

DHM DESIGN

17 June 2016

Francisco Astorga
Park City Planning Department
Via email: fastorga@parkcity.org

REGARDING: Proposed Density/Number of Lots for Alice Claim

Dear Francisco,

I write on behalf of King Development Group, LLC. Since King first filed its application in 2005, density has been raised and resolved in past work sessions and hearings with the Commission and has been resolved with the City Legal Department, but perhaps planning staff and the current Commission is unfamiliar with that historical record. During the May 25, 2016 hearing on Alice Claim, Commissioners once again asked about allowed density and if 9 lots are allowed on this site. With that in mind, set forth below is a summary along with attached supporting documentation for your review and for inclusion into the Commissioner information packet for the July 13, 2016 hearing.

1. The Alice Claim application was deemed complete for purposes of vested rights in 2005 and is subject to the 2004 LMC provisions regarding density.
2. The Staff report dated July 27, 2005 (attached) tabulated a maximum allowed density of 56 lots for the project, 41 of those lots within the HR-1 zone district. The report provided clarification that factors such as grading, vegetation protection, steep slope and access will reduce the ultimate LMC/Subdivision Code compliant density. The Applicant has demonstrated that the 9 proposed lots are Code compliant and are clearly within the 56 lot maximum allowed density.
3. The memorandum dated October 30, 2008 by the Applicant's attorney (attached) provides a detailed analysis of the vested density at the time of the 2005 complete application. In summary, this memo concludes that the Planning Commission or City Council may not reduce density below that permitted in the underlying zones, but may only adjust the dimensions of lots, the location, and other adjustments for good, efficient planning. In other words, the underlying zoning sets the maximum number of lots, and the Planning Commission and City Council defines their size, and their location based on the Code and best planning practices. The Applicant has proven that the 9 lots proposed meet the requirements of the Code and the requested "Gully Plan" meets the direction provided by Staff and the Planning Commission to meet best planning practices.
4. The email dated January 20, 2009 from the City Legal Department (attached) states that "Staff agrees that the underlying density allows for the 9 lots" and continues "however any lots must meet the subdivision and all other criteria of the Land Management Code, and the location and potential development impacts need to be approved by the Planning Commission and City Council." The Applicant has proven that the 9 lots proposed meet the requirements of the Code and the requested "Gully Plan" meets the direction provided by Staff and the Planning Commission in regards to lot locations and minimizing potential development impacts.
5. The property currently has 16 lots of record made up of 14 full and partial lots within the platted HR-L zone district and 2 lots within the metes and bounds parcel (attached). The platted HR-L parcel is encumbered by existing unplatted roads, yet still retains space for potential home sites. The Applicant has offered to deed this land to the City, but until final approval, the property has vested rights to the existing plat.

DHM DESIGN

In Planning Commission work sessions and hearings prior to presentation of the pending Gully Plan, the Commissioners have commented that the rejected plan was not compatible with the underlying zoning on grounds that it did not meet the land use pattern of the HR-1 lots within the city. Several Commissioners stated in the May 25 hearing that the new Gully Plan is now compatible. The Applicant contends that a certain density of homes are needed to provide the HR-1 land use pattern, and based on the site conditions, including existing homes in the adjoining subdivision, the 9 homes in the Gully Plan provides the land use pattern requested, as well as meeting the requirements of the Code. A lesser number of lots would not create the desirable land use pattern as currently zoned HR-1.

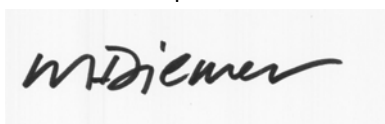
The proposed development is for 9 lots on 9.03 acres, a density of 1DU/acre. Within only the HR-1 zone district the plan proposes 8 lots on 3.57 acres, a density of 2.2DU/acre. These extremely low densities provide a significant amount of open space, 7.85 acres across the entire site which equates to 86.9%. Within only the HR-1 zone district, the area platted as open space equals 2.69 acres which equates to over 75% open space.

The Applicant contends that the proposed development plan provides a density that is well within the limits of the underlying zoning, meets the criteria of the Code, establishes the land pattern of the underlying HR-1 zoning, and yet still establishes and protects a significant portion of the site as open space.

Finally, the Applicant has explained many times to the Planning Commission, Legal Department, and Planning Staff that equitable considerations support the 9-home density for Alice Claim. The Applicant would never have spent \$1 million in the middle of The Great Recession to complete the voluntary cleanup if it had no assurance from Park City of developing nine homes to recover King's cleanup costs. As a Voluntary Cleanup Co-Applicant with King in cleaning up the Park City parcel in Alice Claim and King's property, the City manifested its approval of developing nine homes in Alice Claim. King Development's substantial change in position by incurring all of cleanup costs of \$1 million bars Park City from reducing the 9 lot density of the Gully Plan.

With this information we request that you clearly state in your staff report that the proposed density is well within the vested rights of the property.

Respectfully,
Marc Diemer
Associate Principal



DHM Design Corporation

Gregg E Brown
Director of Special Projects



DHM Design SMA

cc: King Development Group, LLC
Bradley R. Cahoon, Esq.

Planning Commission Staff Report



Subject: ALICE LODGE
Date: July 27, 2005
Type of Item: Administrative; Subdivision

RECOMMENDATION: Staff recommends that the Planning Commission review the proposed subdivision as a work session item and provide the applicant and staff with direction.

DESCRIPTION

Project Name: Alice Lode Subdivision
Project Planner: Ray Milliner
Applicant: Jerry Fiat
Location: Woodside Gulch, from King Road
Zone: Historic Residential (HR-1), Historic Residential Low (HRL), Estate (E).

BACKGROUND

On May 23 2005, the applicant submitted a subdivision application for a 9 lot subdivision at the Alice Lode, located in Woodside Gulch above the intersection of Ridge Avenue and King Road. The property is currently a series of mining claims and metes and bounds parcels consisting of approximately 8.8 acres. It is located at an intersection of the HRL, HR-1 and Estate zones. Bisecting the property is the City owned water facility, including an abandoned water tank, an in-use water tank, and an active pipeline in a narrow strip of land leading to the intersection of Ridge and King (used for the pipeline). There is an existing gravel road running up Woodside Gulch to the City water tanks that provides access.

The property was historically used as a mining operation for ore extraction and processing from 1900-1920. The buildings and machinery used in the operation are now gone, but the hazardous tailings remain. In July of 2002 staff received an application for a 5 lot subdivision of the property (it was withdrawn prior to any hearing by the Planning Commission). At that time, an analysis of the property was conducted indicating that a large portion of the site exceeds minimum Federal regulations for hazardous materials. An application was filed for Brownfield (a federally funded grant program that provides communities with money to clean-up waste repositories) grant money to aid in the reclamation of the site. The application was denied by the Federal regulators.

ANALYSIS

The applicant is proposing a 9 lot subdivision on 8.8 acres. The site rises from a flat canyon bed up a steeply pitched hillside with significant evergreen and deciduous vegetation. The applicant is proposing that access to the property come from a road/driveway that would be cut from the intersection of King Road and Sullivan Avenue, switching back and running south toward the City owned water tanks where it would terminate with a cul-de-sac (see attached subdivision plan). All proposed units would have access from that road. The applicant is proposing 6 lots in the HR-1 zone, 2 in the HRL zone and 1 in the Estate zone. Because the applicant is proposing 9 lots (10 lots trigger MPD review), the requirements of the MPD section of the LMC are not applicable; rather, the applicant will be subject to the review of the HR-1 zone, HRL zone, Estate zone, Chapter 7, Subdivision Requirements of the LMC and for the lot in the Estate zone,

the Sensitive Lands Ordinance. Staff has conducted an initial review of the project and has outlined its concerns in the analysis provided below.

Waste Clean-Up

As part of the development process, the applicant is proposing to remediate the site to acceptable local and federal standards solely at his cost. This would include the portion of the site owned by the City. The Alice Lode site is known to contain significant mine tailing waste, and therefore heavy metal constituents (i.e. lead, arsenic, mercury). Although the site is located within the Park City limits, it is outside of the Expanded Soils Ordinance Area, so the ordinance is not applicable. As a result, any soils generated from construction activities will have to be managed in accordance with State (UDEQ) and Federal (USEPA) RCRA and CERCLA Standards. Staff will require an approved UDEQ Work Plan that defines all operational and constructional procedures during the remediation. The Work Plan will need to include, but not limited to, the means and methods of mitigating any human and environmental exposures, the extent and location of soil movement on and off-site, and the proposed remediation of the area upon which the subdivision will reside.

Density

The applicant is proposing 9 single family units on the site. In the HR-1 zone he is proposing 6, in the HRL zone 2 and in the Estate zone 1.

The HR-1 section of the property is has 77,382 square feet of unplatted land with 4 platted lots and 8 platted partial lots located between King Road and Sampson Avenue, all of the lots are bisected by either Sampson Avenue or King Road. Section 15-2.2-3(A) sets the minimum lot size for the HR-1 zone at 1,875 square feet. Therefore, 77,382 square feet of land area divided by 1,875 square feet yields a theoretic maximum density of 41 lots.

The HRL section of the property has 39,697 square feet of unplatted land. LMC Section 15-2.1-3(A) sets the minimum lot size for the HRL zone at 3,750 square feet. Therefore, 39,697 square feet of land area divided by 3,750 square feet is 10 lots.

The Estate section of the property is 5.5 acres in size. LMC Section 15-2.10-3(A) sets the minimum lot size for a single family home in the Estate zone at 3 acres per unit. Therefore, 5.5 acres of land divided by 3 acres is 1 lot.

ZONE	AMOUNT OF LAND	POTENTIAL LOTS	PROPOSED
HR-1	77,382 square feet	41	6
HR-1 Platted	11,364 square feet	4 full 8 partial	0
HRL	39,697 square feet	10	2
ESTATE	5.5 acres	1	1
TOTAL	8.82 acres	56	9

The above described maximum density calculation reflects the maximum density allowable under ideal circumstances. Factors such as grading, vegetation protection, steep slope and access are all limiting aspects that will significantly reduce the ultimate LMC/Subdivision Code compliant density.

Access / Grading

The applicant is proposing a separate road access to the property that would enter approximately from the intersection of Sampson Avenue and King Road. This road would switch back from King Road running south toward the water tanks. It would provide access for all of the proposed units. In order to access the HRL lots, the driveways would

be required to cross the strip of land for the water pipeline owned by the City, and may interfere with the existing trail that enters the property in that general vicinity. To gain access to these lots, the City would have to grant an access easement over the pipeline property. Driveways for the HR-1 lots and Estate lots would access up-hill off the road. Access to the City owned water tower would also come from the new road.

One reason for the requested new road is that the applicant does not have clear access to the property from the existing access drive from the intersection of Ridge Avenue and King Road, as the property is owned by the City and another adjacent property owner.

Grading for the new drive would be significant. Preliminary drawings submitted by the applicant indicate that the drive would have cuts and fill ranging from 5 to more than 20 feet in height. This amount of grading in addition to the cuts necessary for the homes would have a significant impact on the existing topography and vegetation.

Slope

Approximately 67% of the property is sloped at 40% or greater. The lot in the Estate zone is within the Sensitive Lands Overlay, and would be subject to Planning Commission review for appropriateness for development prior to the approval of the subdivision plat. The lots within the HRL and HR-1 zones would be required to receive a CUP for construction on a slope of greater than 30% prior to the issue of a building permit. However, because subdivision plat approval would entitle the applicant to the density within the HR-1 zone staff recommends that the Commission consider the application for steep slope criteria in analysis of the final subdivision approval.

Vegetation

On the hill side above the mine reclamation site, there is a significant amount of natural vegetation including both deciduous and large coniferous trees. To develop the property in its current configuration would require that a significant amount of the existing vegetation be removed, including many of the large if not most of the evergreen trees on the site. Although much of the necessary remediation will require the removal of vegetation, it is not yet clear how much will be required on the hill side above the former mine site. Staff has significant concerns with the overall amount of site grading and tree loss associated with this plan. Should the project move forward, the applicant will need to demonstrate how the proposed units can be constructed without mass grading the site.

QUESTIONS

Staff is requesting that the Planning Commission review the proposed subdivision and provide staff and the applicant with direction on the following questions:

1. The proposed density, house size, access and lot layout appropriate for the site?
2. Which sections of the property are considered most important for vegetation preservation and slope protection?

RECOMMENDATION

Staff recommends that the Planning Commission review the proposed subdivision application as a work session item and provide the applicant and staff with direction.

EXHIBITS

- Exhibit A – Proposed Plat Amendment
- Exhibit B – Site Survey

MEMO

To: Park City Attorney
From: Joe Tesch & Stephanie Matsumura
Date: October 30, 2008
Re: Alice Claim —Vested Density

We have researched the issue of whether the Planning Commission or City Council could reduce the density beyond that permitted in the underlying zones with regard to the application for a nine (9) lot Major Subdivision on the Alice Claim Property.

The Alice Claim Property consists of 8.8 acres located within the HR-1, HRL and Estate Zoning districts. The Major Subdivision application proposes to create eight (8) lots within the HR-1 Zone and one (1) lot within the Estate Zone. No lots are proposed within the HRL zone.

Analysis

Based upon our review, we conclude that the Planning Commission or City Council may not reduce the density below that permitted in the underlying zones, but may only adjust the dimensions of lots, this location and other adjustments for good, efficient planning.

1. Density with the Zoning Districts:

- i. HR-1 Historic Residential District: According to the Planning Commission Staff Report of October 2006, there are 77,832 square feet of unplatted land within the HR-1 Zoning District between Sampson Avenue or King Road. The minimum Lot Area is 1,875 square feet (minimum width 25' x minimum depth of 75'). Therefore, the maximum density allowed equals 41.51 lots ($77,832 \div 1,875$). The application is for only 8 lots in this zone, with a total square footage of significantly less than 77,832 sq. ft. Therefore, while some discretion exists concerning the location and size of those lots, the number of them cannot be reduced below eight (8) lots “while preserving the density” of the underlying zone.¹

The Planning Director determines Lot width measurements for unusual Lot configurations. *Section 15-2.2-3 of the Park City Land Management Code* (“LMC” hereinafter). There are no maximum size restrictions within Section 15-2.2-3. The

¹ In actuality there are 3.47 total acres in the HR1 Zone for a total of 151,153.2 square feet which translates into a base density of 80.62 residential lots. Alice Lode is requesting only 10% of the base density.

building pad, building footprint and height restrictions define the maximum building envelope within which all development must occur. *Section 15-2.2-3(B)*. The building pad, building footprint and setback requirements are defined in Section 15-2.2-3 and provided in Table 15-2.2 of the LMC. It should be noted that a Conditional Use permit is required for all structures with a proposed footprint of greater than 3,500 square feet. *Section 15-2.2-4*. Lot sizes determine the house size. However, the conditions imposed relate to specific lots, not to underlying density. The proposed use (i.e., single family dwellings) for the eight lots is considered an “allowed use” under Section 15-2.2-2(A)(1) of the LMC.

- ii. Estate Zoning District: The minimum Lot size for single family residences within the Estate Zoning District is three (3) acres. The Planning Commission may reduce the minimum Lot size during the review of a Major Subdivision Plat to encourage clustering of Density. The maximum density is one (1) unit per three (3) acres. In addition, the minimum Lot Width is one hundred feet (100’). The Planning Commission may reduce the minimum Lot Width during the review of the Major Subdivision Plat. Also, the minimum Front, Side and Rear Yards for all structures is thirty feet (30’). However, while the Planning Commission may vary the required yards, in no case shall it be reduced it to less than ten feet (10’) between structures. *Section 15-2.10-3*. There are other front yard, rear yard, and side yard exceptions that can be found in *Section 15-2.10-3 of the LMC*. The single lot applied for that is located within the Estate Zoning District will be a single family dwelling and, therefore, it is an “allowed use” pursuant to Section 15-2.10-2 of the LMC.
2. Subdivision Plat Approval Process: Under the LMC, an applicant has applied for a Major Subdivision. A Major Subdivision is one that contains “four (4) or more Lots [but not exceeding ten (10) lots], or any size Subdivision requiring any new Street.” As a result, since the Alice Claim Property application is for nine lots, it qualifies as a Major Subdivision.² As such, it is subject to the review process outlined in Sections 15-7-1 et seq. and 15-7.1-1 et seq. of the LMC.

As part of the Major Subdivision review process and prior to subdividing land, the Planning Commission reviews the Preliminary Plat of the proposed subdivision giving “particular attention” to “Lot sizes and arrangement.” *Section 15-7.1-5(D) of the LMC*. While the Planning Commission is provided with the authority to **review** lot sizes and arrangement, there is no provision in the Land Management Code authorizing the Planning Commission to reduce the number of Lots, or more specifically, the density below that allowed in the underlying zone.

In fact, under the General Subdivision Provisions of the LMC, there is a general policy and stated intent to preserve the density assigned to each zoning district. More specifically, the stated purpose of the Subdivision regulations is to, *inter alia*, “provide for open spaces through the most efficient design and layout of the land, including the Use of flexible Density or cluster-type zoning in providing for minimum width and Areas of Lots, **while preserving the Density of land as established in the Land Management Code of**

² Under the proposed development plan for eight lots within the HR-1 Zoning District and one lot within the Estate Zoning District, the application need not be submitted as a Master Planned Development.

Park City.” Section 15-7-2(L). (Emphasis Added) Clearly, the ordinances regulating Subdivisions are designed to preserve the density of the land as established in the LMC.

3. Zoning/ Lot Restrictions on HR-1 and Estate Zoning Districts: As previously mentioned, the Alice Claim Development proposes lots within the HR-1 and Estate Zoning Districts. The HR-1 Zoning District and Estate Zoning District are subject to different requirements and restrictions as follows:

- i. Lot Size Restrictions

- a. HR-1 Zoning District: Section 15-2.2: As established in Paragraph 1.i., the eight lots proposed in the HR-1 Zoning District comply with the zoning lot size requirements for the HR-1 Zoning District. There are no provisions within the HR-1 Zoning District restrictions that allow the Planning Commission and/ or Planning Department to require lots greater than the required minimum size dimensions.

However, it should be noted that under the HR-1 Zoning District Restrictions, Section 15-2.2-6 “Development on Steep Slopes,” a **conditional use permit is required** for any Structure³ in excess of one thousand square feet (1,000 sq. ft.) if said Structure and/ or Access⁴ is located upon any existing Slope⁵ of thirty percent (30%) or greater.

As will be described in more detail below, under a conditional permit review the Planning Commission and/ or Planning Department are authorized to adjust the lot size, building height, and setback requirements. Again, there is no authority within this section for the Planning Commission and/ or Planning Department to reduce or make these adjustments to density below that allowed in the underlying zone. The review process for a Conditional Use permit is described in more detail below.

- b. Estate Zoning District: Section 15-2.10: As noted in Paragraph 1.iii, it appears that the one lot proposed in the Estate Zoning District meets the zoning restrictions and requirements. As previously mentioned in Paragraph 1.ii, the Lot Width and required setbacks may be reduced by the Planning Commission; however, there is no provision that allows the Planning Commission and/ or Planning Department to reduce density below that permitted in the underlying zone.

³ “Structure” is defined under the LMC as “anything constructed, the Use of which requires a fixed location on or in the ground or attached to something having a fixed location on the ground and which imposes an impervious material on or about the ground.” Section 15-15-1.224

⁴ “Access” is defined under the LMC as “the provision of vehicular and/ or pedestrian ingress and egress to Structures, facilities or Property.” Section 15-15.1.1

⁵ “Slope” is defined under the LMC as “the level of inclination of land from the horizontal plane determined by dividing the horizontal run or distance of the land into the vertical rise or distance of the same land and converting the resulting figure in a percentage value.” Section 15-15-1.215

ii. Whether Proposed Development is a Conditional or Allowed use:

a. HR-1 Zoning District: Pursuant to Section 15-2.2-2(A), single family dwellings are an Allowed Use, and therefore not a Conditional Use, within the HR-1 Zoning District. Therefore, the eight lots proposed in the HR-1 Zoning District are not subject to the Conditional Use process.

aa. Structures on Steep Slopes. However, as previously noted, if the proposed structure is greater than 1,000 square feet located on a slope greater than 30%, a conditional use permit is required. Based upon the previous Planning Commission Staff Reports (specifically of October 25, 2006), approximately 67% of the property is sloped at 40% or greater. The eight single family units proposed in the HR-1 Zoning District site may be in areas where the property is sloped at 40% or greater, and thus require a **conditional use permit**. See *October 25, 2006 Planning Commission Staff Report*.

The Planning Commission reviews a Conditional Use Permit application based upon criteria specified in Section 15-2.2.9(B) of the LMC. Among the criteria reviewed is the location of the development, visual analysis, building location, setbacks and dwelling volume. The Planning Department and/ or Planning Commission may require an applicant to adjust the building location, the building form and scale, the setbacks and the dwelling volume⁶. *Section 15-2.2-6 of the LMC*. However, there is no authority to eliminate density. The only authority is to place conditions on its use.

The “maximum volume of any Structure is a function of the Lot size, Building Height, and Setbacks.” *Section 15-2.2-10(8) of the LMC*. As part of the Conditional Use Application Review, the Planning Department and/ or Planning Commission “may further limit the **volume** of a proposed Structure to minimize the visual mass and/ or to mitigate differences in scale between a proposed Structure and existing Structures.” *Id.* Therefore, the Planning Department and/ or Planning Commission may limit the Lot size, Building Height, and Setbacks to minimize its visual mass and mitigate differences in scale; however, there is no provision that they may reduce density below the amount permitted in the underlying zone.

bb. Structures less than 1,000 square feet on Slopes Less than 30%. For those lots on Alice claim with structures less than 1,000 square feet (including the garage) and/ or Access to said

⁶ We were unable to locate a section of the LMC that defines and sets forth how dwelling volume is determined beyond the general statement that it is a function of Lot Size, Building Height, and Setbacks.

Structure is located upon an existing Slope greater than thirty percent (30%), those lots are not subject to the Conditional Use process.

- b. Estate Zoning District: Similar to the HR-1 District, pursuant to Section 15-2.10-2(A), single family dwellings are among the Allowed Uses, within the Estate Zone District. **Only Conditional Uses** in the Estate District are subject to the Sensitive Lands Overlay Review. *Section 15-2.10-6 of the LMC*. The Sensitive Land Overlay Zone Regulations imposes further review, restrictions and regulations upon development that may affect the overall density.⁷
4. Planning Commission and City Council are without Authority to Reduce Density under these facts: Since there is no grant of authority to reduce density under these facts, the Planning Commission is prohibited from doing so. Municipalities are granted the authority to enact ordinances, rules, regulations, etc. with regard to, among other things, density. *Utah Code Ann. § 10-9a-102*. An owner of property holds it subject to zoning ordinances enacted pursuant to a city's police power. *Smith Investment Company v. Sandy City*, 958 P.2d 245 (Utah App. 1998) (citing to *Western Land Equities, Inc. v. City of Logan*, 617 P.2d 388, 390 (Utah 1980)). If a zoning regulation or other land use restriction is unreasonable or irrational, it may violate substantive due process rights of the property owner and not be upheld. *Smith Inv. Co.*, 958 P.2d 245. However, zoning ordinances that promote the general welfare, or demonstrate a reasonably debatable inherent interest of the general welfare will be upheld and the municipality's legislative judgment controls. *Id.*

Under Utah statute, 10-9a-509, "an applicant is entitled to approval of a land use application if the application conforms to the requirements of the municipality's land use maps, zoning maps, and applicable land use ordinance in effect when a complete application is submitted and all fees have been paid, unless: (1) the land use authority on the record, finds that a compelling, countervailing public interest would be jeopardized by approving the application; or (2) in the manner provided by local ordinance and before the application is submitted, the municipality has formally initiated proceedings to amend its ordinances in a manner that would prohibit approval of the application as submitted." In addition, under the Park City Land Management Code, vesting for purposes of zoning occurs upon the filing of a complete Application. *See Section 15-7.1-6 of the LMC*. The LMC also states that "an applicant is entitled to approval of a land Use Application if the Application conforms to the requirements of an applicable land Use ordinance in effect...unless...the land Use authority, on the record, finds that a compelling

⁷ It should be noted that the Planning Commission Staff Report of October 25, 2006 notes that the lot in the Estate zone is within the Sensitive Overlay Land Zone. Notably, however, the October 25, 2006 Planning Commission report accurately notes that the lots in the HR-1 zone are not subject to the Sensitive Overlay Land Zone. According to a telephone conversation with Planner Brooks Robinson on September 29, 2008, all Estate Property located within Old Town is subject to the Sensitive Land Overlay Zone restrictions. The current Zoning Map appears to show that the outer perimeter of the Estate Zoning District on the Alice Claim Property is part of the Sensitive Land Overlay Zone. However, this should be confirmed. Although the Planning Commission (as found in the October 25, 2006 Planning Commission Staff Report) suggests that the one lot within the Estate Zone is within the Sensitive Land Overlay Zone, this suggestion appears to be contrary to Section 15-2.10-6 of the LMC. Nonetheless, the following section discusses how the Sensitive Lands Review, if applied, could affect density.

countervailing public interest would be jeopardized by approving the Application.”
Section 15-1-17 of LMC.

The case of *Western Land Equities, Inc. v. City of Logan*, 617 P.2d 388 (Utah 1980) is instructive as to a city’s authority to withhold approval of subdivision that meets all zoning requirements at the time of application. In *Western Land Equities*, applicant owners sought relief from the city’s refusal to approve a proposed single-family subdivision that met the minimum zoning requirements. Specifically, the applicants sought approval of a single family residential subdivision on land within a manufacturing zone which permitted single-family dwellings.

The court held that “an applicant is entitled to a building permit or subdivision approval if his proposed development meets the zoning requirements in existence at the time of his application and if he proceeds with reasonable diligence, absent a compelling, countervailing public interest.” *Id.* at 396. In its decision, the court noted that “[t]here may be instances when an application would for the first time draw attention to a serious problem that calls for an immediate amendment to a zoning ordinance, and such an amendment would be entitled to a valid retroactive effect.” But the court further stated that, “[i]t is incumbent upon a city, however, **to act in good faith and not reject an application because the application itself triggers zoning reconsiderations that result in a substitution of the judgment of current city officials for that of their predecessors.**” *Id.* The reasons provided by the city for withholding approval, specifically for the city’s belief that fire protection would be undermined because of limited access to roads and the city’s objections to inadequate sidewalks and other problems, were not so compelling to overcome the presumption that the applicants were entitled to affirmative official action if they met the zoning requirements in force at the time of application.⁸ *Id.*

In addition to an applicant’s vested right to approval if the proposed development meets the zoning requirements, under Section 10-9a-509(2) of the Utah Code provides that, “**a municipality is bound by the terms and standards of applicable land use ordinances and shall comply with mandatory provisions of those ordinances.**” Park City’s stated policy for subdivisions is to “**preserve the Density of land as established in the Land Management Code of Park City.**” *Section 15-7-2(L) of LMC.* This mandatory provision is an expressed intent to preserve the density established through zoning ordinances. Accordingly, neither the Planning Commission nor the City Council has the authority to reduce the applied for density of nine (9) lots since this density is consistent with the provisions of the underlying zones.

Thank you for your review of these authorities.

⁸ It should be noted, however, that in the case of *Mouty v. The Sandy City Recorder*, 122 P.3d 521 (Utah 2005), the Utah Supreme Court recognized that the exercise of the people’s referendum right is of such importance that it properly overrides “individual economic interests” and constitutes a “compelling, countervailing public interest.”

Thomas Eddington

From: Polly Samuels McLean
Sent: Tuesday, January 20, 2009 2:57 PM
To: Gregg Brown; Brooks Robinson; Thomas Eddington; 'jerry fiat'; joet@teschlaw.com
Cc: paullevy2242@yahoo.com; DAVID KAGAN
Subject: RE: Meeting notes from 12 Jan

Gregg – I have some changes to your summary. As for 10, Tom E might have further clarification.

5. "Staff agrees that 9 lots are allowed per the LMC, but the location and potential development impacts need to be approved by the Planning Commission and City Council. "

Staff agrees that the underlying density allows for the 9 lots, however any lots must meet the subdivision and all other criteria of the Land Management Code, and the location and potential development impacts need to be approved by the Planning Commission and City Council.

6. Staff agrees that the legal access to the property is through the existing, but undeveloped King Road ROW.

Staff agrees that access to the property through the existing, but undeveloped King Road ROW is legal.

7. DHM should explain to the PC why changes were made to the site plan that resulted in the current design. Also, how the remediation project affected the layout.

Staff suggested that it might be helpful for PC if DHM explained why changes were made to the site plan that resulted in the current design. Also, how the remediation project affected the layout.

10. The effect of the current LMC amendment on Alice Claim is uncertain. Tom believes, "this site has special and unique circumstances from the typical old town lots".

The pending Steep Slope CUP LMC amendment would apply to the Alice Claim sight. Tom stated that these lots are unique from the typical old town lots due to their large lot size.

Polly Samuels McLean
Assistant City Attorney
Park City Municipal Corporation
445 Marsac, P.O. Box 1480
Park City, UT 84060-1480
(435) 615-5031

From: Gregg Brown [mailto:gbrown@dhmdesign.com]
Sent: Saturday, January 17, 2009 3:45 PM
To: Brooks Robinson; Thomas Eddington; Polly Samuels McLean; 'jerry fiat'; joet@teschlaw.com
Cc: paullevy2242@yahoo.com; DAVID KAGAN
Subject: Meeting notes from 12 Jan

Please let me know if you have any additions or corrections. Thank you for taking the time to review the

1/20/2009

project.

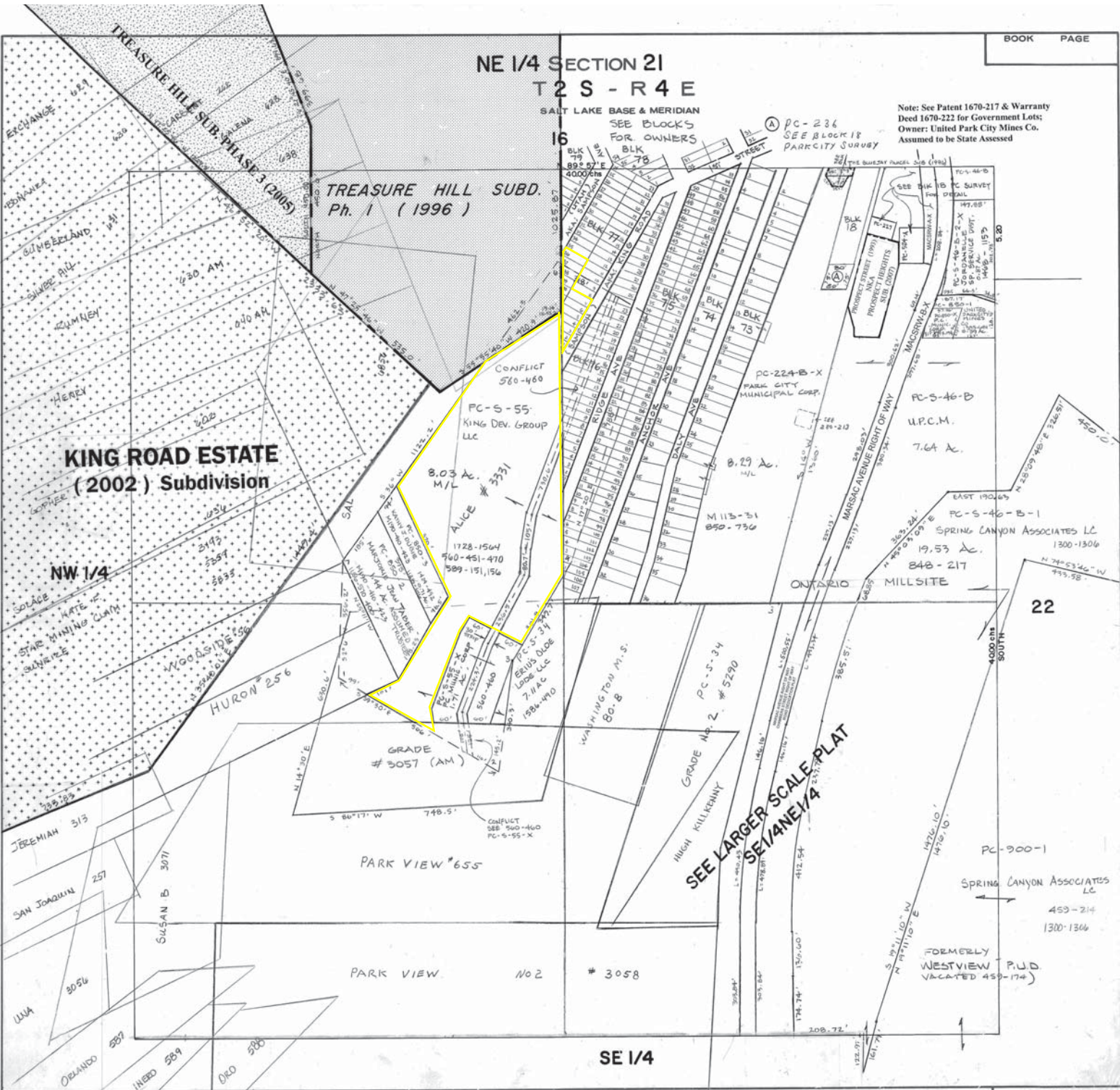
Gregg Brown
Principal | DHM Design
1390 Lawrence Street, Suite 100 | Denver, CO 80204
Tel: 303.892.5566 | Fax: 303.892.4984
Denver | Carbondale | Durango
gbrown@dhmdesign.com
<http://www.dhmdesign.com>

NE 1/4 SECTION 21
T2S - R4E

SALT LAKE BASE & MERIDIAN
SEE BLOCKS
FOR OWNERS

PC-236
SEE BLOCK 18
PARKCITY SURVEY

Note: See Patent 1670-217 & Warranty
Deed 1670-222 for Government Lots;
Owner: United Park City Mines Co.
Assumed to be State Assessed



Approved	REVISIONS - DATE AND INITIAL	(In Pencil)
Utah State Tax Comm		

Date By
Engineering Associates Inc.

SUMMIT COUNTY, UTAH

SCALE
ONE INCH 200 FEET
BOOK PAGE

