

Francisco Astorga

From: Nicole Deforge <ndeforge@fabianvancott.com>
Sent: Monday, October 16, 2017 12:13 PM
To: Francisco Astorga; Treasure Comments
Subject: Treasure Hill Comments -- October 2017
Attachments: 2017.10.16 -- THINC October 2017 Planning Commission Meeting Letter.pdf

Dear Francisco,

Please include the attached letter with the public comments for the Treasure Hill conditional use permit application.

Thank you.

Nikki

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October 16, 2017

VIA E-MAIL (treasure.comments@parkcity.org)

Park City Planning Commission
P.O. Box 1480
Park City UT 84060

**Re: Treasure Hill Conditional Use Permit Application –
October 11, 2017 Planning Commission Meeting**

Dear Commissioners:

I am writing on behalf of THINC, a non-profit organization comprised of hundreds of Park City residents, business owners, and home owners. This letter is intended to supplement the public comments made on behalf of THINC at the October 11, 2017 meeting of the Planning Commission with respect to Project Number PL-08-00370, Treasure Hill Conditional Use Permit Application, Creole Gulch and Town Lift Mid-Station Sites.

MPD Compliance

We appreciate the efforts of the Staff in the latest report to breakout the language of the MPD approval and organize it by relevant CUP criteria. We agree that this will better help guide and focus the CUP analysis and discussion.

However, we again want to caution that compliance with the *express conditions and requirements* of the MPD approval is not merely a CUP issue. Rather, the very first step in this process is for the Applicant to demonstrate that it has complied with each and every one of the conditions of the MPD approval—before we even get to the CUP criteria. Lack of compliance with these conditions is not something that can somehow be mitigated. Either the Applicant has complied with all of the MPD conditions, or it has not. If it has not, its application cannot be approved as a matter of law—no matter what mitigation is proposed.

This conclusion is dictated by the language of the MPD itself and also by governing law:

- "At the time of conditional use or subdivision review, the staff and Planning Commission shall review projects for compliance with the adopted codes and ordinances in effect at the time, **in addition to ensuring conformance with the approved Master Plan.**" Treasure Hill MPD Approval.

- "[T]he rights obtained by the submission and later approval of a development plan **are necessarily conditioned upon compliance with the approved plan.**" *Keith v.*

ATTORNEY MOUNTAIN RESORTS DEV., LLC, 2014 UT 32, ¶ 31, 337 P.3d 213.

Approved Density

We fully support the Staff's conclusions that maximum project density is fixed by the MPD and therefore exceeded in many respects by the current Treasure Hill plans. Staff recently located the Sweeney Properties Master Plan document and Fact Sheet, dated May 15, 1985 ("MPD Fact Sheet"). The MPD Approval expressly states that "[t]he following plans and exhibits, in addition to this report and the project file, constitute the complete development permit." It then specifically references the MPD Fact Sheet as Exhibit 2. There is no question that the MPD Fact Sheet is part and parcel of the MPD Approval and defines the approved density for the Treasure Hill project.

a. Support Commercial

With respect to support commercial space, the MPD Fact Sheet irrefutably demonstrates what the Staff, the Commission, and THINC have been saying all along—that the 19,000 sq. ft. of support commercial approved in the MPD already includes the 5% of hotel floor space provided for under the Code. The Applicant is not entitled to an additional 5% kicker on top of the 19,000 sq. ft., as it has previously claimed. In fact, the MPD Fact Sheet states over and over again, as shown on pages 120-22 of the October packet, that this is the "**total support commercial.**" The Applicant's current Treasure Hill plans therefore exceed the "total support commercial" approved in the MPD by 18,813 sq. ft. or 18.81 commercial UEs.

b. Lobby/Circulation/Accessory/Meeting Space

We also agree with the Staff that the Applicant's MPD Fact Sheet fixes the "maximum lobby space" for the project at 17,500 square feet. The only question then is what does the term "lobby space" mean as used in the MPD. The MPD Fact Sheet clearly shows that this so-called "lobby space" includes precisely the same type of amenities for which Applicant now demands over 271,000 sq. ft. of "circulation space," "accessory space," and "meeting space."

First, circulation space. The term "lobby space" as used in the MPD Fact Sheet is synonymous with the term "circulation space." Although the term "lobby space" was not defined in the governing 1985 LMC, the term "circulation space" under that code expressly included "lobbies outside of units, including lobby areas," as Staff has noted. So "circulation space" is already included within the term "lobby space" as used in the MPD.

Second, accessory space. The term "lobby space" as used in the MPD Fact Sheet is also synonymous with the term "accessory space." "Lobby space" is defined in the MPD Fact Sheet as follows: "NON commercial support amenities: weight rooms, recreation rooms, saunas, administrative offices, storage, guest ski storage, guest meeting rooms, etc."

This definition is strikingly similar, and many respects identical, to the definitions of "accessory" space in the 1985 and 2004 LMCs. Although Staff is correct that the 1985 LMC does not define "accessory space," the definition of "hotel" does include a definition for "accessory facilities" as follows: "Accessory facilities may include a lobby, meeting rooms, recreation facilities, group dining facilities and/or other facilities or activities customarily associated with hotels or hotel apartments." The definition of "residential accessory uses" in the 2004 LMC likewise includes amenities such as "ski/equipment lockers, lobbies, registration, concierge, bell stand/luggage storage, maintenance areas, mechanical rooms, laundry facilities and storage, employee facilities, common pools, saunas and hot tubs not open to the public, telephone areas, public restrooms, administrative offices, hallways and

circulation, elevators and stairways, back of house uses.” The term “lobby space” as used in the MPD Fact Sheet is therefore also synonymous with “accessory space.”

Third, meeting space. As shown above, the definition of “lobby space” in the MPD Fact Sheet expressly includes “meeting rooms.” The 1985 LMC definition of hotel accessory facilities likewise includes “meeting rooms.” Therefore, the term “lobby space” as used in the MPD Fact Sheet already includes approved meeting space so no additional allocation for meeting space is warranted.

The MPD Fact Sheet states that the “total lobby” space sought—and therefore approved—was 17,500 sq. ft. In its CUP application, the Applicant does not specifically identify any of the proposed space as “lobby space.” Instead, it claims nearly 255,00 sq. ft. as circulation or accessory space and 16,214 sq. ft. as meeting space, for a sum in excess of 271,000 sq. ft. This is over 15 times the “total” amount of space approved for such uses in the MPD.

Regardless of the label applied by Applicant to these uses and space, the fact remains that the accessory, circulation, and meeting space now separately claimed by the Applicant is nothing more than the so-called lobby space claimed in its MPD Fact Sheet. By the terms of the MPD, the Applicant is entitled to a maximum of only 17,500 sq. ft. of that space—that is what their Fact Sheet states over and over again—17,500 “total”. And the MPD itself states that **“the approved densities are those attached as an Exhibit, and shall be limited to the maximums identified thereon.”** The MPD Fact Sheet incorporated by reference as Exhibit 2 to the MPD approval therefore limits the lobby/circulation/accessory/meeting space to 17,500 sq. ft.¹

Based on the MPD Fact Sheet, the total approved density for the Treasure Hill project, as compared with the density sought, is as follows:

<u>Uses</u>	<u>Approved</u>	<u>17.2 Refinement</u>
Residential (net):	197 UEs	196.73 UEs
Support Commercial:	19,000 sq. ft.	37,813 sq. ft.
Lobby Space:	17,500 sq. ft.	271,006 sq. ft.

Applicant’s requested density for support commercial and lobby space clearly exceeds the approved density by many multiples. Applicant has therefore failed to comply with the conditions of MPD approval.

Open Space

The construction staging and excavation information recently submitted by the Applicant further highlights its utter failure to comply with the conditions of the MPD,

¹ Even if the Applicant could somehow argue that 17,500 sq. ft. was not the maximum lobby/accessory/circulation/meeting space approved, which it cannot, the Applicant still could not possibly justify a figure of more than 15 times the space it represented in the MPD. This tremendous expansion further corroborates the Staff’s previous findings that the project as proposed in the CUP application is far, far greater in scope, density, mass, bulk, scale, and therefore impact, than the project that was approved 30 years ago in the Master Plan.

particularly in regards to open space. The MPD states as follows: "A key element of the proposed cluster approach is to preserve usable open space in perpetuity. . . . The potential for the subdivision and scattered development of the hillside would have drastically affected the goal of preserving the mountain substantially intact and pristine." The MPD further provides that "the proposed development concept locates buildings in areas to avoid cutting and removing significant evergreens existing on the site."

Contrast this "goal of preserving the mountain substantially intact and pristine" and avoiding the cutting and removal of trees, with the Applicant's excavation plans. Applicant intends to excavate at least 800,000 cubic yards of rock and dirt from the site, including from the land now zoned as open space in order to construct permanent cliffscapes on that land. Then, after accounting for a very conservative and frankly insufficient swell factor of 20-25%, Applicant expects to dump over 1.0 million cubic yards of crushed rock and debris over 16 acres of land that has been dedicated and rezoned as recreation open space (ROS)—in places up to 65 feet deep. In doing so, they will obliterate all of the plants, shrubs, and trees on those 16 acres of pristine open space.

Approximately 1 million cubic yards of that material will be dumped into Creole Gulch alone. In fact, it appears from the drawings that the Applicant is planning to effectively fill in the gulch entirely. The remaining portion will be dumped up along the ridgeline of the hillside. Yet in the MPD Fact Sheet, it specifically states that the open space concept "will prevent undue scarring of the hillside, protect its ridge line, and preserve it for recreational use as a scenic backdrop to the Historic District." Rather than retaining the existing slope, as directed by CUP criteria 15, or minimizing site grading, as expressly required by the MPD, the Applicant's current plans call for complete transformation and regrading of the hillside, ridgeline, and existing slope with its tremendous amount of construction debris.

At the end of the day, the hillside open space will not remotely resemble the hillside that we see today if this project is approved. And it most certainly will not remain substantially intact and pristine. Even in the interim, this hillside property zoned as ROS will be crisscrossed for years with numerous distribution roads having 40' cross cuts and steep cuts, haul routes, heavy machinery and construction vehicles. Exhibits 4-5 of the recent construction plans, which are included in pages 153-54 of the packet show just how extensive these open space incursions and disturbances will be. Again, this is no intact and pristine mountain open space.

Applicant's current plans defeat the entire purpose of the clustered development approach approved for the MPD, as noted above. By dramatically increasing the mass and scale of this project, excavating far more below grade in order to purportedly meet height restrictions despite taller buildings, and then carving out the mountain rather than tucking in the development, the Applicant will generate a tremendous amount of construction debris. That debris must either be trucked out in approximately 100,000 loads over narrow Lowell Avenue or dumped onto 16 acres of hillside open space up to 65' deep. This is yet another example of Applicant purporting to mitigate one impact—construction traffic—by simply creating a different impact—destruction of open space. That is not mitigation—that is merely shifting impacts.

As for the rest of the "Phasing, Staging, Construction" slides submitted by Applicant, they are nothing more than the "soft and fluffy" stuff that Commissioner Joyce has repeatedly decried. There are no details, not measurables, not quantifiables. This latest construction presentation is just more of the same—high-level, noncommittal, broad brush strokes entirely lacking in requisite detail or metrics.

Traffic

Ivan Hopper, a traffic engineer with Avenue Consultants, presented additional traffic information at the October Planning Commission meeting. Copies of the slides are enclosed. Mr. Hooper's analysis plainly demonstrates that the *increased* daily traffic volumes from Treasure Hill alone will exceed the *total* daily traffic volumes for which Lowell and Empire were designed. In fact, at the Manor Way intersection for each road, the estimated daily traffic volumes will exceed capacity by 40-140%.

As for construction traffic, Applicant's current plans to use only Lowell Avenue for construction traffic violates the MPD Approval. The MPD provides as follows: "Empire Avenue and Lowell Avenue will be the main access routes to the Creole Gulch site. As such, during construction these roads will need to carry heavy traffic, probably in the vicinity of up to 300 heavy trucks per day." In other words, the MPD required that *both* Empire and Lowell be utilized in order to share the huge burden of construction traffic from the project. This was surely due in part to the sheer number of heavy trucks that would be going back and forth daily for years and years, but also was certainly due to the narrow width of both of these roads and the fact that two heavy construction trucks simply could not pass one another given existing traffic, parked vehicles, no sidewalks, and pedestrians in the streets—particularly during winter time.

However, the MPD further noted that neither road could then handle the weight of the construction trucks and would need to be rebuilt to do so. Applicant was therefore given the opportunity to participate in that rebuilding process in order to ensure that both streets could handle the construction traffic. Applicant declined to contribute to the rebuilding of Empire several years ago and that road therefore cannot handle the construction traffic. So now the Applicant is proposing that all construction traffic be routed solely over Lowell, which would double the originally anticipated construction traffic on Lowell. Applicant now estimates construction traffic at 10 construction trucks per hour, which actually means 20 vehicle trips on Lowell each hour, for a total of 240 vehicle trips each day summer hours or 2 trips every 6 minutes. And those numbers presume that nearly all of the fill will be dumped in the open space rather than hauled out over Lowell.

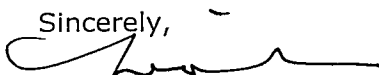
Applicant's plans also would require passage of two large construction vehicles on that very narrow and already often impassable road. They propose to mitigate that issue by adding 5' of asphalt to the uphill side of Lowell. However, that would only get the road back to width it was last winter when all of the photos were taken and presented to the Commission showing Lowell barely functioning as a one-way road with cars going head-to-head and being forced to back-down the hill. Applicant proposes to use that extra 5' as a pull-off to enable the trucks to pass one another and as a snow storage area. Obviously, if used as a snow storage during winter, then it will not be usable as a pull-off to enable trucks to pass. That proposal also fails to contemplate other vehicular traffic, lack of sidewalks, and pedestrians walking down the middle of the road.

Applicant's failure to contribute to the rebuilding of Empire does not excuse it from complying with the MPD requirement that construction traffic be split between Lowell and Empire. And it most certainly does not justify forcing the residents along Lowell to bear the sole burden and bottleneck of construction traffic from the project for years to come. The MPD addresses the consequences of Applicant's failure to contribute to the reconstruction of Empire Avenue. It says this: "[B]ecause the reconstruction would be inconvenient to residents and the City, and because delays, impacts, and potential safety hazards would be created over and above normal City maintenance of existing streets, that action by the developer would be a new impact on City residents." So not only does the Applicant's failure to reconstruct

Empire to bear its share of construction traffic constitute noncompliance with the MPD, it is also an impact that cannot be mitigated by simply rebuilding Empire once again now. As Commissioner Strachan aptly observed at the last meeting, that is a "big problem for Treasure Hill."

Thank you again for your consideration of THINC's concerns. We appreciate the opportunity to be heard.

Sincerely,

A handwritten signature in black ink, appearing to read 'Nicole M. Deforge', with a long horizontal flourish extending to the right.

Nicole M. Deforge

Encl.
cc: client