

## Treasure Comments

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**From:** Nicole Deforge <ndeforge@fabianvancott.com>  
**Sent:** Friday, December 01, 2017 1:13 PM  
**To:** Francisco Astorga; Treasure Comments  
**Subject:** Treasure Hill Comments - November 8, 2017  
**Attachments:** 2017.12.01 -- THINK November 8, 2017 Plg Comm Meeting Letter.pdf

Dear Francisco,

Please include the attached with the public comments for the November 8 Staff Report for the Treasure Hill conditional use permit application.

Thank you.

Nikki

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December 1, 2017

**VIA E-MAIL** ([treasure.comments@parkcity.org](mailto:treasure.comments@parkcity.org))

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

**Re: Treasure Hill Conditional Use Permit Application –  
November 8, 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 November 8, 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.

**Applicant's November 3, 2017 Position Statement**

As an initial matter, THINC rejects the tone of the Applicant's November 3, 2017 position statement and the unfair and very personal attacks on the integrity and competency of the Planning Staff contained therein. Among other things, the Applicant accuses the Planning Staff of "ignorance or something more nefarious." Such accusations and name-calling are completely uncalled for and unfounded. Although THINC does not always agree with the conclusions reached by Staff, it very much appreciates the incredible amount of time and effort that the Planning Staff and Commission have devoted to this process over many, many years and for the unfaltering professionalism and dedication that they have shown. There is absolutely no excuse for resorting to such personal attacks and conspiracy theories.

As for the actual substance of the Applicant's position statement, it is inaccurate in virtually all material respects:

**Sweeney Properties Master Plan ("SPMP") Exhibit 2: May 1985 Fact Sheet**

Although the Applicant goes to great lengths to try to explain why the City should ignore this document, the simple fact remains that the Fact Sheet was expressly incorporated by reference into the SPMP approval as Exhibit 2. It is an integral and inseverable part of the SPMP approval. The City can no more ignore this document than it could ignore an exhibit incorporated by reference into a typical legal contract. This is Contracts 101.

ATTORNEYS AT LAW

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To the extent that there are any differences or inconsistencies between the Fact Sheet and the SPMP, it is up to Staff to reconcile the differences by determining which document controls. And that is precisely what Staff has done. For any provision in the Fact Sheet that is directly but differently addressed in the SPMP, the Staff correctly determined that the later SPMP takes precedent. But where something addressed in the Fact Sheet is not addressed differently in the SPMP, the Staff has correctly concluded that the Fact Sheet governs. What Staff cannot do is entirely disregard the Fact Sheet simply because something that the Applicant requested in the Fact Sheet was approved differently in the SPMP—and the Applicant is flat wrong in insisting that they do so. Staff has gotten it exactly right

As for these alleged discrepancies, the Applicant contends that as between the May 1985 Fact Sheet and the SPMP approval, there are “substantial and irreconcilable” differences. But they curiously identify only two—neither of which is substantial or irreconcilable. First, the Applicant notes that the height limits in the Fact Sheet were less than what was ultimately approved in the SPMP. That is why the Staff relied on the height limits set forth in the later SPMP approval, as is standard in contract interpretation.

Second, the Applicant notes that the site plans purportedly submitted at the same time as the May 1985 Fact Sheet are different in orientation and appearance than the Woodruff documents. Again, the Staff has rightly deferred to the subsequent Woodruff drawings, which were also referenced as an exhibit to the SPMP, and not held the Applicant to any site plans submitted prior.

As for those earlier site plans, they were not part of the Fact Sheet at all and therefore were not part of the SPMP approval. The Applicant wrongly argues that various other submissions or reports allegedly submitted at or around the same time as the May 1985 Fact Sheet must be considered as part of the Fact Sheet. But the SPMP does not mention any such documents—only the Fact Sheet and amendments thereto. Consequently, no such documents can be considered as part of the Fact Sheet itself or therefore as part of the SPMP approval. And the Applicant’s sleight of hand in referring interchangeably to the “May 1985 Fact Sheet” and the alleged “May 1985 Submissions” must be carefully noted.

On the other hand, it is absolutely true that any verifiable amendments to the Fact Sheet must be considered and construed as part of the SPMP per the express language of the SPMP approval. The problem is that the Applicant has not identified any such amendments. Although the Applicant now points to a handful of documents that it claims were amendments to the May 1985 Fact Sheet, none of those documents even mentions the May Fact Sheet, much less claims to be an “amendment” to that Fact Sheet.

To the contrary, these documents are all either stand-alone documents unrelated to the May Fact Sheet or revisions to entirely different documents than the May Fact Sheet. For example, there is a document entitled, “Key Questions,” originally dated November 12, 1985 and revised December 23, 1985. Another document is entitled, “Hillside Potential Density vs. Requested,” and purports to be a December 23, 1985 revision of a December 3 revision to an August 12, 1985 document. Another is entitled, “Advantages to High-Rise Maximum Open Space Approach,” and dated September 23, 1985. Nothing in any of these documents ties them to the May 1985 Fact Sheet. Again, not one of these documents identified by the Applicant makes any mention of the May 1985 Fact Sheet or purports to be a revision or amendment to the May 1985 Fact Sheet.



Even if the Applicant could prove that any of these random documents were amendments to the May 1985 Fact Sheet, none of the documents impacts any of the Staff conclusions that Applicant disputes. For example, the "Hillside Potential Density vs. Request" document identifies a total of 19 UEs of support commercial space—just like the May 1985 Fact Sheet it allegedly amended.

In fact, although the Applicant baldly claims that these documents "eliminated statements about all of the areas Staff found so interesting about the May 1985 Fact Sheet," it identifies just one—lobby space. Yet, the documents did not "eliminate" statements about lobby space—they are simply silent on that issue. It is a well-established principle of contract interpretation that if an amendment is silent as to any provision contained in the original document, then it does not amend that provision and the original provision stands as is. Because none of these documents purport to amend or even address the very detailed lobby space provisions in the May 1985 Fact Sheet, those documents could not possibly have effectuated any amendment to the lobby space provisions in the Fact Sheet—even if they actually were amendments to that Fact Sheet, which they are not. By the way, the purported amendments also say nothing about any parking spaces for the project, yet the Applicant does not argue that they eliminated their parking space entitlements set forth in the Fact Sheet.

Finally, the Applicant's contention that Staff must consider historical background, context, negotiations, and discussions (as well as Dr. Sweeney's hardly unbiased view of the intent and meaning of various documents) in construing the May 1985 Fact Sheet are equally misguided. It is also a well-established principle of contract interpretation that one cannot look beyond the four-corners of a document absent an ambiguity that cannot be resolved by looking to the plain language of the agreement. Here, the Staff can and has construed and reconciled the provisions of the May 1985 Fact Sheet with the SPMP itself and with the other exhibits referenced therein. Nothing more is allowed or required.

Again, the Applicant's demand that the Staff ignore the May 1985 Fact Sheet is directly contrary to the mandatory language of the SPMP. Had the Fact Sheet truly been "rejected" by the City, as the Applicant now claims, it most certainly would not have been expressly referenced and incorporated as an exhibit into the SPMP.

#### SPMP Exhibit 3: Sweeney Properties Master Plan Application

As for Exhibit 3 to the SPMP approval, although the Applicant makes no mention of this document in its November 3 response, it appears that the document is actually included among the items submitted with the response beginning on page 220. And, frankly, it is no wonder that the Applicant failed to call that document to anyone's attention given that it likewise claims only 19,000 square feet of support commercial space for the project and therefore further supports the Staff's conclusions in that regard.

#### **November 8, 2017 Staff Report**

As for the November 8, 2017 Staff Report, THINC would like to express its concurrence with virtually all of the conclusions reached by the Staff in its report, while addressing a handful of those conclusions in further detail below:

#### Item 1: Density

Support Commercial: THINC agrees with Staff's conclusions as to the "maximum" 19 approved support commercial unit equivalents. It also agrees with Staff that Refinement 17.2 exceeds the approved support commercial by 18.81 UEs. The Applicant's argument that it was actually entitled to 10% support commercial under Section 10.9(i) under the 1985 Land Management Code ("LMC") appears to be an entirely new claim and is demonstrably false, as is its contention that the City's attorney agreed with them on that point. Because this is a hotel, Section 10.9 does not apply—Section 10.12 does. That Section provides for only 5% support commercial—which as Staff and various Commissioners have concluded—noncoincidentally equals roughly the 19,000 sq. ft. of support commercial requested by Applicant in its Application and Fact Sheet and approved by the City as part of the SPMP.

Even if Applicant were able to claim an additional 5 or 10% of support commercial under the LMC, as it variously contends, those provisions expressly provide that such support commercial be "oriented toward the internal circulation of the development, for the purpose of serving the needs of the residents or users of that development, and not the general public or persons drawn from off the site." This is perfectly consistent with the mandatory SPMP requirement that "all support commercial uses shall be oriented and provide convenient service to those residing within the project and not designed to serve off-site or attract customers from other areas." Yet, Applicant directly admits on page 8 of its response that the proposed support commercial space is designed only to "primarily provide service to guests of the Project and not attract customers from other areas." "Primarily" is not good enough—and is not even accurate based on Applicant's own parking projections for off-site visitors and the sheer amount of square footage of commercial space claimed.

Lobby Space: As for lobby space, THINC believes that Staff is absolutely correct that the 16,214 sq. ft. of so-called "meeting space" claimed by the Applicant in Refinement 17.2 is merely a subset of the 17,500 sq. ft. of "lobby space" claimed by Applicant in its Fact Sheet. In fact, the Applicant's own definition of "lobby space" in the Fact Sheet expressly includes meeting space. Staff is also absolutely correct in concluding that if the Applicant elects to use 16,000 sq. ft. of its allotted lobby space for meeting space, then it would be left with only 1,286 sq. ft. for all other types of lobby space claimed in the Fact Sheet, which by its own definition includes "weight rooms, recreation rooms, saunas, administrative offices, storage, and guest ski storage areas." This is true regardless of how the Applicant characterizes such space in Refinement 17.2—whether as accessory space, common space, or otherwise. Because the Applicant has not provided any detail as to what each of the categories of space actually contain, it is impossible to determine how much of the square footage they claim in each category actually falls within the limit on lobby space. Regardless, at the end of the day, the lobby space, meeting rooms, weight rooms, administrative office, etc., that are included in Applicant's definition of lobby space cannot exceed 7,500 sq. ft. That must be a condition of approval.

As for circulation space for hallways, the Applicant goes to great lengths in its November 3 response to attack the Staff for purportedly concluding that the "lobby space" referenced in the Fact Sheet includes "circulation space" for hallways. In fact, the Staff reached the opposite conclusion—on page 76 of the recent staff report, the Staff stated that it does not consider hallway circulation space to be included in lobby space.



Item 4: Limit of Disturbance/Building Area Boundary

THINC agrees with Staff's conclusion that the permanent cliffscape features and retaining walls cannot be located outside of the Building Area Boundary ("BAB") as they are shown in Refinement 17.2. Moreover, the cliffscapes and enormous retaining walls now featured in Refinement 17.2 were nowhere reflected in the SPMP approval and are entirely inconsistent with the project as approved in the SPMP. They also run afoul of numerous conditional use permit ("CUP") criteria, including mass, scale, and respect for the existing grade, and create impacts that cannot be mitigated. Therefore, the proposed cliffscapes and retaining walls cannot be permitted at all, much less permitted outside the BAB.

Recreation Open Space

THINC does not disagree that some placement of excavated material over the property zoned as Recreation Open Space (ROS) was contemplated in the SPMP in the areas specifically identified and for the sole purpose of re-grading ski runs. That is not what the Applicant now proposes. The enormity of the excavation, transportation, and dumping of rock and soil that is now called for in the Applicant's plans was never contemplated under the SPMP. It is also entirely inconsistent with the ROS zoning designation and with the relevant SPMP provisions, which imposed the open space requirement to "preserve the mountain substantially intact and pristine" and "avoid cutting and removing significant evergreens existing on the site." Nor can it be done, as Staff rightly concludes it must, in a "naturally-occurring manner which preserves its natural look, feeling, views, openness, etc." or in a such a way to enable "the newly re-graded sites to look natural to maintain open land covered with vegetation."

The Applicant's new argument that it has the right to place whatever excavated material on the ROS land that it chooses is contrary to the plain language of the Deed on which it relies. That Deed merely states that the Applicant may "use the Open Space Parcel as a depository for excess fill generated from construction . . . in conjunction with the Sweeney Master Plan." Although the Applicant ends its quote there, the deed further imposes a condition to this use, namely, "provided any resulting damage to the Open Space Parcel shall be repaired." The Applicant's plans do not satisfy any of these requirements.

The dumping of fill proposed in Refinement 17.2 would not be done "in conjunction with the SPMP." The SPMP contemplated many magnitudes less excavation and fill in general—with most of it being hauled offsite. And the SPMP showed the "excess" fill left onsite being placed only on a fairly discrete area of the open space parcel and used to regrade ski runs. So, when the Deed talks about only "excess" fill being placed on the open space land "in conjunction with the Sweeney Master Plan," it is no blank check for the Applicant to place all of the exponentially larger excavation fill than was ever approved in the SPMP anywhere it wants on the open space parcel and, in doing so, not only regrade the ski slopes identified in the SPMP but also completely fill in natural gulches and clear-cut forested hillsides. Clearly, that would damage the open space land in ways that could not possibly be repaired, which would also be directly contrary to the conditions established in the Deed for placing fill onsite. Because Refinement 17.2 does not meet the express conditions established in the Deed for placing excess fill on the open space parcel, the Applicant cannot rely on that document in claiming the right to do as it proposes in Refinement 17.2.



#### Item 5: Setbacks

As quoted in the Staff Report, the SPMP stated with respect to the Hillside Properties that the "buildings have been set back from the adjacent road approximately 100' and a comparable distance to the nearest adjoining residence" and also that the "Hillside properties provide substantial 100'+ setbacks from the road, with buildings sited considerably farther from the closest residence." THINC respectfully disagrees with Staff that Refinement 17.2 complies with the 100'+ setback requirement. Drawings S-4, S-5, S-6, S-7, and S-8 each show buildings for the project located at best 20' from the road and possibly closer and also much closer to the closest residences. This simply does not comply with the 100'+ setback requirement in the SPMP.

#### Item 8: Employee Housing

We agree with Staff that Refinement 17.2 does not satisfy the affordable housing requirements under the LMC. In 2009, staff calculated the affordable housing requirements for the project based on the 19,000 square feet of support commercial approved for this project. Make note, that this is yet another example of where all parties agreed that there would only be 19,000 square feet of support commercial. Had Applicant or the City believed that Applicant was entitled to another 5 or 10% of the total floor area in support commercial, then that additional amount would have been included in the affordable housing calculation. It was not. And the Applicant said nothing.

Based on Applicant's claim to just 19,000 square feet of support commercial space, the Applicant was required to provide 22,775 sq. ft. of affordable square feet for the project. Of that, Applicant has proposed 6,660 sq. ft. of employee housing on site, despite the fact that the city Housing Authority directed that Applicant provide all of the affordable housing on-site. That amount is facially insufficient, as Staff correctly notes.

And if the Applicant is approved for any more than 19,000 sq. ft. of support commercial upon which the 2009 calculation was done, that calculation must be redone to include all commercial space and affordable housing requirements imposed accordingly as a condition of approval.

#### Information Not Provided

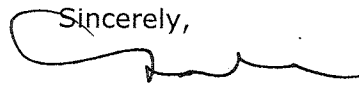
Finally, lack of information. The Applicant's vague and noncommittal responses to the long list of items that Staff has compiled as to outstanding information is illustrative. In lieu of the specific, detailed, written plans, as repeatedly requested the Commission and Staff, the Applicant provides a few high-level bullet points. This does not come to providing the information necessary for serious consideration of the remaining items much less approval of Applicant's CUP application.

#### **Application Must Be Denied**

Because the Applicant has failed to comply with the mandatory provisions of the SPMP approval, and also cannot sufficiently mitigate the serious impacts of the proposed development under the relevant CUP criteria, THINC urges the Planning Commission to deny the subject application.

Park City Planning Commission  
December 1, 2017  
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Thank you again for your consideration of THINC's concerns.

Sincerely,  


Nicole M. Deforge

cc: client

4837-9432-4311, v. 1