

PARK CITY MUNICIPAL CORPORATION  
PLANNING COMMISSION MEETING MINUTES  
COUNCIL CHAMBERS  
MARSAC MUNICIPAL BUILDING  
SEPTEMBER 14, 2016

COMMISSIONERS IN ATTENDANCE:

Chair Adam Strachan, Melissa Band, Steve Joyce, John Phillips, Laura Suesser, Doug Thimm

EX OFFICIO:

Bruce Erickson, Planning Director, Francisco Astorga, Planner; Makena Hawley, Planning Tech; Polly Samuels McLean, Assistant City Attorney, Jodi Burnett, Outside Counsel

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REGULAR MEETING

**ROLL CALL**

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

The Planning Commission held a site visit to the Treasure Hill property prior to the meeting. Chair Strachan provided a brief summary. The Commissioners visited the site and members of the public attended. The applicant provided a handout, which was distributed prior to the walk-about, and discussed several points in the handout. Chair Strachan explained that questions were not taken or addressed during the site visit because the site visit is not recorded and any comments would not be on the record. That is true of any site visit. If the public had questions or comments from the site visit, he encouraged them to give public comment during the public hearing portion of the agenda this evening.

**ADOPTION OF MINUTES**

August 10, 2016

Commissioner Joyce referred to page 7, middle of the bottom paragraph, “Mr. Ferrin believed that Park City know that Treasure Hill...”. He corrected know to correctly read **knew** that Treasure Hill. Commissioner Joyce referred to page 11, second paragraph, second sentence, “He reminded the Planning Commission that outside to the City addressed this issue in a separate letter”. He corrected the minutes to correctly read, Outside **Counsel** to the City.

Chair Strachan noted that Ann Macquoid’s name was misspelled in the Minutes. The correct spelling is MacQuoid, with a capital Q. He referred to page 16 and corrected the minutes to reflect that Ms. MacQuoid was elected to the City Council in **1985**, not 1995 as written.

MOTION: Commissioner Phillips moved to APPROVE the minutes of August 10, 2016 as amended. Commissioner Thimm seconded the motion.

VOTE: The motion passed unanimously.

August 24, 2016

Commissioner Thimm referred to page 66, third paragraph from the bottom, second to last sentence and changed a much safe project to correctly read a much **safer** project.

MOTION: Commissioner Joyce moved to APPROVE the minutes of August 24, 2016. Commissioner Suesser seconded the motion.

VOTE: The motion passed unanimously.

#### **PUBLIC INPUT**

There were no comments.

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

There were no reports or disclosures.

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

1. Treasure Hill Conditional Use Permit, Creole Gulch and Town Lift Mid-station Sites – Sweeney Properties Master Plan (Application PL-08-00370)

Planner Francisco Astorga stated that they were getting close to wrapping up the first criteria regarding the size of the project to be mitigated through a conditional use permit application. He noted that a section of the Staff report identifies that the 2004 Code is applicable to the conditional use permit. The Staff report also addresses the Staff position regarding the Woodruff 3D analysis that was discussed in previous meetings. The Staff report clarifies that the Woodruff drawing is a site plan, horizontal component, merged together with five building section. That was how the 3D rendering was achieved. The applicant introduced that rendering in a previous meeting.

Planner Astorga stated that both the site plan and the building sections were part of the record. They were included in the approval and mentioned on the very first page of the MPD.

Planner Astorga stated that the third item to address represented the claims indicated by the applicant regarding the fire protection plan. The Staff acknowledged that the applicant met with City Officials and the Fire District early in the process, but the Staff did not believe it was the only fire plan that could be approved at that site. Planner Astorga noted that the conditional use permit has specific criteria for emergency egress regarding fire department equipment, and that is reviewed through the conditional use permit application.

Planner Astorga stated that per specific direction given by the Planning Commission, the volumetrics would be the next item to review. He clarified that when he talks about volumetrics he is referring to Criteria 8 and 11 from the conditional use permit. Both of those criteria address mass, bulk, scale, compatibility, design, and site design. Planner Astorga remarked that it is difficult to address those two conditional use permit criteria without talking about the excavation component. The Staff has reviewed the application consistent with the analysis that was done by the City in 2009, which is one reason why they keep referring to the 2009 Staff report that was published by then Senior Planner Katie Cattan. After reviewing what Planner Cattan had written, the Staff concurs with the analysis that was presented to the Planning Commission in 2009. The current Staff report outlines what was said in 2009, and shows that the Staff was being consistent with Criteria 8 and 11. Per direction and input from the Planning Commission, the Staff was ready to fully address those three conditional use permit criteria.

Planner Astorga commented on the issue regarding the 5% support commercial and noted that the Staff had not deviated from the Analysis that was done in 2009. He believed the Planning Commissioner has indicated that they also concur with the Staff analysis; and that is the disagreement they have with the applicant over the 5% support commercial. Planner Astorga noted that the Staff findings were outlined in the Staff report.

Planner Astorga commented on the role of the Planner. He explained that the role of the Planner and the Planning Department is to only provide a recommendation to the Planning Commission. The Planning Commission is the administrative body tasked with the review of the Conditional Use Permit. Planner Astorga clarified that as the Planner he does not make a decision; he only provides a recommendation. He wanted it understood that the same applied for the former Planners who have worked on this application. Planner Astorga reiterated that the Planning Commission was the administrative body in charge of reviewing and approving or denying conditional use permits. The City Planners only provide a recommendation based on their knowledge of the LMC and other applicable Codes, as well as their expertise.

Planner Astorga stated that this was a continuing review and they would be moving on to the next topic on October 12<sup>th</sup> regarding the items related to volumetrics.

Chair Strachan noted that the applicant had raised the questions about prior Staff reports and whether the 5% rule applies to the total floor area, whether it applies to something different, or whether it is 10% of the entire total floor area. He asked if there was a dispute in the Staff's interpretation. Planner Astorga replied that there was a dispute between the City's interpretation and the applicant's interpretation. Chair Strachan asked if there was a dispute between the interpretation of the Planners who have worked on this project both past and present. Planner Astorga answered no. He explained that the Planning Department agreed with the analysis that Planner Cattan did in 2009.

Chair Strachan stated that one assertion the applicant made is that both Kirsten Whetstone and Pat Putt recognized throughout the review process in 2004, 2005, and 2006 that the project was allowed an additional 10% of the total floor area for support commercial and meeting spaces pursuant to 15-6-8. He understood that Planner Astorga concluded that it is 5% of just the hotel. Planner Astorga recalled that the Planning Commission discussed this in detail in 2009, which is why Jody Burnett was brought in as Outside Counsel. In his memo dated April 22<sup>nd</sup>, 2009, Mr. Burnett provided an advisory opinion regarding which Code applied to the 5% rule. In his memo, Mr. Burnette further explained that it would be 5% of the hotel. Planner Astorga noted that Mr. Burnett was present this evening if the Commissioners had questions.

Planner Astorga believed that opinion was the difference between 2004, 2005 and 2006, and what took place in 2009 when the Planning Commission had a specific concern regarding the 5%. Chair Strachan understood that Planner Astorga's conclusion was based on Mr. Burnett's interpretation of the Code. Planner Astorga replied that he was correct. Planner Astorga clarified that his conclusion was based the opinion that Mr. Burnett was asked to provide to the Planning Commission.

Mr. Burnett stated that this circled back to the point that the Planning Commission is the arbiter for the interpretation with assistance from the Staff and City Council. There may have been different opinions over time, but the Commissioners have to resolve that issue. Mr. Burnett recommended that they not try to make a piecemeal decision on an issue by issue basis, and recognize that this is going to be a comprehensive decision. The Planning Commission needs to make sure that they understand the applicant's position and the Staff's position and to have all their questions answered. Once they are comfortable that they have the answers they should move on to the next topic. All the topics are inter-related and they need to make sure they can make a comprehensive decision in the context of reviewing all of the CUP criteria.

Chair Strachan asked for the standard of review on what the Planning Commission decides is the correct interpretation. Mr. Burnett replied that it depends on whether it has a factual component, or is purely a legal interpretation. He pointed out that some would be purely

legal interpretations. If there is a factual component, there would be a substantial evidence standard. That would be addressed in court and he was unsure whether the City's appeal standard was on the record. Assistant City Attorney McLean stated that the appeal process is de novo. Mr. Burnett explained that de novo means that the appeal body would get a fresh look. However, a judicial review means substantial evidence on the record for any factual determinations. Mr. Burnett stated that for purely legal issues, it is a correctness standard, which means there is no deference other than a limited non-binding deference to a local jurisdiction's interpretation of the ordinance in recognition of their familiarity with their own codes.

Sean Ferrin, representing the applicant, introduced the team involved with the Treasure Hill project. As in past meeting, the critical team members were present to fully and fairly address all the questions. Mr. Ferrin noted that this was the fourth public hearing for the CUP application in these rounds of public hearings. They appreciated the opportunity to meet the Commissioner and others on site to show them Treasure Hill, and to walk around the mountain to talk about the development of Treasure Hill.

Mr. Ferrin recognized that Treasure Hill is a significant project. However, the development plan MPE has submitted as part of the CUP application and the refinements that have been made to that development plan over the last 12 years have resulted in a development that both mitigates potential negative aspects, and allows the owners of Treasure Hill to use the entitlements that Park City gave to them in 1986.

Mr. Ferrin stated that one of the most important takeaways from the site visit should be the confirmation of the amount of open space; because 119 acres of open space has been preserved on Treasure Hill. As a result of, and in the words of the Planning Commission and the City Council from 1986, "In directing the development of Treasure Hill, clustering and tucking Treasure Hill into Creole Gulch is important". Mr. Ferrin remarked that based on of Staff and the Planning Commission, the applicant went to great expense to mitigate the height of the Treasure Hill project. He pointed out that the mitigation requires excavation. Mr. Ferrin noted that as they discussed at length during the second public hearing, the building zones and the open space restrictions imposed in the 1986 MPD approval established vertical limitations. Those limitations impose restrictions on the Mid-Station development and on Creole Gulch. Mr. Ferrin stated that if those vertical restrictions are in place and the top of the development is pushed down, the only place that square footage and volume can go is down, which means excavation.

Mr. Ferrin noted that the handout that was prepared by the applicant and provided at the site visit would be made available on the City website. People would be able to use that information to go up to the site and walk around to see how the Treasure Hill project will fit into the mountain and be tucked into Creole Gulch. Mr. Ferrin thanks the Staff and the

Planning Commission for the time spent preparing for and evaluating this CUP application. He assumed they had read all of the materials supplied, which included the Executive Summary, and the Position Statement because they are critical to understanding and thoroughly evaluating the CUP application. Mr. Ferrin remarked that the prepared Staff reports alone do not provide the entire history, nor do they completely and accurately provide a presentation of Treasure Hill.

Mr. Ferrin noted that the presentation this evening would address the MPD requirements and conditions, the CUP standards for review, and CUP criteria 1 through 15. He stated that all of the CUP criteria, including traffic, massing and compatibility will be address further at later hearings. Mr. Ferrin remarked that the presentation would also talk about confirming the public hearing record, project timelines showing the progression of the CUP application, the support commercial issue, and a summary of the square footage.

Mr. Ferrin stated that following the suggestion by Commissioner Phillips the applicant proposes that instead of conducting a public hearing this evening, it might be more beneficial to everyone if they could have a work meeting while the site visit was still fresh in their minds. It would allow them to have a dialogue about Treasure Hill on the record, they would be able answer questions rather than just state positions, and they could review a Sketch-up model of Treasure Hill to see how it fits within the mountain. Mr. Ferrin noted that the applicant was willing to conduct a work session with the Planning Commission if the Commissioners thought it would be useful in helping them understand the Treasure Hill project.

Mr. Ferrin wanted to confirm a few things about the public record. He stated that several concepts and issues that have repeatedly come up during the public hearings need correction or clarification. Mr. Ferrin did not believe that the applicant and the Staff disagreed on these matters; and in an effort to get everyone on the same page, last week the applicant sent the Staff a joint statement that they wanted to be able to agree with them on specific issues. The applicant did not get a response from the City. He hoped they would get a response so the applicant could provide a joint statement to the Planning Commission as something concrete to use to evaluate some of these issues.

Mr. Ferrin provided a summary of what the applicant believed the issues were. The first one is what are the applicable Codes. He stated that Park City's 1985 LMC applies to all matters relating to the interpretation of the 1986 MPD approval for Treasure Hill. Park City's 2003 LMC applies to all matters related to the review and approval of the 2004 CUP application. The only apparent point of disagreement between Staff and the applicant is whether 1985 LMC or the 2003 LMC controls the issues relating to support commercial and meeting space. Mr. Ferrin intended to address in detail the apparent point of disagreement when he discusses the square footage calculations later in his presentation. The next

issue was the date of the CUP application. Mr. Ferrin stated that the CUP application was filed in 2004, and it is a vested application as of that date. References to subsequent dates, such as the 2009 Update or the 2009 Refinements, are merely references to the 2004 vested CUP application. Mr. Ferrin emphasized that the applicant has only filed one CUP application for Treasure Hill, which is the 2004 CUP application, and that is the application currently before the Planning Commission. Mr. Ferrin commented on the Woodruff drawings and he believed there was some confusion at the last public hearing. He stated that the Woodruff drawings were attached to and are a part of the MPD approval. Mr. Ferrin stated that the Woodruff drawings do not vest the right to build the development shown on the Woodruff drawings. They are scaled drawings used to help determine volumetrics, and merely reflect one concept of what could be built under the 1986 MPD approval.

Mr. Ferrin commented on the concept of vesting and stated that it applies to both the 1986 MPD approval and to the 2004 CUP application. The MPD approval vests in 1986, and it vest the rights for 197 residential and 19 commercial unit equivalents. The MPD approval established the underlying UEs, but not the total square footage that could be built for those UEs. Mr. Ferrin stated that the 1985 LMC and the 1986 MPD approval specified that the square footage would be address in a subsequent CUP application process. He remarked that the Park City Attorney and the Staff have confirmed this numerous times, that the square footage issues would be addressed under the LMC in effect at the time of the application. For Treasure Hill that would be the 2004 application, and the 2003 LMC governs the CUP application. Mr. Ferrin stated that with respect to vesting for the CUP, the application vested in 2004, and the vested rights include the square footage attributable to the 197 residential UEs, the 19 commercial UEs, and all the additional square footage allowed under the 2003 LMC. Mr. Ferrin reiterated that the applicant's right to square footage was vested in 2004. The amount of the square footage was to be determined through the CUP process.

Mr. Ferrin stated that the Historic District was the last point to clarify. As part of the CUP approval process, the Planning Commission will need to evaluate whether the design of Treasure conforms with Park City's Historic District Guidelines in the context of the CUP approval. Mr. Ferrin welcomed Staff's input on these issues. If there is disagreement, he hoped they could meet and come up with a joint statement that would help the Planning Commission evaluate the issues.

Mr. Ferrin was prepared this evening to address what he believed were the final issues related to the square footage calculations for Treasure Hill. However, the current Staff report addresses the fire protection plan and the volumetrics analysis, which were issues beyond the scope of what the applicant understood would be the topic this evening. He noted that the applicant addressed volumetrics in their presentation at the second public

hearing meeting and in their position statements. They were willing to re-address those issues and provide a response to the Staff report if directed to do so by the Planning Commission. Mr. Ferrin stated that the applicant would provide a separate response to the Staff's comments regarding the fire protection plan.

Mr. Ferrin reiterated his previous comments that understanding the complex history of the approvals of Treasure Hill and how the CUP application process has progressed since 2004 is critical to evaluating and approving the CUP application for Treasure Hill. Based upon comments from the public and the Planning Commission, some of that history needs to be clarified. The Planning Commission could not just rely on the comments in the more recent Staff reports or public comment. Mr. Ferrin stated that understanding the process takes a look at the entire history of the CUP application for Treasure Hill. The entire history, and all of the information that Commissioner Joyce demanded be found and made public during the second public hearing, must be reviewed and evaluated.

Mr. Ferrin walked through a timeline of critical dates and the City's positions regarding Treasure Hill on those dates. The timeline expanded from 1986-2009. Mr. Ferrin stated that the 1986 MPD approval vested Treasure Hill with 197 residential and 19 commercial UEs. The 1986 approval and the 1985 LMC specified that the final development plan would be evaluated pursuant to a separate CUP application process; and it would be under the Code in effect at the time the CUP was filed.

Mr. Ferrin stated that the next critical date was 1999, which he refers to as the '99 Legal Directive. In an August 25<sup>th</sup>, 1999 letter to the applicant, Mark Harrington, the Interim City Attorney at that time, stated, "Square footage and floor areas for the unit equivalents are calculated as provided in the Land Management Code and the Uniform Building Code adopted by Park City at the time of application". Mr. Ferrin noted that in reliance on that letter, the applicant expended great amounts of time and money designing a project with the understanding that the 2003 LMC, which was in effect at the time of the application, would govern square footage and floor areas allowed under the UEs.

Mr. Ferrin remarked that the next critical date was 2004. The fire protection plan occurred in 2004. Following City Council's directive in 1986 to cluster and tuck Treasure Hill into Creole Gulch, and after months of discussion and analysis, on January 9<sup>th</sup>, 2004 Park City and the applicant entered into the fire protection plan. The plan incorporated the cliffscape design elements and served as the basis for the ultimate design of Treasure Hill. On January 13<sup>th</sup>, 2004 the CUP application was filed. At that point 394,000 net square feet of residential space and 19,000 gross square feet of commercial space was vested. Mr. Ferrin stated that also vested was the additional square footage permitted under the 2003 LMC, which he believed was a critical point for the Planning Commission to understand as part of their evaluation and approval of the CUP for Treasure Hill. In response to



comments by Commissioners Strachan and Suesser at the last meeting regarding the LMC and whether the 2003 LMC applies, Mr. Ferrin commented on the calculation of square footage, which was 413,000 square feet + 5% + parking; and noted that whether they use the 2003 LMC, or incorrectly use the 2005 LMC, that formulate is not correct. Under both Land Management Codes, the applicant is also vested with additional square footage for other uses such as circulation, meeting space, resort space, etc. Mr. Ferrin pointed out that the analysis is not that simple. The LMC required a much deeper analysis in making the square footage calculations, particularly as it applies to additional square footage.

Mr. Ferrin stated that the next critical item in the timeline was what he refers to as the 2004 legal directive. On April 9<sup>th</sup>, 2004 in a memorandum addressed to the Planning Commission, Mark Harrington, by then the City Attorney, again stated, "Square footage and floor areas for unit equivalents are calculated as provided in the Land Management Code and the Uniform Building Code adopted by Park City at the time of application". Mr. Ferrin remarked that in the course of five years, the applicant and the Planning Commission were directed on numerous occasions, including twice by the City Attorney, to use the 2003 LMC in making the square footage and floor area calculations for Treasure Hill. Mr. Ferrin stated that if the Planning Commissioner were only to look at the current Staff reports, they would not understand the critical history or what the applicant has gone through, and why the project looks like it does. He emphasized that the applicant inquired and was directed by Park City that the square footage calculations were supposed to be in accordance with the 2003 LMC.

Mr. Ferrin noted that in 2005 a Staff report issued on March 9, 2005, Planner Kirsten Whetstone wrote that the 2004 CUP application complies with all of the applicable MPD development parameters and conditions, all of the CUP standards for review, and nearly all of the 15 CUP criteria. Mr. Ferrin quoted specific comments made by Planner Whetstone in the March 9<sup>th</sup> Staff report. "The revised Treasure Hill CUP plans comply with the approved density and all development constraints within the identified development parcels". "The current Treasure Hill CUP Plans comply with the clustered development concepts approved in the Sweeney MPD". "The current plans comply with the MPD open space requirements". "Staff has determined that the revised plans for the Treasure Hill CUP comply with the height and elevation standards approved in the Sweeney MPD". "The current Treasure Hill CUP plans comply with the Park City General Plan regarding location of medium density and resort related development". "The revised Treasure Hill CUP plans are consistent with the previously approved height and volumetrics". "Meeting space and support commercial space, 10% of the total approved floor area per the Land Management Code is allowed in the MPD, in addition to the 19 UEs of commercial space". "Additional square footage is allowed for back of house and other ancillary uses such as storage, mechanical, common space, etc." "The locations of building on the site, grading, slope retention, cliffscape design complies with the site design and site suitability criteria of the

LMC”, although specific conditions of approval will be required to address details of the grading plan, cliffscape design, retaining walls and other elements of the site plan”.

Mr. Ferrin pointed out that in 2005 the Staff determined that the Treasure Hill CUP complied with density, location, clustered development, open space, height, elevation, the General Plan, and volumetric criteria. It noted that in addition to the 197 UEs and the 19 UEs of commercial space, the applicant was entitled up to 5% additional space for meeting space, up to 5% additional space for support commercial space, and additional space for back of house and other ancillary uses. The Staff also indicated that the grading, slope, retention, cliffscape, and all of the designs were compatible with the site design and site suitability standards in the 2003 LMC. Mr. Ferrin stated that this was not a rouge Staff report. It was similar in content to all of the previous Staff reports and to many of the Staff reports written after that. Mr. Ferrin noted that the March 9<sup>th</sup> Staff report, and its favorable conclusions and support for the project in favor of the applicant, was missing from the ten-page summary of all the Staff reports related to this project that was provided in the current Staff report for this meeting.

Mr. Ferrin stated that the March 9, 2005 Staff report directs the applicant and the Planning Commission to focus on other issues, including addressing mitigation of construction and traffic impacts, maintenance, snow removal, and pedestrian access on Lowell and Empire. It also suggests a more detailed review of architectural concepts.

Mr. Ferrin stated that 2006 was the next critical date in the timeline. On April 12<sup>th</sup>, 2006, then Park City Planning Director, Patrick Putt, issued a Staff report recommending, “The applicant prepare preliminary architectural drawings for each of the proposed buildings which illustrate size, building form and massing, roof shapes, exterior details, including materials, window to wall ratios, decks, plaza, outdoor space, retaining walls, etc. for Planning Commission review, as part of its action on the conditional use permit”. Mr. Ferrin remarked that notwithstanding Mr. Putt’s recommendation to do architectural details, he concludes, “The plans being reviewed currently for the CUP illustrate that the MPD development parameters have been met”. In summarizing Treasure Hill’s entitlements, Mr. Putt also noted that, “In addition to 197 residential and 19 commercial UEs, Treasure Hill is entitled to additional support commercial equal to 5% of the floor of Treasure Hill, and additional meeting space equal to 5% of the floor area of Treasure Hill”.

Mr. Ferrin stated that based on these Staff reports and based upon the letter from the City Attorney, the Memorandum to the Planning Commission, people telling the applicant that the 2004 CUP application complied with all approval requirements other than unfinished work on the three of the CUP criteria, that the applicant was entitled to additional square footage under the 2003 LMC, including 5% for support commercial, 5% for meeting space, and additional floor area, and the directive from Mr. Putt to prepare architectural drawings

to further illustrate compliance, the applicant spent approximately two years and over \$1 million on architectural drawings and engineering analysis for Treasure Hill. Mr. Ferrin remarked that as the CUP review process progressed after 2006, the preliminary architectural drawings, which provide greater detail and clarity regarding Treasure Hill, resulted in 167,000 additional square feet being added to Treasure Hill. As discussed in detail at the July public hearing, this additional square footage included employee housing, mechanical, storage rooms, circulation space, a central laundry, support commercial and meeting space, and associated accessory space. It also includes skiing related space such as ticket offices and lockers.

Mr. Ferrin noted that at the August public hearing he stated several times that the refinement of the design of Treasure Hill was driven in part by directives from the Staff and the Planning Commission. Noting that the cliffscape design concept was in the fire protection plan in 2004, he felt that Commissioner Joyce publicly challenged his credibility and the credibility of everyone on the Treasure Hill team. Mr. Ferrin explained that it was directives in the 2006 Staff report by Patrick Putt to refine and start getting into the weeds about the Treasure Hill project. There were directives to not only look at what it will look like, but how it will operate, how lobbies, meeting room, service areas, common areas, commercial spaces, resort operational areas all come together into a fully integrated and efficient operating development. Mr. Ferrin believed that the directive in 2005 and the directive from Pat Putt in 2006 supported his assertion that the design of Treasure Hill was driven in part by the directives of Staff and the directives of the Planning Commission.

Mr. Ferrin appreciated the significant time the Commissioners were spending to evaluate the CUP application; and he appreciated their candor in making comments on the application. He assured Commissioner Joyce and all the members of the Planning Commission that no one on the Treasure Hill team has attempted to hide anything or unfairly characterize any aspect of the Treasure Hill CUP application. He believed the applicant had bent over backwards to accurately and honestly provide all the facts to this Planning Commission.

Mr. Ferrin stated that the last critical date in the timeline was 2009, which was a turning point in the evolution of Treasure Hill. After all of the updates and the refinements made to Treasure Hill between 2004 and 2008 with input from Staff and the Planning Commission; and after an investment by MPE of over \$2 million, including \$1 million in architectural detail alone, the April 22<sup>nd</sup>, 2009 prepared by Katie Cattan, the fourth of five planners assigned to this project, reversed the City's prior positions on all of the previous points. Mr. Ferrin remarked that for the first time the Staff questioned the method for calculating support commercial and meeting space; and it does so using an incorrect analysis. Mr. Ferrin pointed out that for all intents and purposes, the April 22<sup>nd</sup>, 2009 Staff report reflects the end of the refinement of the design of Treasure Hill. Although

communications continued after that point regarding parking, traffic, and construction of Lowell and Empire, the applicant continued to pursue approval of Treasure Hill based upon the 2004 CUP application as refined between 2004 and 2009, as well as specific direction given to the applicant by the City Attorney, the Staff, in previous Staff reports. That was the application before the Planning Commission today.

Mr. Ferrin wanted to know what happened in 2009 and why the City changed its position from its previous support for the project. It still remains a mystery to MPE and the development team. Mr. Ferrin stated that after spending five years and \$2 million, and after progressing down long paths towards approval and having significant support from the Staff and the Planning Commission, Park City made an abrupt change in its view of Treasure Hill and the City is unwilling to say why. Neither then Planner Katie Cattan's 2009 report or any Staff report since then explains in detail why the conclusions and recommendations in all the other Staff reports that the applicant relied on were incorrect. Mr. Ferrin believes the applicant deserves an explanation.

Mr. Ferrin reiterated his consistent comment that the Planning Commission must look at the entire history of the approval and the process for the CUP application for Treasure Hill; because that history gives the context in which to make their decision to approve the CUP.

Mr. Ferrin commented on support commercial. In looking through the hundreds of pages of positions and arguments made by the Staff and the applicant between 2009 and today, he thought the most contentious issues is the concept of what governs the calculation of support commercial and meeting space. It was raised again this evening, showing that confusion still remains on this issue. The question is whether the 2009 LMC or the 2003 LMC applied. Mr. Ferrin noted that this issue not only drives the square foot and floor area calculations, but it is also the basis of a perplexing assertion by Staff and the Planning Commission that in pursuing the CUP application the applicant is amending, and thereby re-opening, the 1986 MPD approval. The issue was fully addressed in their position statement that was included in the Staff report. Mr. Ferrin stated that the language that Planner Astorga refers to in Jody Burnett's memorandum is the language that the Staff was using to support its position that the 1985 LMC should apply. Mr. Ferrin pointed out that the 1985 LMC governed the 1986 MPD approval. He read from the section entitled, Vesting of Zoning Rights, which provides in relevant part that, "The project owner may take advantage of changes in zoning that would permit greater density for more intense use of the land provided; however, that these changes may be deemed a modification of the plan and subject to payment of additional planning review fees". Mr. Ferrin stated that the language everyone looked at until recently was "permit greater density or more intense use of land." The Staff is now taking that language and saying that the 2003 LMC, by giving additional 5% density for support commercial, and the additional 5% for meeting space is in fact permitting greater density or more intense use of the land. The premise is that

more space creates more intense use because it generates more traffic. This the hook the City has been using to say that the 1985 LMC applies. Mr. Ferrin read from the beginning of that same section. "The project owner may take advantage of changes in zoning." Mr. Ferrin pointed out that there have been no changes in zoning for Treasure Hill since 1986. He believed the simple, plain reading of the ordinance means that it has no application.

Mr. Ferrin stated that the applicant has pointed out this position in phone calls with Staff and Counsel, and suggested that the analysis was not correct. There were not given a specific response on this issue. Mr. Ferrin thought it was confusing for the Planning Commission to get different information coming from the Staff on one side of an issue, and from the applicant on the other side of an issue. He reiterated his wish to work with the Staff to come up with a joint statement that succinctly puts these issues in place, and to outline any discrepancies very clearly to help the Planning Commission make the appropriate decision.

Mr. Ferrin stated that the applicant's position is that the 1985 LMC does not apply to this issue. The square footage and floor area of the UEs are calculated as provided in the LMC and the Building Code adopted by Park City at the time of the application, which is the 2003 LMC. In response to the current Staff report, Mr. Ferrin stated that the applicant had acknowledged that the current design of Treasure Hill includes a limited number of UEs located in Creole Gulch side that the 1986 MPD approval designated beyond the Mid-Station site. Mr. Ferrin stated that this was done in cooperation with Staff to reduce and mitigate height on the Mid-Station site. If requested, the applicant will relocate those back to the Mid-Station site.

Mr. Ferrin emphasized that the applicant has no intent to reopen the 1986 MPD approval. The fact that the Staff and the applicant may disagree and have different interpretations about which Code should apply, and the fact that the applicant has made a recent and good faith assertion as to why the 2003 LMC applies, does not constitute an amendment to the 1986 MPD approval. Mr. Ferrin stated that in looking through the Minutes and all the Staff reports, he was unable to find facts or legal support for Commissioner Strachan's assertion that they were "this close" to re-opening the MPD. Mr. Ferrin did not believe the City wanted to re-open the MPD, because if the 1986 approval is undone, it would result in going back to the pre-MPD approved development. It would require the City to give back to the applicant the open space, the easements, the rights-of-way, the public trails, and the associated improvements on Treasure Hill. It would result in a reversion to the underlying zoning at the time and the underlying density allowable in 1985 in excess of 450 unit equivalents. It would also result in the applicant be entitled to construct single family homes and related surface streets on all the acres of Treasure Hill. Mr. Ferrin noted that this would cause Treasure Hill and the coveted open space to look much like the east side

of Deer Creek. Mr. Ferrin stated that if needed, the applicant was willing to discuss in further detail the fact that they were not intending to re-open the 1986 MPD approval.

Mr. Ferrin noted that the square footage calculations for Treasure Hill are based upon the UEs established in the 1986 MPD approval and the square footage and floor areas established by the 2003 LMC. Mr. Ferrin stated that this was the approach endorsed by the 1986 MPD approval, by the 1985 LMC, by the Park City Attorney, by Staff up until 2009, and by Utah Law. In accordance with the LMC, Sections 5-6-8A&E, the applicant and Staff agreed that each residential unit equivalent was equal to 2,000 net square feet, and each commercial unit equivalent was equal to 1,000 gross square feet of floor area. As addressed in detail in the previous position statements and presentations made by the applicant to the Planning Commission, and based on the criteria and at the direction of Staff, Mr. Ferrin explained how the applicant had calculated the square footage. He noted that 393,000 square feet is directly attributable to residential UEs of 394,000 of the vested UEs under the 1986 MPD approval. There are 17,470 commercial UEs of the 19,000 vested UEs under the 1986 MPD approval. They were not using all of the vested commercial UEs. Mr. Ferrin stated that 27,726 square feet of support commercial space represents 4% of the possible 5% allowed under the LMC. There was 16,127 square feet of additional meeting space, which represents 2.4% of the possible 5% of additional meeting space. Mr. Ferrin remarked that both of these calculations, as permitted under the 2003 LMC, are based upon total above grade square footage. The 2003 LMC does not provide any specific restriction for the 136,000 square feet for accessory uses proposed; nor does it provide specific restrictions for the 173,320 square feet of circulation. The parking is 245,063 square feet. The total square footage for the project was 1,008,808 square feet.

Mr. Ferrin stated that for the purpose of calculating additional support commercial and meeting space under the LMC, the applicant has consistently advised Staff that Treasure Hill, like almost all resort development, will be designed to operate as a hotel or as nightly rental condominiums for the entire project. They may be under various ownership strategies, but they will all be operated as hotel or as nightly rental condominiums as required by the ordinance for the purposes of calculating additional square footage for support commercial and meeting space. As provided in the LMC, the calculation of support commercial and meeting space is based upon total above grade square footage of 673,922 square feet. The total vested square footage of 1,008,808 square feet reflects the removal of the mine exhibition and its corresponding 8,000 square feet of commercial and support commercial space. Mr. Ferrin stated that this square footage requested by the applicant in the 2004 MPD application as revised in 2009, is authorized by the 1986 MPD approval and by the 2003 LMC. He noted that for the reasons outlined in all previous presentations and position statements, this square footage is reasonable in the context of

what is required to make Treasure Hill a functionally integrated and operating project. It is reasonable in the context of what Park City has approved for other projects.

Mr. Ferrin stated that he has worked on Land Use and Entitlement projects for the last 30 years across all of the western United States. He has also worked on Land Use and Entitlement projects in Summit County for the last 20 years. From that experience, he believes that the Treasure Hill CUP application is unprecedented in many respects. He has never seen an applicant who has invested more time and more money, and who has provided a completely open book approach to all aspects of the application. Mr. Ferrin noted that every aspect of Treasure Hill and every aspect of the CUP application is placed on a public website for everyone to review and comment on. It is also unprecedented that he has never seen an owner give such an enormous benefit to a community including 119 acres of open space and a density reduction of 200 UEs in exchange for a specific development right that was supported by the Staff and Planning Commission for five years, only to see the City and the Staff forget its end of the bargain.

Mr. Ferrin stated that the City, the Staff and the Planning Commission may not like the Treasure Hill project, but the Planning Commission must evaluate the project and approve the CUP in light of the vested rights and the historical approvals. They did not create the history that applies to Treasure Hill, but they have to abide by that history. Mr. Ferrin clarified that he was not implying that the Planning Commission should approve anything the applicant submits. However, the applicant should have the CUP application approved by the Planning Commission per the legal standard in Utah, which is reasonable conditions to mitigate reasonably anticipated detrimental effects of the proposed uses. It was what the applicant had from the time the application was filed until 2009. Mr. Ferrin stated that the applicant deserves an approval of its CUP application.

Planner Astorga referred to the items on page 88 of the Staff report regarding Finding of Fact #4, Development Parameters and Conditions No. 3 and the narrative, which were specific findings of the approved Master Plan. He read Finding of Fact #4, "The commercial uses proposed will be oriented and provide convenient service to those residing within the project". Planner Astorga stated that this was the recurring theme in the Master Plan. Planner Astorga agreed that the Conditional Use Permit must be in compliance with the 2003 LMC, but it also has to be in compliance with the original Master Plan.

Planner Astorga stated that the Master Plan divided the Hillside properties into two sites; Mid-Station and Creole Gulch, and it assigned a total of four numbers; the residential component for both and the support commercial for both. The Staff did not believe the applicant was able to trade a unit and place it on the other side. It could possibly be amended, but not transferred from one side to the other.

Planner Astorga noted that Mr. Ferrin indicated in his presentation that a site plan was presented that replicates the concept. Planner Astorga clarified that it is not just any site plan; it is the site plan. Several scenarios were presented to the Planning Commission in 1985. Of the several scenarios, the site plan with the cross section was the plan that was approved. That specific site plan and building sections were included in the approval.

Planner Astorga commented on the volumetric analysis and history. She stated that in his original June 8<sup>th</sup> Staff report, he included a summary of all the meetings from 2004, 2005, 2006 and 2009 and 2010. In the current Staff report he only included the ones regarding volumetric analysis, which relates to Criteria 8 and 11 regarding mass, scale and compatibility. For example, if a meeting only talked about transportation, that was not included in the current summary because it was not specific to the volumetrics portion of the CUP criteria. Planner Astorga referred to Mr. Ferrin's comment about a missing Staff report, and explained that it was not included because it was not applicable to the volumetric and Criteria 8 and 11. He clarified that it was included in the full summary list that was provided in the June 8<sup>th</sup>, 2016 Staff report.

Planning Director Erickson reported that Madeline Kahn was in the audience earlier this evening; however due to a physical disability she was unable to make her presentation this evening and she is unable to type an email. Ms. Kahn offered to record her comments to be replayed at the next public hearing, or an alternative that the Planning Commission would be comfortable with to make sure the record is correct. Chair Strachan preferred whatever means was easiest for Ms. Kahn to make her comments. If she wanted to record them they should find a way to get it into the record. They need to make sure that her disability would not prevent her from giving public comment. Director Erickson stated that the Staff would work it out with the applicant to make sure that Ms. Kahn gets her comments on the record.

Planner Astorga stated that he had written two paragraphs in the Staff report regarding the fire protection plan because it was part of the presentation at the last meeting. It will be discussed further when they discuss that specific CUP criteria.

Planner Astorga noted that Mr. Ferrin had suggested that the Planning Commission dispense with public comment this evening and use that time for a work session dialogue. He pointed out that this item was noticed for a public hearing and he believed the Planning Commission needed to take public input. Planner Astorga was not opposed to a future work session and offered to schedule a date if directed to do so by the Planning Commission.



Chair Strachan agreed that there should be a public hearing this evening. He asked the Commissioners whether they should consider taking public input at a future work session when they go through the Sketch-Up. Chair Strachan recognized that public input is not always taken during a work session, but he personally thought public comment was important for this type of project, and it would give the public the opportunity see the Sketch-Up and to ask questions of the applicant and Staff. The Commissioners concurred.

Mr. Ferrin clarified that the intent of suggesting a work session was to allow a dialogue with the Planning Commission and to answer questions. He was not opposed to public comment during a work session.

The Commissioners agreed that it was better to have the work session sooner rather than later. Chair Strachan asked the Staff to work with the applicant to schedule a work session.

Since it was the applicant who suggested a work session, Commissioner Band asked Mr. Ferrin if the applicant was willing to modify the plan; or if they wanted a work session to explain the plan they have. Mr. Ferrin replied that it was the latter.

Mark Harrington, City Attorney and the former Interim City Attorney responded to a couple of comments Mr. Ferrin made during his presentation. The Staff would provide a more comprehensive response to some of the issues that were raised, but some things needed to be addressed right away. Mr. Harrington stated that the City did respond and affirmatively reject the proposal for the joint statement earlier this week. He and Mr. Ferrin were unable to schedule a meeting to further discuss it. They did propose a time back and forth but did not get that. Mr. Harrington wanted it clear that the applicant did get a response.

Chair Strachan asked if that was an outright rejection not to do a joint statement, or if it was a matter of needing more time to consider it.

Mr. Harrington replied that it was a verbal response on Staff's current position. There is a problem with iterations of how these agreements take on a life of their own, and the Staff has no authority to make agreements. Therefore, the Staff will not be making any more agreements if he has any say.

Mr. Harrington commented on legal directives. He stated that he certainly had given no legal directives in this, and he believed both letters from August of 1999 speak for themselves. They are part of the prior public hearing record and they will make both letters, in their entirety, available to the Planning Commission again. Mr. Harrington read one excerpt just to make sure that that legal directive is in perspective. The first was from the first letter in which the partial quote was a follow up to. "The City is clearly under no

legal obligation to execute a disclosure to potential buyers or execute a letter summarizing the development options of the Sweeney's. As stated above, the existing approvals and the City Codes speak for themselves, and the City Planning Department will make its files available to any owner, interested buyer, or other citizen in accordance with established government records accessing management procedures. The City Staff is always available to informally meet with owners, their representatives, or citizens regarding potential development options regarding property within the City. However, such meetings are non-binding; in as much as the City reserves the right for formal comment and analysis only upon submission of a complete development application, in which there was none at this time. There is no current application for the Creole and Mid-Station sites for the Sweeney Master Plan. If you need formal responses to your questions posed in your letter, I suggest you direct the Sweeney's to file an application for a conditional use approval pursuant to development parameters conditions of the Sweeney Master Plan. As stated in Number One of the development parameters and conditions of the Sweeney Master Plan, at the time of conditional use or subdivision review, the Staff and Planning Commission shall review projects for compliance with the adopted Codes and Ordinance in effect at the time, in addition to ensuring conformance with the approved master plan".

Mr. Harrington stated that the sentence that Mr. Ferrin referred to was a follow up to that. He believed it was consistent with Staff's current analysis regarding unit equivalents and the measurement thereof; not the disputed aspects of accessory uses and support commercial uses and other uses that are in effect. The Staff disagrees with the characterization that they are vested in those additional or amounts of those additional areas. There are many nuances to this. There are many gray areas. Mr. Harrington agreed that this was a unique situation on both counts. Not only have the applicants showed tremendous diligence and patience with this process, but so has the City. The City Staff has gone at great personal risk to go out of their way to explain why the applicant has the rights that they have so many years after the 1985 approval. This is unique. The City has stood for that right to pursue their approvals in conformance with the Master Plan and our Codes, and we will continue to do so. They will ensure fair due process and he believed the applicant has had that to date.

Mr. Harrington commented on the language that was used just today. When referenced in the past it was a directive. When referenced moving forward it is a dialogue. Which one is it. He stated that the choices to amend their application with preliminary comments from Staff, the Planning Commission or the public are just that. They are choices by the applicant. They are not directives from anyone else until the Planning Commission votes. The only directive they can do is vote. Mr. Harrington noted that the Sweeney family has shown great patience and worked very well with Staff over the years. That is not disputed. He hoped that as the lawyers have to banter moving forward to a decision that they do not lose sight of that on either side, and they do not take cheap shots at either side. The City

and the family have worked in good faith to one another and he thought they would continue to do so if the lawyers do not get in the way.

Mr. Harrington referred to the last sentence he read from the 1999 letter, which references back to the master planned development. He stated that the hardest job the Staff has had and one the Planning Commission will have in making a final determination is parsing some of these areas where the application has a bit of a conflict or a gray area between the 1986 approval and the 2003 Land Management Code. He believed there were areas where they all want to pick and choose different ones to apply to have the best possible outcome. The applicant does this and the Staff has as well in the past. He believed that created some of the give and take back and forth. He did not think there was any mystery about some ulterior motive or any turning point. Any reasonable person who reads the minutes of those past Planning Commission meetings could not possibly come to the conclusion that everything was rosy and picture-perfect, and then changed at the drop of a dime. That's absurd. Mr. Harrington stated that they were struggling with the conflict between what was approved and what was left to a subsequent process 20 plus years later. In good faith, as they work through those issues, he hoped they would not lose sight of that.

Chair Strachan opened the public hearing.

John Stafsholt stated that he was representing THINC this evening. He introduced their legal counsel, Charles Stormont, who THINC has on retainer. Mr. Stafsholt stated that Mr. Stormont would speak first and he would follow with a slide presentation.

Charles Stormont, representing THINC stated that THINC includes hundreds of Park City residents, business owners and homeowners who are very concerned about the Treasure Hill Development proposal and the profound problem it will create for Park City as a community. Mr. Stormont commented on Exhibit X on page 125 of the Staff report, which was a memorandum prepared by the applicant that addressed issues raised by the Staff report. He appreciated Mr. Ferrin's presentation, and he also intended to talk about history. Mr. Stormont believed they would hear from THINC that the presentation and the letter presented by the applicant did not do full justice to the history. There are pieces of that history that need to be considered. If they have to abide by history, then they should abide by all of the history. Mr. Stormont suggested that it was not the proper legal standard as Jody Burnett spoke to earlier in his discussion with Planner Astorga.

Mr. Stormont stated that in the past the applicant has quoted extensively from the 1985 MPD Findings with respect to compliance with the General Plan, and they used a number of quotes. THINC has pointed out that what was approved and what is currently proposed differ significantly by hundreds of thousands of square feet. The

prior findings have no basis or applicability to the current proposal. Mr. Stormont noted that they are now seeing a slightly different version of that argument. Arguments are being presented with respect to findings made by Staff in 2004 and 2005 being applied to the current proposal. As indicated in the Staff report from the last meeting, the proposal currently before the Planning Commission has changed significantly since 2005. There may be a fair argument over the characterization of those changes and whether they are a refinement of what was originally proposed, or they constitute a material change. Mr. Stormont did not believe they needed to get into those characterizations at this point, but there is more information, and that additional information includes more than 167,000 square feet that were not part of the information submitted to Staff in 2004 and 2005. That is an increase in almost 20% of the total square footage that is part of the proposal. Mr. Stormont thought that significant change was critical in understanding why THINC suggests that the prior findings are meaningless. Aside from that issue, there is a different proposal being considered now and they need to look at that proposal.

Mr. Stormont commented on the argument that was made with respect to findings about the General Plan in 2004 and 2005. Another argument related to support commercial and meeting space issues. He read from the Staff report, "The applicant suggests that these reports demonstrate what the City has consistently represented to the applicant, that the 2003 LMC resolves the support commercial question from 2004 to (blank)." Mr. Stormont appreciated that a draft was submitted, but there is no way to know through what time period.

Mr. Stormont suggested that there was another piece of significant information, which is the April 22<sup>nd</sup>, 2009 letter from Mr. Burnett. In that letter, Mr. Burnett states, "The provisions of the LMC in effect as of the date of that original approval in 1986 should also be applied to the calculation of any additional meeting space and support commercial areas without requiring the use of unit equivalence of density. That is up to 5% of the total floor area within a hotel may be dedicated to meeting rooms and support commercial areas without requiring the use of a unit equivalent of commercial space". Mr. Stormont noted that attacks were made on the experience of some of the prior Staff. He did not think it was appropriate and he did not think anyone would question the experience or expertise of Mr. Burnett. His conclusions are important and he encouraged the Planning Commission to consider them with the seriousness that everyone does. Mr. Stormont noted that the applicant did not address Mr. Burnett's legal conclusion. Instead they suggest that the Planning Commission should abide by history. However, THINC would argue that only part of the history has been presented by the applicant. The applicant suggests that millions of dollars have been spent. Mr. Stormont stated that in their July 22<sup>nd</sup> letter to the Planning Commission, THINC explains why some of those expenditures are irrelevant. The MPD may create a vested

right, but THINC disagreed with that conclusion. If that is the position of the Planning Commission and the City, that is as far as it goes with respect to vested right. Additional work is irrelevant. He cited a case in which it was ruled that a development approval does not create independent free floating vested property rights. The rights obtained by the submission and later approval of the development plan are necessarily conditioned upon compliance with the approved plan. Mr. Stormont stated that similar language appears within the 1985 approved plan. They must ensure not only compliance with the 2003 Land Management Code and the conditional use requirements set forth, but also compliance with the limitations set forth in the 1985 and 1986 MPD approval.

Mr. Stormont remarked that the question of history was interesting. Mr. Harrington spoke to the hard work and good faith of everyone involved. He did not think it should be discounted. However, as they heard earlier from Planner Astorga and Mr. Burnett, the issue on the legal question such as support commercial and meeting space, and how much is vested and counts toward unit equivalents, is a question of correctness. They must get it right under the law. History and abiding by history does not dictate what the law is or what the law demands. Mr. Stormont referred to a quote by a Justice who got a prior opinion wrong and later admitted he got it wrong. He quoted the Justice, "Wisdom too often never comes and so one not ought to reject it merely because it comes late." Mr. Stormont stated THINC agrees with Mr. Burnett with respect to the support commercial and meeting space analysis that he has put forth, and they believe it is correct. They ought not to reject this correct legal conclusion simply because it came in 2009. Mr. Stormont thought they should move forward and rely on that conclusion because it is in fact correct.

Mr. Stormont noted that the applicant suggests that the General Plan is not a sufficient basis to deny the CUP application because the purpose and intent language is not substantive law and it is irrelevant. He believed it was very relevant and the 2003 LMC is very explicit about why the General Plan needs to be considered. As part of the CUP process, it expressly states that, "The City shall not issue a conditional use permit unless the Planning Commission concludes that the use is consistent with the Park City General Plan as amended". It is one of the legal criteria that must be considered by the Planning Commission. THINC believes the Staff analysis and conclusions with respect to non-compliance with the General Plan are spot on, and he encouraged the Planning Commission to review those carefully and to draw their own conclusions.

Regarding the issue of re-opening the MPD approval was discussed on page 133 of the current Staff report. Mr. Ferrin suggested that Planner Astorga was relying on Mr. Burnett's discussion of Section 1.22 of the 1985 LMC, which is the provision that deals with changes in zoning while an application is pending. Mr. Stormont did not believe

that Mr. Burnett's letter discusses that particular provision. He was unsure where the applicant was driving that argument. He did not see it in the public record or in Mr. Burnett's letter. Mr. Stormont thought there was a certain irony in that the applicant was now trying to dismiss Section 1.22. He encouraged them to look at page 115 of the July 13<sup>th</sup> Staff report, where the applicant's letter stated that it should be permitted to take advantage of changes in zoning that would permit greater density or more intense use of land. Mr. Stormont noted that it was part of the justification that was offered a few months ago for expanding density and requesting more information. The applicant is now rejecting that same provision of the LMC when it comes to re-opening the MPD. Mr. Stormont read from the applicant's letter in the current Staff report, "The 2003 LMC applies to all matters related to the review and approval of the 2004 CUP application". THINC agrees with that statement. He read from Section 15-6-4(i) of the 2003 LMC, "Changes in a Master Planned Development, which constitute a change in concept, density, unit type or configuration, or any portion or phase of the MPD will justify review of the entire Master Plan and Development Agreement by the Planning Commission, unless otherwise specified in the Development Agreement. If the modifications are determined to be substantive, the project will be required to go through the pre-application public hearing and determination of compliance as outlined in Section 15-6-4(b)". Mr. Stormont pointed out that the 2003 LMC not only permits, but it demands that the 1986 MPD approval be revisited if the applicant persists in the current application and seeking what it seeks now. He stated that the substantive and significant changes from the 1985-1986 MPD are tremendous, and the Staff highlighted them extensively on page 86 of the current Staff report.

Mr. Stormont thought the site visit was helpful. Mr. Stafsholt was prepared with a presentation on the Craig Elliott model. During the site visit they learned that the model was stored away. He believed the pictures Mr. Stafsholt would present are very telling and they show side by side what was shown in the Woodruff drawings, what was approved, and what is currently proposed. Mr. Stormont stated that if the current proposal mass and scale is what the applicant seeks, the only proper course is through the modification process set out in the 2003 Land Management Code. He pointed out that the same process still exists in the current LMC. If the applicant does not want to re-open the MPD, the Planning Commission decision is straight-forward. They should deny the CUP application because it does not conform to the density limitations set forth in the approved MPD from 1986. It is far in excess as the Staff has outlined a number of times. Mr. Stormont asked the Planning Commission to review their discussion in the July 22<sup>nd</sup> letter that THINC submitted if there are additional questions with respect to the applicability of the 2003 LMC regarding additional claims to vested rights.

In terms of the proposed work session, Mr. Stormont requested that they pay close attention to the open meeting requirements set forth in the Utah Code so the public is made aware and has the opportunity to be involved.

Chair Strachan assured Mr. Stormont that the work session would be publicly noticed in advance.

John Stafsholt, representing THINC Park City, rebutted some of the comments Mr. Ferrin made in his presentation. The first is that the purpose of a CUP application is to mitigate the size of the project and not to add square footage as Mr. Ferrin had stated. Mr. Stafsholt believed the numerous quotes Mr. Ferrin read were out of context. He requested that the representatives for the applicant be required to use quotes shown in full context with the Staff report cited because it might tell a different story. Mr. Stafsholt remarked that if all the quotes read were accurate, there would have been no reason for MPE to pull the project before a vote in 2009. According to Mr. Ferrin there was great support for the project in 2004 and 2005, and the applicant actually did additional work in 2006 based on that support. Mr. Stafsholt stated that he and many others in Park City were around in those years and they have never seen strong support for the Treasure Hill projects that have come forward since 2004. He reminded everyone that Staff reports are not approvals, and only the Planning Commission can approve a CUP. Mr. Stafsholt noted that many statements were made about the full transparency of the project. However, after MPE pulled the project prior to a vote in 2009, all other project discussions were in private for over six years. Regarding Mr. Ferrin's comment about the applicant giving the City 100+ acres of open space, Mr. Stafsholt noted that in 2004 the project was 11.5 acres. The rest was Estate Zoning in 1985. That Estate Zoning has very low density, it is mostly unbuildable. Mr. Stafsholt pointed out that the open space gift of ROS Zoning is equal to the Estate Zoning that the project had in 1985.

On the issue of size, mass, scale, volume, and density, Mr. Stafsholt stated that Treasure Hill is located within the Historic District, and it is important for the project to be compatible with the scale already established. In addition, the Historic District Design Guidelines are also in effect, per the 1985 MPD approval. Mr. Stafsholt emphasized that the Historic District Design Guidelines, the LMC and the Park City General Plan all apply to this project; and the most restrictive of those documents must be followed.

Mr. Stafsholt presented slides showing Treasure Mountain as it exists today, and Treasure Mountain with the Treasure Hill project imposed. He noted that during the site visit they talked about the height from the front of the buildings where the height was lowest, but it was difficult to understand the depth of the excavation. The applicant tried

to explain it, but they were unable to go up the Mountain side to see the tops where there will be excavation of 140' and 150'. It was talked about from below where it does not look so bad.

Mr. Stafsholt presented a picture showing the 150' cut visible from Deer Valley Drive. He pointed out that the numbers came directly from the Sweeney's. Looking from Heber Avenue, a 140' cut was visible. Another picture showed a 110' cut. Mr. Stafsholt pointed out that the 110' cut moves into the 150' cut. These are vertical scars and that type of cut requires drilling and shooting and different charges.

Mr. Stafsholt presented a diagram showing the cuts and noted that the red line around was the MPD zone. He pointed out that some cuts were quite far outside of the MPD zones, and no one can explain why that occurs. Mr. Stafsholt thought it was important to understand that within that 11.5 acres, every tree, bush and blade of grass will be gone. In addition, it will be excavated at least 20 feet, and 150' feet in the high spots, so they lose the trees and the ground. Mr. Stafsholt remarked that per LMC 15-6-7, the project shall be designed to fit the site, not the site modified to fit the project. He believed this project was completely opposite from that requirement. Mr. Stafsholt provided examples of what the applicant is proposing to do that was different from what was proposed in 1985 or 2004. He explained what was being done to make the Mountain fit the project instead of making the project fit the Mountain. Mr. Stafsholt stated that in 1985 the project was set to fit the grade. He indicated the existing grade, represented by a green line, and a red line showing the maximum building height. The shaded area was the space that was envisioned in 1985 to be built on.

Mr. Stafsholt noted that THINC had asked for story poles for the site visit because it would be easier to see the footprint. He understands that story poles are a commitment, but it was difficult to visualize size and height without it.

Mr. Stafsholt stated that several people had asked for a 3-D model, unaware that a 3-D model was done years ago. He noted that the model was a smaller design and there was no development in the Mid-Station site. The model showed no excavation on the sides. He again commented on the significant amount of excavation that will now be required due to the changes in the project. The current proposal is so different from the 3-D model he was not surprised it could not be found or was in disrepair. Mr. Stafsholt presented additional slides showing the cuts required for excavation for the project.

Mr. Stafsholt stated that from the model and the current project they were looking at 1.1 million square feet. That would be the same square footage of as Park City Walmarts at Kimball Junction. Mr. Stafsholt outlined the negatives associated with this project as proposed. There would be 250,000 square feet underground, some building going as



deep as five stories underground; 100'-150' permanent excavation scars visible from all over town; blasting and dynamite required to accomplish the excavation; 13 buildings, many over ten stories; removal of greenery; drastic changes to every house below the project; drastic changes to the drainage; and environmental damage such as toxic waste disturbance and drinking water contamination. Mr. Stafsholt stated that this was a conditional use permit, but the impacts are irreversible and not conditional.

Mr. Stafsholt noted that at the last meeting four people who were on the Planning Commission and the City Council in 1985 and 1986 provided comment and made it clear that what the applicant requested at that time, and what was approved, were residential units and not a hotel. Ann MacQuoid emphasized that what the Planning Commission and City Council approved were residential condo units. They did not approve a hotel of one, two, three, four or five stars. Mr. Stafsholt presented a slide with language from the 1983 LMC, which governs the original Master Planned Development. He reviewed the Land Use Table from 1983. He noted that hotels in the HR-1 were starred, and the stars indicated that hotels were prohibited uses. Mr. Stafsholt pointed out that the applicant was using residential and transient lodging as the use, and calling it a hotel. Mr. Stafsholt noted that Mr. Ferrin stated several times that the use has been the same throughout the history of this project. He disagreed with that statement because everything imaginable has been in this plan. Mr. Stafsholt reiterated that the 1983 LMC governs the use.

Mr. Stafsholt stated that this proposal was not anywhere close to being in compliance for a CUP. The Sweeney's had an MPD approved and finalized in 1986, but nothing has been built for 30 years because the approval requires a CUP to build anything. The CUP is required because the project is not an approved use in the Historic zones within which they want to build. If the project did not keep getting bigger, the project might have been approved many years ago if they proposed what they were approved for. Mr. Stafsholt noted that the Sweeney's have come to the City and the Planning Commission many times over the last 30 years, and no CUP has ever been approved with good reason. The size, mass, scale and densities are always too large and impactful, and each time they come back the design is larger and more impactful. He did not believe this project was a conditional use. A conditional use permit can be revoked if the applicant fails to meet the mitigations. There is no way to revoke 150' high vertical excavations in the hillside.

Mr. Stafsholt stated that for him personally, not speaking for THINC, he believes a new MPD application is required for this project due to the extreme modifications over the years, as called for by the Land Management Code. He outlined the modifications that have occurred and other reasons that support a new MPD. This project is not in compliance and it should be denied.

Neals Vernagaard, a resident at 822 Lowell, commented on the issue of a side work session discussion. He is the Treasure for THINC, and from THINC's perspective, there have been way too many meetings on the side.

Chair Strachan stated that there would be no side meeting. The work session meeting that was discussed earlier would be an additional meeting that is fully noticed and the public would be invited.

Mr. Vernagaard clarified that he was referring to the meetings between the City and the applicant after 2009. He understood that a group of people got together to come up with some type of resolution. Those meetings were so quiet that no one is allowed to release minutes or any other information.

Chair Strachan explained that those meetings were settlement discussions where the applicant tried to reach a legal settlement with the City, which is confidential by law. There were no Planning Commissioners or a quorum of decision makers at any of those meetings. The public was kept from those meetings as required by the confidentiality that Utah law imposes.

Mr. Vernagaard explained that THINC is nervous about closed door meetings because of what occurred in the past. He stated that the residents are the ones who are impacted. THINC put up signs all over town and hired an attorney because it is not even close to a win/win solution. It is not even a win/lose situation. It is a win and get crushed situation. He remarked that anyone on the north side of this development that lives near there will lose the equity value in their homes and their lifestyle will be crushed. For that reason, they are nervous about any type of meetings where the public cannot participate. He believed the members of THINC have done a good job of mostly speaking through their attorney, but he asked the Planning Commission to allow the public to participate in any conversation and discussion related to this project. He also suggested that if the purpose of the work session is for the attorneys to say the applicant is right and everyone else is wrong, it would be a waste of time.

Ann MacQuoid stated that a number of the points she was going to comment on have already been addressed. However, she wanted it clear that at the time of the MPD approval the City Council was strongly influenced and very cognizant of the Historic District Commission and the Historic District Guidelines. She realized that both have changed over the years, but the spirit of the agreement under which the MPD was approved was with regard to the Historic District Guidelines. Ms. MacQuoid stated that with regard to history, the City Council and the Planning Commission within the City limits of Park City have always been extremely careful and very wary to change the

Land Management Code. She recalled that until 2003 the Land Management had not been changed since the 1980's. It demonstrates how serious everyone takes that document. Ms. MacQuoid pointed out that these documents are intended not to replace or change previous documents in the LMC, but rather are intended to reflect the day in which we live. She believed the LMC carefully does that, but with respect to the fact that what was previously planned or approved could not be tossed aside because of new regulations. Ms. MacQuoid stated that it was her personal opinion and she may be wrong from a legal standpoint, but approvals that were given should not be tossed aside unless there is an overriding effect on the community. She remarked that when this Master Planned Development was approved in 1986, the Council asked that the applicant come back for a conditional use. That was done throughout the history of approvals of large scale MPDs in Park City for the reason that they are predicated and only would be approved because of subsequent applications and step by step approvals. Ms. MacQuoid noted that when the Treasure Hill MPD was approved in 1986 there were no buildings on Lower Main Street. The Town Lift had been approved but was not yet constructed in 1986. She wanted everyone to think about the impact that a very large scale development would have had in the 1990s, as compared to 2016.

Jim Tedford, representing Preserve Historic Main Street, stated that this group has been working for the last four years to get an acceptable project on the corner where the Kimball Art Center was located. Within the last few months he believed they have succeeded in doing that. It has come a long way since some of the earlier proposals and he was looking forward to something that fits on Main Street. Main Street is one of the biggest attractions in Park City and it is important that they treasure Main Street and take care of it because it is fading all the time. Mr. Tedford read a quote from an article that Ann MacQuoid had written in the paper. "As to the intent of the elected, appointed and employed City Officials, the absolute goal was the protection, preservation, and enhancement of Historic Main Street and the surrounding Old Town neighborhoods. The heart and soul of Park City was, and is today, Main Street and our Historic District. Saving Main Street both economically and aesthetically was always a goal. We faced many tough decisions in the late 1980s and 1990's, but none that threatened the fabric of our Historic District more than what is now called the Treasure Hill Master Plan". Mr. Tedford stated that they have to save the Historic District and this project needs to be modified in order to do that.

Annie Lewis Garda, a neighbor to the project, agreed with Attorney Ferrin that understanding the history is very important. She agreed that what the applicants proposed in 1985/1986 were residential units, and the Planning Commission and City Council approved residential units. Ms. Garda questioned why they were spending time on trying to accommodate square footage for a five-star hotel, when a hotel was neither

in the application or the approval. Ms. Garda stated that the other part of the history is what Attorney Ferrin called the mystery of Kirsten Whetstone's report. As Planner Astorga pointed out earlier, it is the role of the Staff to make recommendations and express opinions. It is the role of the Planning Commission to make decisions. Ms. Garda noted that after that particular report, then Commissioner Jim Barth, presented a list of 20 things which he felt had either been failed to be investigated or had been evaluated erroneously. Katie Cattan was asked to take over at that point to more thoroughly investigate those things, and she became the Planner for the project. Ms. Garda remarked that the Planning Commission repudiated or disagreed with large portions of the Staff report Mr. Ferrin had referred to. That was the reason why more reliance was given to the report written by Katie Cattan.

Gary Knudsen thought it was good to hear both sides. He wondered what the project would be like when it is built and what affects it will have on the town. He noted that a football coach tells the team what they did wrong after the fact, but he hoped the Planning Commission could think ahead and tell them now what could be done to avoid the problems. Mr. Knudsen could not find where the traffic flow has been discussed. He sympathized with both sides and he could understand how people feel. However, he had concerns about the traffic coming down Lowell and Empire and down Manor because there is only one road going out down Empire to the main traffic light. Mr. Knudsen thought the plan was only showing one access in and out. In the winter the Resort blocks the road so people cannot go down Lowell. The traffic all merges at Empire and Manor Way. He suggested sending traffic down 8<sup>th</sup> Street, but nobody wants traffic.

Chair Strachan informed Mr. Knudsen that traffic and access issues would be discussed in detail at a future meeting dedicated specifically to that topic. He encouraged Mr. Knudsen to continue attending these meetings because it will be helpful to hear public input from the people who live on those streets.

Mr. Knudsen appreciated their time and he wished them good luck.

Deb Stafsholt referred to the 245,000 square feet for parking wanted to know how many parking spaces that would be. She pointed out that it was a volume question.

Chair Strachan agreed that it was a volume issue; however, there is a lot of interplay between all the issues and the Planning Commission was trying to be careful not to look at them through a microscope. He stated that her continued assistance in helping them remember all of the issues would be appreciated.

Ms. Stafsholt stated her agreement with all previous speakers.

Chair Strachan closed the public hearing.

Mr. Ferrin asked to clarify his response to Commissioner Band when she asked if they would be willing to revise the plan as they work with the Sketch-up. He misinterpreted her question and thought she asked if they were willing to change the entire plan. Mr. Ferrin stated that the applicant is always willing to listen to the Planning Commission and consider their comments. They encourage the directive and the discussion.

Commissioner Band clarified that her question was whether the work session would be an opportunity to discuss ideas back and forth. Mr. Ferrin replied that the applicant is always willing to discuss issues and consider input to make design changes with respect to the plan.

Commissioner Thimm stated that building areas and volume were very inter-related. He noted that page 89 of the Staff report talked about the entitlement and what was put in place with the MPD. He understood the 197 residential UEs and the 19 commercial UEs were an entitlement. With regard to trading units between Creole Gulch and Mid-Station, Commissioner Thimm thought it was very clear where the UEs were to be spent; and that is where he expects them to be spent. In terms of area, Commissioner Thimm commented on the 1985 LMC versus the 2003 LMC, and the application of the 5% rule. He recalled question that was raised about whether there was ever a reason for any type of change. Commissioner Thimm noted that page 92 of the Staff report contained an excerpt from an April 22<sup>nd</sup> 2009 letter that the hired Counsel, Jody Burnett, had written providing his opinion on the vesting. He stated that Mr. Burnett's opinion is the lens he intends to look through because it talks about the 5% and how it gets applied.

Commissioner Thimm noted that page 90 of the Staff report talks about the number of square feet that would be used for the 5%. In looking at the terminology of net and gross square feet, he was in agreement with the finding on page 90 regarding the net square footage for the hotel because it was very clear. Commissioner Thimm thought it made sense because it was not applying 5% and compounding circulation of back of house areas and adding to the total.

Commissioner Thimm stated that at the last meeting Chair Strachan had asked the Commissioners to look at the area. He went through and looked at the areas as proposed, and then looked very closely at the entitlement and the UEs. Commissioner Thimm stated that there were a lot of numbers to be considered, such as 1,016,000+ square feet; 875,000+ square feet, which is the interpretation of the Woodruff plan. However, he discounts the Woodruff plan because he knows how those plans are

generated and how the square footage is calculated based on the drawing. He did not believe it was the lens they should be looking through. Commissioner Thimm they should be looking what the entitlement is, and understanding the back of house space.

Commissioner Thimm stated that in looking at the proposal in terms of accessory and common circulation, there is over 309,000 square feet of area. If they include over 245,000 square feet of parking stalls, the result is more than half a million square feet. He ran through the numbers the best he could glean them, and taking into account the entitlement for the 197 UEs and the 19 UEs, and adding in the accessory back of house area and parking, he calculated 979,314 square feet. He explained that his calculation used the exact numbers that are there for parking, and the exact numbers there for circulation, back of house and accessory uses.

Commissioner Thimm commented on parking. He understood there was a total of 424 parking stalls, which is 578 square feet per stall. He was unsure how all the circulation worked, but most parking garages are designed to be in the realm of 375 to 385 square feet per stall, including circulation. Since area and mass is a major part of this discussion, Commissioner Thimm wanted a better explanation as to why there is that level of inefficiency in terms of parking. Commissioner Thimm stated that adding together the accessory space and the common circulation area, the result is 309,000 square feet. In comparison with the 1.01 million square feet, it is over 30% of the area. Again, he would like to understand why there is that much inefficiency. He challenged the applicant to relook at the efficiency of the design and determine if some of the mass and bulk in the project could be eliminated by becoming more efficient in the back of house areas and in the parking. Commissioner Thimm stated that if he takes just the parking at 385 square feet per stall, his calculation is 897,491 square feet.

With regard to building mass and bulk and how that is put into the site, Commissioner Thimm noted that some of the cross sections have massive cuts and an amazing amount of dirt will have to be moved. In thinking of what happens in these zones, he strongly believes the LMC tells them to look at designing a building and designing a site in such a way that honors the land and steps with the mountain, rather than cutting a huge bench into it and building a building.

Commissioner Thimm commented on the fire protection plan. Having been part of many conversations with the fire department or other AHJ as a designer, they look at what he submits, but they never say it is the only way. If there is a solution that lessens bulk, mass and other major issues, it should be looked at. He suggested scheduling a new meeting with the AHJ if there can be a win/win situation for everyone.

Chair Strachan thanked Commissioner Thimm for his efforts and calculations. Before they begin to talk about mitigating impacts they need to understand the methodology they will use to arrive at a square footage, and from that how those impacts could be mitigated. Commissioner Thimm clarified that he was not endorsing any of the numbers he mentioned. It was merely his take on the surface. They were a long way from the end and many discussions still needed to occur before they reach the right numbers. Commissioner Thimm understood that there may have been differing opinions among Planning Staff over the years, but they need to look at this through the lens of the LMC and what the Planning Commission uses to make a good, honest, conscious decision.

Commissioner Suesser commented on the applicant's timeline and their discussion regarding support commercial. When Mr. Ferrin put up the timeline, he stated that all that was approved by the MPD was the 198 UEs for residential and the 19 UEs for commercial, and that they needed to look at the 2003 LMC to calculate the support commercial. She pointed out that Mr. Ferrin neglected to mention that the original MPD in 1985-1986 addressed the support commercial issue. It stated that in addition to the 19 UEs of commercial, the applicant was awarded 5% of the total hotel floor area; not 5% of the total project. Commissioner Suesser questioned why the applicant had not addressed that discrepancy, and why they did not think the hotel floor area specifically states in the original MPD and reiterated by the Staff and Mr. Burnett, was the appropriate percentage and the proper percentage to calculate with respect to support commercial.

Commissioner Suesser referred to the number that she calculated at the last meeting, which was 628,346 square feet. That is the total vested density that she finds in the documentation. It is consistent with the Staff findings and with the guidance that Jody Burnett provided.

Commissioner Suesser had comments on Criteria 8, 11 and 15, which were talked about in great length in the Staff report. However, she understood that the mitigation issues would be discussed during the work session and at the next meeting, and she would reserve her comments until then.

Commissioner Band believed she had given most of her comments at previous meetings. At this point she found nothing compelling that would make her disagree with Staff either now or in 2009. Commissioner Band noted that in his presentation Mr. Ferrin stated that they must go down to mitigate. However, the water shed and soils and excavation that will be required will take more mitigation. Commissioner Band thought it was drastic to go up there, and she agreed with Commissioner Thimm that the LMC commands them to honor the ground; not just now, but in 2003 and 1985.

Commissioner Band thought the Woodruff plans were attached to the MPD for a reason. Maybe not to be used exactly, but the idea of it was what was approved. The Woodruff plan definitely honored the land much more so with far less excavation. Commissioner Band thank Mark Harrington for his comments, and for reminding everyone that whatever the Staff says, the Planning Commission grants the CUP. The Staff gives their opinion and it is a working relationship.

Commissioner Joyce thanked the applicant for the site visit and the packet they handed out. He also liked Commissioner Phillips idea of Sketch-up and he was pleased that the applicant was interested in using it. He pointed out the concerns about excavation, and asked if there was any way to incorporate into a view of what would be visible to other people. He thought it might help speed along the process.

Commissioner Joyce remarked that some of the public comments they hear are not always the case. This evening they heard that Treasure would be the biggest convention space in Summit County and Park City. He noted that the Montage has more meeting space that what Treasure has asked for, as documented in the last Staff report.

Commissioner Joyce thought it appeared that the applicant was looking to the Planning Staff for approval. Obviously, it was clarified that the Planning Staff do not give approvals. He noted that there are many times when the Staff provides a recommendation and the Planning Commission has disagreed. Commissioner Joyce echoed others in saying that there is no approval until there is a vote by the Planning Commission.

Commissioner Joyce apologized if his comments at the last meeting regarding the fire plan offended Mr. Ferrin. It was certainly not his intent. His point was that Mr. Ferrin kept saying that much of the reason for the deep cuts and the push backs was based on their work with the previous Planning Commission and Planning Department. He was surprised to find that in the back of the fire agreement, which preceded the applicant ever submitting any application to the Planning Commission, that the applicant already had the excavations and retaining walls. He felt like the applicant was implying that the City forced the cuts, when in fact, before the CUP application was filed they already had changed from the Woodruff plan which followed the topography, to one with a big plaza area and they basically cut into the earth.

Commissioner Joyce understood why the applicant worked with the Fire District, but he was fairly certain that they were not looking at traffic, toxic soils or anything else when they approved the fire plan. He was surprised to hear that the applicant based a lot of the project on the fire plan. Commissioner Joyce remarked that everything is woven



together and it all has to work together. There is no one aspect that is guaranteed. It has to be resolved as one package. Commissioner Joyce understood that the fire plan is a condition of approval of the MPD, but the fact that it was done before a CUP was submitted to the Planning Commission is irrelevant if nothing else works because of it.

Commissioner Joyce referred to the pictures on page 101 of the Staff report that were submitted by the applicant, and he had also looked at the avi files on the Treasure website. He felt like he was in tunnel vision, and he was unable to visualize mass and scale from the pictures or the video. In the future, he would prefer a broader view.

Commissioner Joyce stated that when he looks at circulation, back of house, parking, meeting space, he believed that Treasure was in line with the Montage and the St. Regis, which are the most direct comparisons. From pure square footage in general, Commissioner Joyce thought he was at the higher end. His number was closer to Commissioner Thimm than Commissioner Suesser.

Commissioner Joyce commented on the amount of circulation and accessory space and noted that if they were building this out in Quinn's Junction he would be comfortable with it. However, they are building on the side of a hill in Historic Old Town. It is steep property with a lot of issues. He thought the applicant had put themselves in a position where it would be difficult to mitigate most of the issues. Even though he might agree with the ratios of the total square footage, he is not convinced that they can put that amount of square footage on that space and mitigate the 15 criteria associated with the CUP.

Commissioner Joyce commented on support commercial. He was the one who requested all the documents from 1985 and 1986, and one recurring theme is that the commercial would basically support the internal functions of the hotel or condos, and the purpose was to build bed base for Main Street. Commissioner Joyce stated that the zoning that was up there was HR-1 and Estate, and neither of those zones have commercial. Therefore, there was no inherent commercial. However, as part of the negotiations, he assumed the applicant made a case for why they needed commercial. He was surprised that the exact number approved was 5% of the residential, but he thought it was very explicit. Commissioner Joyce noted that on the notes of the MPD, it says, "The approved densities are those attached as an exhibit, and shall be limited to those maximums identified thereon". He could not understand why they were talking about 5% or additional commercial, because for all of the gray areas, he believed this one was very specific. Commissioner Joyce was opposed to adding anything beyond 19,000 square feet of commercial until someone explains why that clear statement does not apply. He believed that everything the applicant keeps adding is in direct conflict with providing beds for Main Street.

Commissioner Joyce stated that excavation is his biggest issue for many reasons. The applicant has talked about Woodruff being a conceptual plan, and in looking through the minutes of 1985-1986, it is not a conceptual plan. It is the conceptual plan. There is a lot of discussion about all the different alternatives they eliminated, how they moved the clustering, how they added height and how they reached an agreement. He noted that the applicant keeps saying that the City Council and Planning Commission knew they were approving a tall project on the side of the mountain right above Old Town. In his opinion, all the decisions that were made in terms of clustering in the gulch and how the height was set back and how it stepped back with the hill, that was the agreement and it is attached as part of the MPD. It is the plan that everyone agreed on. Cutting a flat plaza, it is dramatically different than what was approved, and the impacts are horrendous. Commissioner Joyce believed that many of the impact issues they will be working through are present because the proposed CUP so different from the Woodruff plan that was selected by the 1985 Planning Commission and attached to the 1986 approval by the City Council. Commissioner Joyce stated that mass and scale will be major issues for him in terms of why they are looking at something so dramatically different from what was approved.

Commissioner Phillips agreed with all the comments of his fellow Commissioners. He specifically agreed with Commission Thimm, regarding looking through the lens of Jody Burnett's statement. He also agreed with the Staff's conclusion on hotel space in general. Commissioner Phillips was impressed with the thought that was put into the square footage amounts, although, he may come up with a slightly different number. However, that is the maximum and it may have to decrease to mitigate the many other impacts of the project. Commissioner Phillips echoed the comments that the design should fit the land.

Commissioner Phillips agreed that the numbers for back of house, etc. were in line with other hotels. However, those hotels are meant to draw in people and they may have different types of space. He did not believe Treasure Hill was intended for that purpose. He was excited to see the Sketch-Up model and he was pleased that others were looking forward to that as well. He thought it would be the best representation to date, and in preparation, he thought it would be wise for the Planning Commission to provide some direction on what they would like to see to help the applicant be more prepared.

Commissioner Phillips suggested that they start with the request of previous Commissioners as found on pages 106 and 107 of the Staff report. There were a lot of perspectives that have been requested and he believed that was a good list. He suggested that they look at them to see which ones might be the best points.

Commissioner Phillips wanted to know more about the design from the architect's perspective. He would like to know the methods used to mitigate scale and mass, because that is a huge mitigating factor. He was sure a lot of thought went into different techniques to accomplish that mitigation. He would also like to hear what the architect was thinking when it came to designing this project to fit into this particular property. Commissioner Phillips was interested in hearing how the process occurred and how the project got to where it is because that tells a lot.

Commissioner Phillips thought the Woodruff plans were interesting. At times they can discuss it as what was expected and what should be done; but other times it is considered as just a concept. The Woodruff plan is used to come up with some of the numbers, but they cannot say it applies in that aspect but not when it comes to the anticipated excavation or some other aspect. He thought they needed to decide whether or not they were working off of the Woodruff drawings, and what bearing they have. Commissioner Phillips thought it would be beneficial to make that decision as a group on both side of the table.

Commissioner Phillips wanted to know how much time would be spent on volumetrics. Director Erickson stated that he planned on at least two meetings. He noted that these are conditional use criteria and the focus should be understanding the total volume, and secondly, the efficacy and accuracy of the mitigation strategy.

Commissioner Phillips reiterated his previous comment that he is reviewing this project against the 2003 LMC and the MPD. At this point the Woodruff is their best visual representation, and he is working off of that as well.

Commissioner Phillips was dismayed with the tone of the meeting this evening, and he heard it from both sides. Comments about who said what 12 years ago have no bearing on his decision. He only cares about the LMC, the MPD and the facts in front of him. Commissioner Phillips thought the applicant's presentation set the tone for the evening, and he was frustrated because he expected to hear more about the project itself. The community feeds off of that tone and he suggested that the applicant consider the tone they set when they prepare their presentations. Commissioner Phillips commended Commissioner Thimm for his comments. In his opinion, it was the turning point of the evening. He was also refreshed to hear the comments from the other Commissioners. It is important for everyone to stay focused on the project and the specific topic for each meeting.

Chair Strachan requested that John Stafsholt submit the slides from his presentation to Planner Astorga so they can be part of the record. Chair Strachan encouraged the

applicant to make the Sketch-Up drawing for the work session available to the public, the Planning Department, and Commissioner Phillips, who is familiar with Sketch-Up, prior to the work session. A one or two-hour work session is not enough time to present a Sketch-Up drawing without giving the Staff and the Commissioners time to analyze it. Members of the public who are familiar with Sketch-Up should also be given that opportunity.

Chair Strachan asked the question that Mr. Stafsholt had raised regarding the propriety of the retaining walls being outside of the MPD development line. He did not expect an answer this evening, but it was a valid question.

Like Commissioner Phillips, Chair Strachan preferred that the meetings keep a more factual tone. The applicant will get a fair hearing, but the Commissioners do not like being taunted. Their focus is to figure out the scope, scale, size and impacts of this application, and to apply the CUP criteria.

Planner Astorga thought they should schedule the work session for the next meeting. Director Erickson stated that the timing would depend on how soon the Sketch-Up would be available. If the Sketch-Up is not ready for the next meeting, Commissioner Joyce suggested that the applicant provide information on the reasoning for what they were proposing and how they intend to mitigate the impacts. He would like visual examples of viewpoints and what they did to make it acceptable. He thought they could have a useful intro meeting without the Sketch-Up. Director Erickson stated that the Staff would work with the applicant on scheduling a work session for the next meeting. There were other issues to talk about if the Sketch-Up was not ready.

MOTION: Commissioner Thimm moved to CONTINUE the Treasure Hill Conditional Use Permit public hearing to October 12, 2016. Commissioner Band seconded the motion.

VOTE: The motion passed unanimously.

**2. 158 Ridge Avenue – Steep Slope Conditional Use Permit for a new Single Family Dwelling (Application PL-16-03149)**

Planning Tech Makena Hawley reviewed the Steep Slope Conditional Use Permit application for a 158 Ridge Avenue. It is the third of three houses in the King Ridge Estate Subdivision. The applicant had submitted a Steep Slope CUP with a proposed square footage of 2,945 square feet. The total floor area exceeds 200 square feet and construction is proposed on a steep slope greater than 30%.

Director Erickson noted that there was a long history to this site and Planner Hawley had vetted out the issues in the Staff report. He supported her recommendation for approval.

Commissioner Thimm had read the Staff report and the long history, which included special exceptions and other items that were approved. He asked if those were all still in place or whether some had expired.

Planner Hawley replied that the only thing that expired was the previous Steep Slope CUP. The driveway had not expired and it was already in place. The plat amendment was approved and the special exception was approved.

Chair Strachan noticed that Director Erickson had given administrative approval on a height exception for the garage and circulation. Planner Hawley noted that the Code specifies a height exception for garage areas and circulation. Director Erickson explained that there were circumstances on a steep slope where if they literally applied the Code the garage would not be useful. An exception can be made to allow a garage but not allow the house to expand on the street. This was one of those cases, and the applicant was given the minimum possible to get a garage to work in that location.

Chair Strachan asked if administrative height exceptions were given to the other two homes on Ridge Avenue. Jonathan DeGray, representing the applicant, stated that the first home did not require the exception. The second home was granted an exception because it was a steep downhill lot. The plat specified placing the house to the front yard setback line. They were not pushing the house further down the hill. They had to start at the front setback line as required by the plat amendment. Mr. DeGray noted that the language of the plat allows a height exception for the garage up to 18' above the garage. He clarified that the garages did not exceed the 18' and the house complies with the overall 35' height in all cases.

Chair Strachan opened the public hearing.

There were no comments.

Chair Strachan closed the public hearing.

**MOTION:** Commissioner Joyce moved to APPROVE the Steep Slope CUP application for 158 Ridge Avenue, including the Planning Director's approval of a height exception for the garage on a downhill lot, in accordance with the Findings of Fact, Conclusions of

Law and Conditions of Approval found in the Staff report. Commissioner Band seconded the motion.

VOTE: The motion passed unanimously.

Findings of Fact 158 Ridge Avenue

1. The property is located at 158 Ridge Avenue.
2. The property is described as a Lot 3, King Ridge Estates.
3. The first 20 feet are at approximately 15%. The following 15 feet hold a steep slope of approximately 67% followed by 53 feet of a moderate slope of approximately 26% finished by the final 20 feet containing a steep slope of 70%.
4. The driveway, structure and rear deck are situated towards the front half of the lot consisting of a linear dimension of approximately 70 feet.
5. The proposed structure is situated over slopes that area approximately 67% which requires a Steep Slope CUP.
6. The lot is 131.07' in length on both sides, with a width of 55'; the lot contains 7,209 sf of area. Under the Plat requirements, the maximum allowable building footprint is 2,120 sf for a lot of this size and the proposed building footprint is 1,460 sf.
7. The King Ridge Estates Subdivision plat states the maximum floor area cannot exceed 3,030 sf; the proposed home has a floor area of 2,945 sf (this is excluding a 324 sf garage as the Plat Notes state garages up to 600 sf are not included in the overall floor area).
8. The vacant site is not listed as historically significant on the Park City Historic Sites Inventory and there are no structures on the lot.
9. The property is located in the HRL zoning district and is subject to all requirements of the Park City Land Management Code (LMC) and the Design Guidelines for Historic Districts and Historic Sites.
10. Access to the property is from a private drive from Ridge Avenue, an existing public street, an unbuilt right-of-way to be built by the applicant. The access drive is being built concurrently with development of each lot. Currently the drive is being constructed for Lot 1 and Lot 2 as these homes are under development and will

continue to Lot 3 upon building permit approval for Lot 3.

11. Two parking spaces are proposed on site. One space is proposed within an attached garage and the second is on the driveway in a tandem configuration to the garage.

12. The neighborhood is characterized by primarily historic and non-historic single family houses and vacant lots.

13. A Historic District Design Review (HDDR) application is currently being reviewed by Staff.

14. The lot is an undeveloped lot containing primarily grasses, weeds, and shrubs that are not classified as significant vegetation except for the lower portion that has a 30 foot "no disturb" protection area on the lot.

15. The driveway is proposed to be a maximum of 12 feet in width and 15 feet in length from the edge of the street to the garage element in order to comply with the plat note #13 of the King Ridge Estates plat note. The garage door is setback an additional 3 feet in order to place the entire length of the second parking space entirely within the lot and to comply with the LMC Parking regulations.

16. The garage element is located 15 feet from the front property line in order to comply with the King Ridge Estates COA requiring the garage element to be at the front setback. There is an indent of 3 feet by 9 feet in order to allow for the second parking spot to be placed entirely on within the lot.

17. The garage door complies with the maximum width and height of nine feet (9') and the grade of the driveway complies at 9.6% slope.

18. The garage does not exceed 18 feet in height above the garage floor.

19. The proposed structure complies with all setbacks.

20. The proposed structure complies with allowable height limits and height envelopes for the HR-L zoning district as the house measures less than 27 feet (standing at 27 feet) in height from existing grade (with the exception approved by the Planning Director for garage, circulation and ADA elevator standing at 28.5 feet above existing grade).

21. The structure is less than the maximum height of 35 (measures to 31.5 feet) feet

measured from the lowest finish floor plane to the point of the highest wall top plate that supports the ceiling joists or roof rafters, and the design includes a 10 foot step back at a height slightly below 23 feet.

22.The proposal, as conditioned, complies with the Historic District Design Guidelines as well as the requirements of 15-5-5 of the LMC.

23.The proposed materials reflect the historic character of Park City's Historic Sites, incorporating simple forms, unadorned materials, and restrained ornamentation. The exterior elements are of human scale and the scale and height follows the predominant pattern of the neighborhood.

24.Lot coverage, site grading, and steep slope issues are also compatible with neighboring sites. The size and mass of the structure is compatible with surrounding sites, as are details such as the foundation, roofing, materials, as well as window and door openings. The single car attached garage and off-street parking area also comply with the Design Guidelines.

25.No lighting has been proposed at this time. Lighting will be reviewed by the Planning Department at the time of the building permit for compliance with the Land Management Code lighting standards.

26.The applicant submitted a visual analysis/ perspective, cross canyon view from the east, and a streetscape showing a contextual analysis of visual impacts on adjacent streetscape.

27.There will be no free-standing retaining walls on the property that exceed four feet in height with the exception of the south façade that allows for an egress window which requires an approval of an Administrative CUP. The building pad location, access, and infrastructure are located in such a manner as to minimize cut and fill that would alter the perceived natural topography.

28.The final materials and design of the needed retaining walls on the property must be brought back to the Planning Department and the City Engineer for the final review prior to sign off by the City. Retaining walls exceeding 4 feet will need to be approved by the Planning Director and City Engineer with an Administrative CUP (LMC 15-4-2 (A) 1).

29.The site design, stepping of the building mass, articulation, and decrease in the allowed difference between the existing and final grade for much of the structure mitigates impacts of construction on the 30% or greater slope areas.



30. The plans include setback variations, increased setbacks, decreased building heights and an overall decrease in building volume and massing.

31. The proposed massing, articulation, and architectural design components are compatible with the massing of other single family dwellings in the area. No wall effect is created with adjacent structures due to the stepping, articulation, and placement of the house.

32. Building Height of the garage is 28.5 feet on a downhill lot; garage height may exceed 27' up to 35' on a downhill lot as approved by the Planning Director on June 24, 2016 per LMC 15-2.3-6..

33. The findings in the Analysis section of this report are incorporated herein.

34. The applicant stipulates to the conditions of approval.

#### Conclusions of Law – 158 Ridge Avenue

1. The CUP, as conditioned, is consistent with the Park City Land Management Code, specifically section 15-2.1-6(B).
2. The CUP, as conditioned, is consistent with the Park City General Plan.
3. The proposed use will be compatible with the surrounding structures in use, scale, mass and circulation.
4. The effects of any differences in use or scale have been mitigated through careful planning.

#### Conditions of Approval – 158 Ridge Avenue

1. All Standard Project Conditions shall apply.
2. City approval of a construction mitigation plan is a condition precedent to the issuance of any building permits.
3. A final utility plan, including a drainage plan, for utility installation, public improvements, and storm drainage, shall be submitted with the building permit submittal and shall be reviewed and approved by the City Engineer and utility providers, including Snyderville Basin Water Reclamation District, prior to issuance of a building permit.
4. City Engineer review and approval of all lot grading, utility installations, public

improvements and drainage plans for compliance with City standards is a condition precedent to building permit issuance.

5. A final Landscape Plan shall be submitted to the City for review prior to building permit issuance. Such plan will include water efficient landscaping and drip irrigation, and shall mitigate the visual effects of the retaining walls. Lawn area shall be limited in area.

6. If required by the Chief Building Official based on a review of the soils and geotechnical report submitted with the building permit, the applicant shall submit a detailed shoring plan prior to the issue of a building permit. If required by the Chief Building Official, the shoring plan shall include calculations that have been prepared, stamped, and signed by a licensed structural engineer.

7. This approval will expire on September 14, 2017, if a building permit has not been issued by the building department before the expiration date, unless an extension of this approval has been requested in writing prior to the expiration date and is granted by the Planning Director.

8. Plans submitted for a Building Permit must substantially comply with the plans reviewed and approved by the Planning Commission and the Final HDDR Design.

9. All retaining walls within any of the setback areas shall not exceed more than six feet (6') in height measured from final grade, unless an exception is granted by the City Engineer per the LMC with an Administrative CUP, Chapter 4.

10. Modified 13-D residential fire sprinklers are required for all new construction on this lot.

11. All exterior lighting, on porches, decks, garage doors, entryways, etc. shall be shielded to prevent glare onto adjacent property and public rights-of-way and shall be subdued in nature. Light trespass into the night sky is prohibited. Final lighting details will be reviewed by the Planning Staff prior to installation.

12. Construction waste should be diverted from the landfill and recycled when possible.

13. All electrical service equipment and sub-panels and all mechanical equipment, except those owned and maintained by public utility companies and solar panels, shall be painted to match the surrounding wall color or painted and screened to blend with the surrounding natural terrain.

14. Parking is only allowed on the private driveway in front of the garage for 158 Ridge Avenue; parking is prohibited on the private drive (extending from Ridge Avenue).

15. The CMP shall include language that the contractor shall provide and place signage such as Heavy Truck Traffic, etc. along access routes.

16. Construction mitigation plan, which will include controlling loose rocks, must be approved prior to granting building permits.

17. The CMP shall state that truck access during construction shall be limited to King Road.

18. The CMP shall comply with COA #10 from the 07-74 Ordinance stating "Construction mitigation plan, which will include controlling loose rocks, must be approved prior to granting building permits."

19. A snow shed easement or roof design acceptable to the Chief Building Official must be approved.

20. Final Grade must be within four vertical feet (4') of Existing Grade around the periphery of the Structure, except for the placement of approved window wells, emergency egress, and a garage entrance (15-2.1-5).

21. The Chief Building Official will require snow shed agreements from each neighboring property and will provide an approval determination during the Building Permit Plan Check process to complete COA #7 of Ordinance 07-74.

**3. 7379 Silver Bird, Unit 29 – Plat Amendment to change existing common area to private area (Application PL-16-03207)**

Planning Tech Hawley reported that the requested plat amendment would convert existing common area into private area. It would allow for enclosing an area and converting it into living space for Unit 29. The 60% open space would still be maintained on the lot.

Planner Hawley noted that the HOA had signed off on the request and she had not received any public comment.

Chair Strachan asked if there would be any change in use or intensity of use. Director Erickson replied that the use would not change; however, the size of the private space would be expanded. He pointed out that Unit 29 is a second home rental unit.

Chair Strachan opened the public hearing.

There were no comments.

Chair Strachan closed the public hearing.

MOTION: Commissioner Joyce moved to forward a POSITIVE recommendation to the City Council for the Silver Bird Condominiums at Deer Valley Second Amended – Amending Unit 29 condominium plat, based on the findings of fact, conclusions of law and conditions of approval as stated in the draft ordinance. Commissioner Suesser seconded the motion.

VOTE: The motion passed unanimously.

Findings of Fact – 7379 Silver Bird Unit 29

1. The property is located at 7379 Silver Bird Drive Unit 29 within the Residential Development (RD) District and is subject to the Eleventh Amended Deer Valley MPD (DVMPD).
2. Within the DVMPD, a project can utilize either the City's Unit Equivalent (UE) formula of 2,000 square feet per UE or develop the allowed number of units without a stipulated unit size so long as the project has %60 or more of open space.
3. A total of 6 units were constructed with allowed number of units per the Deer Valley MPD. The Silver Bird Condominiums parcels are all included in the 11th Amended Deer Valley Master plan and are developed using allowed number of units without a stipulated unit size with provision that at least 60% open space is maintained.
4. Silver Bird Condominiums record of survey plat was approved by City Council on October 7, 1982 and recorded at Summit County on October 22, 1982.
5. The Silver Bird Condominiums First Amended condominium plat was approved by City Council on September 4, 2015 and recorded at Summit County on April 24, 2015. The condominium plat amendment was to convert limited common deck space to private area for Units 25, 26, 27, 28, 29 & 30, so that they could enclose a covered patio and convert it to living space. Units 27, 28, 29, & 30 requested to convert common area deck space to private so that they could extend their deck. Units 25 & 29 request to enclose existing hallways and convert them from common area into private space.

6. On June 09, 2016, the applicants submitted an application for a condominium plat amendment to convert common space to private area for Unit 29, so that they can convert it to living space.

7. The application was deemed complete on June 28, 2016.

8. The square footage of the unit, including the area being converted is as follows: Unit 29 private area: 4001.2 sq. ft.;

9. The Silver Bird Condominiums parcels were developed using allowed number of units without a stipulated unit size. The amendment does not change the number of residential units and at least 60% open space is maintained.

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

11. The HOA received 100% approval from the owners to convert this unit on April 12, 2016.

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

13. The applicants will be required to provide a survey at the building permit stage for the Planning Department's review.

#### Conclusions of Law – 7379 Silver Bird Unit 29

1. There is good cause for this condominium plat amendment.
2. The amended condominium plat is consistent with the Park City Land Management Code and applicable State law regarding condominium plats.
3. The amended condominium plat is consistent with the 11th Amended and Restated Deer Valley Master Planned Development.
4. Neither the public nor any person will be materially injured by the proposed condominium plat amendment.
5. Approval of the condominium 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 – 7379 Silver Bird Unit 29

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

condominium plat.

2. The applicant will record the amended condominium plat at the County within one year from the date of City Council approval. If recordation has not occurred within one year's time, this approval for the condominium plat will be void, unless a complete application requesting an extension is made in writing prior to the expiration date and an extension is granted by the City Council.
3. Fire suppression must extend into the addition.
4. All conditions of approval of the Silver Bird Condominiums at Deer Valley condominium plat and the Deer Valley MPD as amended shall continue to apply.
5. This Plat is required to be recorded prior to any building permit issuance.

The Park City Planning Commission Meeting adjourned at 9:30 p.m.

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