1887 Plat”) and there is not any language on the 1887 Plat dedicating Sampson Avenue/King Road to Park City (the “City”).

For a dedication to be effective, Utah law currently requires dedicatory language on the plat. *See* Utah Code Annotated Section 10-9a-603(1)(b) (stating that “the owner of the land shall provide an accurate plat that describes or specifies . . . whether the owner proposes that any parcel of ground is intended to be used as a street or for any other public use, and whether any such area is reserved or proposed for dedication for a public purpose”). Where there is not an express dedication of property to the public, then courts have analyzed whether there is intent to dedicate property and whether the government entity to which the property was allegedly dedicated actually accepted the dedication. *See William J. Lemp Brewing Co. v. P.J. Moran, Inc.*, 169 P. 459, 461 (Utah 1917) (stating that “it is fundamental, always, that there must be an intention to dedicate” and “acceptance must be made within a reasonable time after the dedication”). Even if there was intent to dedicate property to a governmental entity and the entity originally accepted such dedication, the governmental entity may be estopped from claiming that land was dedicated if it allowed others to place improvements on the land. *See Premium Oil Co. v. Cedar City*, 187 P.2d 199, 204 (Utah 1947) (stating that “[i]n many cases where cities attempt to open dedicated streets for the benefit of the public, the courts have estopped the city from enforcing a dedication because the city authorities and the public itself has taken no action over a period of years to prevent the erection of valuable improvements”).

The foregoing cases combined with the facts surrounding the Diamond calls into serious question whether there is a public right of way over the Diamond. As stated above, there is no dedication language on the 1887 Plat. The pink highlighted portions of the attached Exhibit C show where Sampson Avenue/King Road was platted on the 1887 Plat in the area of the Horseshoe. The yellow highlighted portions of Exhibit C show the actual location of Sampson Avenue/King Road at the Horseshoe and how Sampson Avenue/King Road as-built deviates significantly from where it is platted. As evident on Exhibit C, the platted portions of Sampson Avenue/King Road currently run through houses and lots. The fact that Sampson Avenue/King Road was not dedicated to the City on the 1887 Plat coupled with the fact that the Diamond has not been developed, is currently not part of Sampson Avenue/King Road and that improvements have been made over the platted location of Sampson Avenue/King Road, casts significant doubt on whether there is a public right-of-way over the Diamond. Absent any evidence of there being intent to dedicate the Diamond to the City and/or the City accepting such dedication, it is unlikely that the Alice Developer has the right to construct the King Access Road on the Diamond.



Another portion of the King Access Road which the Alice Developer does not currently have access over is shown on Exhibit A and is a portion of the easement (i.e. dirt road) that the City uses to maintain the water tank ("Water Tank Easement"). The City only has an easement over the Water Tank Easement and the scope of this easement is limited to maintaining the water tank. Accordingly, the Alice Developer cannot expand the use of the Water Tank Easement above and beyond its historical use which was limited to providing access to and from the water tank. *See* 25 Am. Jur. 2D *Easements and Licenses* § 71 (stating "the principle that the owner of the easement cannot materially increase the burden of the servient estate or impose thereon a new and additional burden underlies the use of all easements). Hence, the Water Tank Easement cannot be used for access to and from the Alice Subdivision because such use would be greater in scope than that permitted by the Water Tank Easement.

One alternative that the Alice Developer previously contemplated was connecting the King Access Road to a dirt road located on the Residents' property. However, as correctly stated on Page 26 of the 2009 March Staff Report, "access has not been perfected over the private property at 135 Ridge Avenue."<sup>1</sup> Not only would the Alice Developer need to obtain an easement over the Residents' property in order to pursue this alternative, the Alice Developer would also need to obtain an easement over the Water Tank Easement because, as discussed in the previous paragraph, the Alice Developer's use of the Water Tank Easement is beyond the scope of the City's easement. As citizens of Park City, the Residents object to expanding the use of this public easement beyond its current use.

Accordingly, the Residents request that the Planning Commission not approve the Alice Subdivision until such time as the Alice Developer establishes that it has legal access to construct the King Access Road at the Access Point and over the Water Tank Easement.

## **II. Excess Road Cuts and Visual Impact on Neighborhood (Alice Subdivision)**

In January of 2006, the Planning Commission requested that the Alice Developer consider an alternative access "due to the excessive road cuts that would be required and the visual impacts on the neighborhood." *See* page 2 of January 11, 2006 Work Session Notes. Based on this recommendation, the Residents believe that the Alice Developer approached them in an effort to secure access rights from them and comply with the Planning Commission's recommendations. Although the Alice Developer was able to successfully negotiate the purchase of the property from the adjacent owner, it was unable to reach an agreement with the Residents.<sup>2</sup>

Accordingly, the Alice Developer's current plans do not properly address the Planning Staff's concerns. Construction of the Access Point will "require retaining walls on the western side as the road would cut into the toe of the slope" and such retaining walls would be over 20 feet tall. *See* Pages 11

---

<sup>1</sup> Over the years the Residents have, in good faith, had discussions with the Alice Developer about access. The Residents remain ready and willing to undertake further discussions with the Alice Developer provided the terms and conditions that are commensurate with the long-term impact and disruption caused by such an access easement.

<sup>2</sup> As the City knows, the Alice Developer, with the City's consent, used the public easement and proceeded with the environmental cleanup of the tailings site at no cost to the City. However, it was at a substantial cost to the Residents who were displaced from their home (without compensation) due to environmental and health concerns due to the hundreds of trucks passing in front of their home.



and 25 of the 2009 March Staff Report and page 140 of the Planning Packet. These retaining walls would be constructed less than 100 feet from the Residents' property. Moreover, because most of the proposed lots in the Alice Subdivision are located on Very Steep Slopes or Steep Slopes, additional retaining walls will be constructed around the houses in the Alice Subdivision which will further scar the hillside of the canyon. The Planning Commission should closely examine all alternatives before allowing such excessive road cuts which will forever change this pristine area of Old Town.

### III. Safety of Access Point and Violation of Land Management Code (Alice Subdivision)

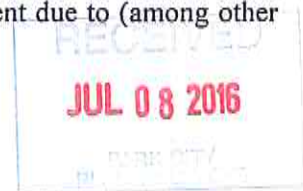
The proposed location of the Access Point is also unsafe and violates the LMC. Undoubtedly, the Alice Subdivision will increase traffic on King Road and Ridge Avenue which are narrow roads that some consider to be the most dangerous in Park City, particularly during the winter. See Page 4 of the January 11, 2006 Work Session Notes (indicating that former Commissioner Volkman believes that King Road is clearly one of the most dangerous streets in Park City); see also Page 17 of January 28, 2009 Planning Commission Meeting (indicating that Vice-Chair Russack believes that the road is extremely steep and can be a nightmare during the winter.) Construction of the King Access Road at the Access Point results in five roads (the Residents' driveway, the Access Point, Ridge Avenue, King Road and Sampson Avenue) intersecting at or near the sharp curve of the Horseshoe. This layout appears to violate the following safety standards in the LMC: (i) Section 15-7.3-2(F) of the LMC states that roads "should be designed to work with Existing Grade and cut and fill Slopes should be minimized." (ii) Section 15-7.3-4(A)(3)(a) requires that "[a] combination of steep Grades and curves shall be avoided." (iii) Section 15-7.3-4(G)(1) requires that "[s]treets shall be laid out so as to intersect as nearly as possible at right angles. A proposed intersection of two (2) new Streets at an angle within ten degrees of perpendicular is required. An oblique Street should be curved approaching an intersection and should be approximately at right angles for at least one hundred feet (100') therefrom." Based on the current plans for the Alice Subdivision, it appears these safety standards are being disregarded.

More importantly, as currently designed and proposed, the Residents and others may be unable to see cars driving out of the Access Point and onto Ridge Avenue. The Access Point drivers may not be able to clearly see the Residents when they pull out of their driveway. With limited visibility around the Horseshoe, the Access Point drivers may not have enough time, distance or space to avoid an accident. Of course, winter conditions further exacerbate this hazardous condition.

### IV. Double Frontage Lot (Ridge Subdivision)

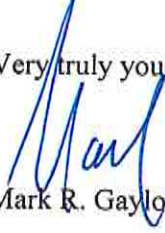
Finally, as shown on Exhibit A, the Alice Developer leaves open the possibility of connecting the Alice Subdivision with the Ridge Development. As further illustrated on Exhibit A, the Ridge Road proposed for construction is directly behind the Residents' home. Construction of Ridge Road and the road proposed by the Alice Developer would violate Section 15-7.3-3(E)(1) of the LMC which states that "[l]ots fronting two (2) Streets, except a Corner Lot, shall be avoided." In fact, upon closer examination (see Exhibit A) the Residents' home actually would be surrounded by roads on three sides creating a virtual island parcel via the Horseshoe, Access Point and proposed Ridge Road. In considering the proposed Alice Subdivision, the Planning Commission should review it in conjunction with the Ridge Development as the two together will have a dramatic impact on the Residents' home in violation of the LMC. Accordingly, the Planning Commission should prohibit such a circumstance.

In conclusion, as stated in the 2009 March Staff Report, Section 15-7.3-1(D) of the LMC states that if the Planning Commission finds land to be unsuitable for development due to (among other



things) Steeps Slopes, adverse earth formations or other features, including ridgelines, "which will be unreasonably harmful to the safety, health and general welfare of the inhabitants of the Alice Subdivision and/or its surrounding Areas" then such land shall not be subdivided or developed unless the Alice Developer and the Commission agree upon adequate methods to "solve the problems created by the unsuitable land conditions." Because the Access Point creates hazardous conditions at the Horseshoe, violates safety standards in the LMC, will require excessive road cuts and the construction of retaining walls over 20 feet in height which will visually impact the neighborhood, and because the Alice Developer does not have legal access over the Diamond or Water Tank Easement, the Residents believe that Alice Developer has not solved any of the problems created by the "unsuitable land conditions" and that the proposed Alice Subdivision should be rejected by the Planning Commission. Furthermore, because the Ridge Development violates the LMC and will result in their home being an island surrounded by roads, the Residents also request that the proposed Ridge Development be rejected by the Planning Commission.

Very truly yours,

  
Mark R. Gaylord

MRG/jgw

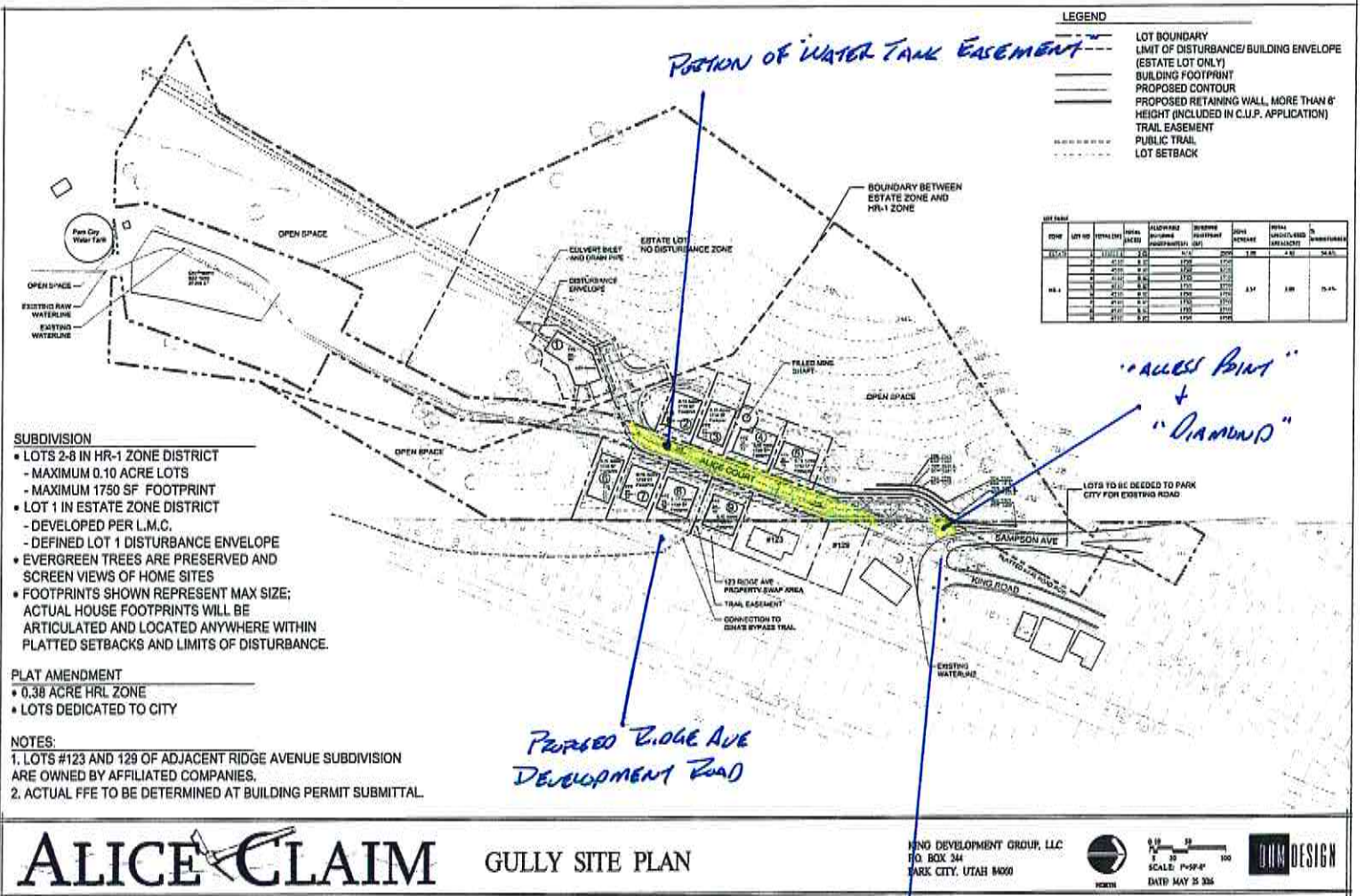
cc: Park City Planning Department  
Park City Building Department  
Mr. Matt Cassel  
Mark O. Harrington, Esq.  
Polly Samuels McLean, Esq.  
Joseph Tesch, Esq.



**EXHIBIT A**

Alice Site Plans

(attached)



**ALICE CLAIM**

GULLY SITE PLAN

LAND DEVELOPMENT GROUP, LLC  
P.O. BOX 344  
PARK CITY, UTAH 84002



SCALE: 1"=40'  
DATE: MAY 25, 2016





CHECKED:  
6-4-05

**PRELIMINARY SITE PLAN**  
**KING ROAD SUBDIVISION**  
Proposed By: JERRY FIAT

REVISED:  
8-1-05

**SDI**  
614 Main Street, Suite 404  
Post Office Box 4560, Park City, Utah 84060  
435-649-4499



NORTH

SCALE:  
1" = 50'

SHEET NO.

SP.1

RECEIVED  
JUL 08 2016

PARK CITY  
PLANNING DEPARTMENT



**EXHIBIT B**

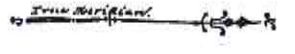
1887 Plat

(attached)

PLAT OF  
 Sub-division No. 1 of Mill-site Reservation  
**PARK CITY**  
 SUMMIT CO. UTAH

Scale 80 feet to 1 inch  
 No. 76 50 East

*I hereby certify that this is a true and correct copy of the original plat as filed in the office of the County Recorder of Summit County, Utah, on the 15th day of August, 1874.*  
 County Recorder



*Filed Aug 15 1874*  
*John C. Ogden*  
*County Recorder*



STATE OF UTAH  
 County of Summit  
 I, John Ogden, County Recorder in and for Summit County, State of Utah, do hereby certify and certify to all that the original copy of this plat is on file in my office, and that the same is a true and correct copy of the original plat as filed in the office of the County Recorder of Summit County, Utah, on the 15th day of August, 1874.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, this 15th day of August, 1874.

*John C. Ogden*  
 County Recorder

Sec 21 T.2S. R.4E. S.1 Mer.

*No. 1234*

HILLSIDE STREET  
 PROSPECT ST.  
 CHAMBERS

W. WOODSIDE  
 PARK AVENUE  
 FIFTH STREET  
 SIXTH STREET

RECEIVED  
 JUL 08 2016

**EXHIBIT C**

Sampson/King As Platted And As Actually Built

(attached)

Google Maps 135 Ridge Ave



Imagery ©2016 DigitalGlobe, State of Utah, USDA Farm Service Agency, Map data ©2016 Google 200 ft

RECEIVED  
 JUL 08 2016  
 PARK CITY  
 PLANNING DEPT.