



**DATE:** September 9, 2016

**SUBJECT:** Treasure Hill Properties' Compliance with General Plan and Support Commercial Provisions of Land Management Code

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**1. Background.**

As the Planning Commission Staff report dated July 13, 2016, recites,

[t]he Sweeney Properties Master Plan (SPMP) was approved by the Planning Commission on December 18, 1985. . . . On October 16, 1986, the City Council approved the SPMP with amendments to the maximum allowed building heights [for the] Hillside Properties known as the Town Lift Mid-Station and the Creole Gulch sites.

The Hillside Properties consists [sic] of the Town Lift Mid-Station (Mid-station) and the Creole Gulch sites. These Hillside Properties are the last two (2) parcels to be developed within the SPMP. . . .

A combined total of 197 residential UEs and 19 support commercial UEs was approved for the 11.5 acre remaining development sites. Of the 123 acres of Hillside Property, 110 have become zoned recreation open space (ROS) due to the agreement within the SPMP.

Under the SPMP, each development site is required to attain the approval of a Conditional Use Permit (CUP) from the Planning Commission. On January 13, 2004, the applicant submitted a CUP application for the Creole Gulch and Mid-station sites. The CUP was reviewed by the Planning Commission from April 14, 2004 to April 26, 2006. A complete set of revised plans was received by staff on October 1, 2008. Additional materials were received by staff on December 18, 2008. The CUP was reviewed by the Planning Commission from January 7, 2009 to February 10, 2010. (pp.1-2.)

In April 2016, the Applicant, MPE, Inc., requested that the Planning Commission place its CUP Application for the development of the Hillside Properties back on the Commission's agenda and to review the application for compliance with the applicable Land Management Code

(“LMC”) and SPMP Approval. The Planning Commission held public hearings on the CUP Application on June 8, July 13, and August 10, 2016.

The topics that the Planning Commission directed Staff and MPE to address at these past hearings touch upon a number of criteria under the Conditional Use Review Process set forth in the applicable 2003 LMC.<sup>1</sup> Specifically, the issues the Planning Commission has directed Staff and MPE to address during this and prior hearings cover portions of the following CUP criteria:

1. Size and location of the Site;
4. Emergency vehicle Access;
5. Location and amount of off-Street parking;
6. Internal vehicular and pedestrian circulation system;
8. Building mass, bulk, and orientation, and the location of Buildings on the Site; including orientation to Buildings on adjoining Lots;
11. Physical design and Compatibility with surrounding Structures in mass, scale, style, design, and architectural detailing; and
15. Within and adjoining the Site, impacts on Environmentally Sensitive Lands, Slope retention, and appropriateness of the proposed Structure to the topography of the Site.

The topics also touch upon several of the CUP Standards for Review, including:

2. the Use will be Compatible with surrounding Structures in Use, scale, mass and circulation;
3. the Use is consistent with the Park City General Plan, as amended; and
4. the effects of any differences in Use or scale have been mitigated through careful planning.

The topics that MPE has discussed with the Planning Commission during the previous hearings in 2016 have also included several of the conditions of the SPMP Approval, including the building height and building envelope limits established by the SPMP Approval.

The CUP Application satisfies the CUP Standards for Review, each of the criteria set forth in the 2003 LMC, and the associated conditions of the SPMP Approval, including the criteria, standards, and conditions covered by the issues addressed during the prior hearings.

Because “[a] conditional use shall be approved if reasonable conditions are proposed, or can be imposed, to mitigate the reasonably anticipated detrimental effects of the proposed use,” and because the CUP Application conforms to the conditions of the SPMP Approval and proposes additional mitigating factors to address the impacts of square footage and volume, the Planning

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<sup>1</sup> Staff and MPE agree that the Fiftieth Edition of the LMC revised on July 10, 2003 (“2003 LMC”) applies to the CUP Application.

Commission should conclude that the CUP Application meets the criteria, standards, and conditions relating to these issues. Utah Code § 10-9a-507(2)(a).

## **2. The CUP Application Conforms to the General Plan.**

### **2.1 The Planning Staff Concluded the CUP Application Complies with the Applicable General Plan in 2004 and 2005.**

Notwithstanding the Planning Staff's sudden and unexplained change of position on this issue, which is addressed below, Planning Staff has repeatedly concluded in the past that the **“Treasure Hill CUP plans comply with the Park City General Plan regarding location of medium density resort related development.”** (See, e.g., [March 9, 2005 Staff Report](#) p. 5; [April 27, 2005 Staff Report](#) pp. 5–6 (emphasis in original).)

In particular, the Planning Staff wrote in 2005 that:

#### **General Plan**

The Park City General Plan indicates that the Creole Gulch and Midstation parcels are an area of Medium Density Residential development. The proximity to the activities of both the Park City Mountain Resort and the Main Street Commercial District were factors in this designation, as well as in the approval of the clustered plan. The Park City Mountain Resort master plan approval for approximately 502 unit equivalents occurred after the Sweeney Master Plan approval. Residential density in Old Town is in the range of 12-15 units per acre. Typical low density residential neighborhoods, such as Park Meadows, Aspen Springs, and Thayne's Canyon are in the range of 3-5 units per acre.

Gross density of the Treasure Hill project is 3.15 unit equivalents per acre (197 u.e. on 62.5 acres, including only the 51 acres of open space associated with this phase of the MPD). Net density is approximately 17 u.e. per acre (197 u.e. on the 11.5 acres development parcel). By comparison, the net density of the Mountainside development is about 30 units per acre.

According to the City's inventory, there are about 424 existing units on Lowell and Empire Avenues in the 5 and 1/2 blocks south of Manor Way to the Empire/Lowell switchback. Sweetwater Condominiums consists of 89 units (located on approximately 50 Old Town lots) and Mountainside Marriot consists of 183 units. There are approximately 82 dwelling units on Empire, not including Victoria Village (24 units) and Skiers Lodge (16 units) condominiums, and 30 units on Lowell Avenue.

In a review of the building permits issued for single family and duplex units on Lowell Avenue south of Manor Way, staff found

that 28 of the 30 dwelling units on Lowell Avenue were constructed since approval of the Sweeney Master Plan. Although it was platted in 1878, Lowell Avenue is not considered an historic Old Town street and development on Lowell is relatively recent and is more closely associated with Park City's transition to a resort town. In fact, 22 of the 30 dwellings on Lowell Avenue were constructed following the awarding of Salt Lake City as host of the 2002 Olympic Winter Games. **The current Treasure Hill CUP plans comply with the Park City General Plan regarding location of medium density resort related development.**

([March 9, 2005 Staff Report](#) p. 5.)

## **2.2 Planning Staff's Current Position Relating to General Plan Compliance Is Erroneous and Contrary to the SPMP Approval and Staff's Own Prior Conclusions.**

The July 13, 2016, Staff Report fails to identify the version of the General Plan that Staff is supposedly applying to the CUP Application. During the hearing on July 13, 2016, planner Francisco Astorga identified the "1999 General Plan" as supposedly applicable. ([Planning Commission Meeting Minutes](#), p.16, July 13, 2016.) However, Planning Staff has failed to make the 1999 General Plan available for inspection or review. Instead, Planning Staff has appended apparently irrelevant versions of the General Plan to its Staff Reports, including the 1997 General Plan.

Referring to an unknown version of the General Plan, the July 13, 2016, Staff Report claims that the "proposed square footage of this project does not comply with the purpose statements of Land Management Code and goals and actions listed within the General Plan." ([July 13, 2016 Staff Report](#), p. 105.) Even though "purpose statements" and planning "goals" cannot be used to deny the CUP Application for the reasons set forth below, Staff's conclusions about these items are incorrect and contradict Staff's earlier conclusions to the contrary.

First, the July 13, 2016, Staff Report states that "[t]he project is located in the Estate zoning district of Park City" and that "purpose statement 8 [for that zone] states 'encourage comprehensive, efficient, compatible development which results in distinct and cohesive neighborhoods through application of the sensitive lands ordinance.'" ([July 13, 2016 Staff Report](#), p. 105.) The Staff Report acknowledges that the Sensitive Lands Overlay does not apply to the CUP Application, but concludes, *without any analysis or explanation*, that the CUP Application "is excessive and inefficient." (*Id.*)

As an initial matter, the Staff Report fails to explain why the Estate Zone or its purpose statements are even relevant to the CUP Application. Treasure Hill was re-zoned as part of the MPD process. ([SPMP Revised Staff Report](#), p. 8, December 18, 1985.) Moreover, the underlying zoning for the Hillside Properties at the time of the MPD application was both Estate and HR-1. As explained further below, at the time the City approved the SPMP, it determined that the

clustering of density at the Midstation and Creole Gulch sites was not only consistent with the General Plan,<sup>2</sup> it was the best way to effectuate the goals of the General Plan.

Addressing Staff's unexplained and unsubstantiated conclusion that the CUP Application is "excessive and inefficient," the Applicant notes that the idea to "cluster the bulk of the density" at the Midstation and Creole Gulch sites reflected the City's preference for a "high-rise"-type development, and that the current size of the proposed development is a function of the City's own requirements, including its fire protection directives. ([SPMP Revised Staff Report](#), p. 7–8, December 18, 1985.) As the City concluded in the SPMP Approval, "[b]ecause of the underlying zoning and resultant density currently in place, the cluster approach to developing on the hillside has been favored throughout the formal review and Hearing process." (*Id.* at 12.) Indeed, the *very first* "Finding" in the SPMP Approval was that "[t]he proposed clustered development concept and associated projects are consistent with both the Park City Comprehensive Master Plan and the underlying zoning." (*Id.* at 2.)

Moreover, the July 13, 2016, Staff Report does not attempt to harmonize Staff's current position with Staff's contrary conclusions on numerous prior occasions. For example, in its March 9, 2005, Staff Report, Staff concluded:

The Creole Gulch and Mid-station development parcels are zoned E-MPD, and are subject to the approved Sweeney Properties Master Plan. The Sweeney Properties MPD allows hotel, condominium, townhouse, resort support commercial uses, and ski runs, lifts, etc. with the maximum densities and heights as outlined above. Open space parcels are zoned ROS. **The current Treasure Hill CUP plans comply with the existing zoning.**

([March 9, 2005 Staff Report](#) p. 5 (emphasis in original).) **Ten years ago, Staff concluded that the CUP Application complied with the existing zoning requirements and the General Plan; now, Staff takes the opposite position. Staff offers no explanation for this sudden about-face.**

The July 13, 2016, Staff Report also draws on certain "goal" and "intent" statements from some undisclosed version of the General Plan. ([July 13, 2016 Staff Report](#), p. 105–06.) Staff claims, based on these general purpose statements, that the "amount of circulation area, lobby areas, parking circulation, etc. [requested in the CUP Application] are not modest in scale and compatible to the surrounding area." (*Id.*)

With respect to the assertion that the circulation areas, lobbies, and parking are not "modest" in scale, Staff offers nothing in support of this conclusion. As the Applicant has previously explained on numerous occasions, the square footage and floor areas of the project, including the circulation areas, lobbies, and parking, are a function of the City's fire protection requirements, the 2003 Land Management Code's expressed preferences for such floor areas in resort developments, and modern development trends.

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<sup>2</sup> At the time of the SPMP Approval in 1986, the City's General Plan was known as the "Comprehensive Master Plan."

Indeed, Staff conducted an analysis of other resort developments allowed by the City during the same period of time as the SPMP Approval and CUP Application. As the July 13, 2016, Staff Report itself concludes “[b]ased on the Department’s research” into other developments the City has permitted to be built under the auspices of the same General Plan, “there is generally a trend towards wider hallways, more open lobby and check-in space, a desire by guests for socializing space, sitting spaces with views, etc.” ([July 13, 2016 Staff Report](#), p. 107.) The City’s own analysis concluded that the CUP Application seeks square footage in these categories that is comparable—or less than—other resort developments that this Planning Commission has approved in the City in recent times. ([Exhibit W](#).) The City has permitted these other developments under the same apparent General Plan—with the same language—that Staff now claims precludes approval of the CUP Application. The Staff offers no explanation for this discrepancy in treatment.

As for Staff’s claim that the circulation areas, lobbies, and parking are not compatible with the surrounding areas, Staff again fails to articulate any reasons for its conclusion. As the Applicant has noted on numerous prior occasions, the Woodruff Drawings, attached as exhibits to the SPMP Approval (and specifically incorporated into the SPMP Approval), anticipated buildings of the same basic size and volume as those proposed by the CUP Application. In fact, the buildings shown on the Woodruff Drawings were *more* “front loaded” and closer to the surrounding residential areas than the current proposal. The current proposal improves the neighborhood compatibility of the buildings as compared to the Woodruff Drawings.

Nonetheless, Planning Staff, the Planning Commission, and the City Council concluded that the “proposed clustering approach [represented by the Woodruff Drawings] was deemed the *most compatible*” of the alternative approaches presented for consideration. ([SPMP Revised Staff Report](#), p. 10, December 18, 1985 (emphasis added).) Moreover, the second “Finding” of the SPMP Approval was that “[t]he uses proposed and general design of the project is or will be compatible with the character of development in the surrounding area.” (*Id.* at 2.)

Moreover, Staff’s current position contradicts Staff’s own prior conclusions. For example, in its March 9, 2005, Staff Report, Staff concluded, on the topic of “Compatibility, Scale, and Concentration of density in Creole Gulch area” that the “**current Treasure Hill CUP plans comply with the cluster concept, which was the preferred alternative, as approved with the Sweeney MPD.**” ([March 9, 2005 Staff Report](#), p. 14 (emphasis in original).) Unlike the current Staff Reports, which suggest that Staff believes it is writing on a blank slate, the March 9, 2005, Staff Report and others recognize that Staff must analyze the CUP criteria in the context of the findings and determinations of the SPMP Approval. Staff’s current analysis contradicts the findings and conclusions set forth in the SPMP Approval without any explanation.

The July 13, 2016, Staff Report’s position on compliance with the General Plan fails to account for the prior findings of the SPMP Approval or Staff’s own prior reports, and it fails to explain why the development proposed by CUP Application is no longer compatible, when Staff found it to be compatible in 1986 and again in 2005. Absent from the July 13, 2016, Staff Report is any explanation for the Staff’s departure from its prior conclusions in 2005 that the CUP application fully complied with the applicable General Plan. Reaching directly contradictory conclusions without providing any explanation or rationale for the change in position is the textbook definition of arbitrary and capricious action.

### **2.3 Staff's Current Conclusions about General Plan Compliance Fail to Take Into Account the History of the Project and the SPMP Approval.**

Staff's current position on General Plan compliance ignores the context and history of the project. As the Applicant has outlined and summarized throughout these proceedings, in order to fully understand the current CUP Application and the reasons it should be granted, it is vital to understand that context and history.

The City has already determined that the development proposed by the CUP Application is consistent with, and the best way to effectuate, the goals of the General Plan. At the time of the MPD Application,

[t]he city's Comprehensive Master Plan identifie[d] the Hillside property as a key scenic area and recommend[ed] that development be limited to the lower portions of the mountain. . . . The proposed Sweeney Properties MPD is in conformance with the land use designations outlined in the Park City Comprehensive Master Plan.

([SPMP Revised Staff Report](#), p. 9–10, December 18, 1985.)

The SPMP Revised Staff Report further noted that “[t]he concept of clustering densities on the lower portion of the hillside . . . has evolved from both previous proposals submitted and this most recent review process” and that “[t]he Park City Comprehensive Master Plan update that was recently enacted encourages the clustering of permitted density to those areas of the property better able to accommodate development.” ([SPMP Revised Staff Report](#), p. 12, December 18, 1985.) As noted above, the *very first* “Finding” in the SPMP Approval was that “[t]he proposed clustered development concept and associated projects are consistent with both the Park City Comprehensive Master Plan and the underlying zoning.” (*Id.* at 2.)

To suddenly suggest that the CUP Application is inconsistent with either the General Plan or the “purpose statements” of the underlying zoning is to ignore the history of the SPMP Approval, in violation of the Applicant's contractual rights and reasonable expectations based on the City's prior representations, upon which the Applicant has relied by making significant investments of time, money, and other resources.

### **2.4 The General Plan Is Not A Sufficient Basis For Denying the CUP Application.**

Finally, neither general policy statements from a General Plan nor “purpose” and “intent” statements contained in a Land Management Code are a sufficient basis to deny the CUP Application, whatever their merit.

As the City's own current General Plan explains, the General Plan “is a long range policy plan that will guide future Land Management Code (LMC) and zoning decisions.” ([General Plan](#), p. 8.) However, the “LMC is the regulatory document that addresses specific zoning and land uses within respective zones.” (*Id.*) So long as the application complies with the *specific* provisions of the applicable Land Management Code, it is entitled to approval, regardless of supposedly contradictory language in the General Plan.



The same is true for general “purpose” and “intent” statements prefatory to specific sections of code. As the Utah Supreme Court has noted, “a statement of legislative purpose . . . is nothing more than a statement of policy which confers no substantive rights.” *Price Dev. Co., L.P. v. Orem City*, 2000 UT 26, ¶ 23, 995 P.2d 1237, 1246. Such “purpose” and “intent” statements cannot be used to “limit th[e rights] actually given by the legislation.” *Id.*

### **3. The Support Commercial Sought in the CUP Application Is Allowed Under the Applicable Code.**

#### **3.1 The Planning Staff’s Current Position Is Erroneous.**

The July 13, 2016, Staff Report states that “[a]ny additional support commercial and meeting space areas above the 19 UEs must be in compliance with the LMC at the time of the MPD vesting.” ([July 13, 2016 Staff Report](#), p. 104). The Staff Reports dated July 13, 2016, and August 10, 2016, further state that “[a]ny additional support commercial above the 19 UEs is not vested.” (*Id.*)<sup>3</sup> These Staff Reports cite an earlier staff report from September 23, 2009, and associated meeting minutes to justify this position.

While the August 10, 2016, Staff Report appears to focus only on Staff’s position on the amount of square footage the Applicant is allowed for Support Commercial uses ([August 10, 2016, Staff Report](#), p. 138), Staff’s analysis actually accounts for square footage for both Support Commercial and Meeting Space uses. The vast majority of the Staff Report only references Support Commercial space, while omitting explicit references to Meeting Space, but a careful reading of the Staff Report reveals that Staff’s conclusion that the Applicant is only entitled to 11,740 square feet of additional space is for Support Commercial and Meeting Space uses. (*See August 10, 2016, Staff Report*, p. 135.)

The Applicant acknowledges that in 2009, the City brought in a new planner to the project, Katie Cattan, who took positions that were completely contrary to the conclusions previously reached by more senior and more experienced planners. Even though Ms. Cattan arrived at positions contradicting those set forth in prior Staff Reports, Ms. Cattan’s Staff Reports, including the cited September 23, 2009 Staff Report, failed to even acknowledge the numerous prior Staff Reports—which spanned years of review—in which more experienced members of the Planning Department Staff reached opposite conclusions. Both Kirsten Whetstone, senior planner for Park City, and subsequently, Pat Putt, former planning director for Park City, 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 Space uses pursuant to Section 15-6-8 of the 2003 LMC. (*See, e.g.*, April 14, 2004, Staff Report; May 26, 2004, Staff Report; July 14, 2004, Staff Report; August 11, 2004, Staff Report; August 25, 2004, Staff Report; April 12, 2006, Staff Report.)

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<sup>3</sup> The August 10, 2016, Staff Report is internally inconsistent on the question of vesting, noting both that “any support commercial above the 19 unit equivalents is not vested” and that the “applicant has vested rights to 19,000 square feet of support commercial [i.e., 19 UEs,] as written on the Master Plan narrative **and [an] additional five percent (5%) of the hotel area.**” ([August 10, 2016, Staff Report](#), p. 138 (emphasis added).)



For example, as the March 9, 2005, Staff Report concluded, “[m]eeting space and support commercial (10% of the total approved floor area) per Land Management Code (15-6-8.) is allowed per the MPD, **in addition to the 19 UE of commercial uses.**” ([March 9, 2005 Staff Report](#), p. 17–18 (emphasis added); *see also* [April 12, 2006, Staff Report](#), p. 13, (“Support Commercial/meeting space” allowed is equal to “5%/5% of gross FA.”).))

Apart from the conclusion that the Applicant is entitled to 10% of additional floor area for Support Commercial and Meeting Space uses—5% for each—above the 19 UEs of Support Commercial set forth in the SPMP Approval, this passage also demonstrates that the City has consistently represented to the Applicant that the 2003 LMC resolves the Support Commercial and Meeting Space determination from 2004 through 2006. Staff’s explicit reference to Section 15-6-8 of the LMC is a reference to the 2003 LMC, *not* to the 1985 LMC. Staff instructed the Applicant to expend considerable time, money, and other resources further designing the project on the basis of these representations, which are now an integral part of the project’s design and functionality.

Staff’s current position represents a sharp and unexplained departure from Staff’s prior conclusions, specifically (1) that the 2003 LMC—not the 1985 LMC—applies to the Support Commercial and Meeting Space question, and (2) that the Applicant is entitled to an additional 10% of floor area for Support Commercial and Meeting Space uses over and above the 19 UEs of Support Commercial set forth in the SPMP Approval. Staff provides no explanation for this arbitrary and capricious change of position.

### **3.2 There Is No Basis For Threatening to Reopen the SPMP Over the Support Commercial Issue.**

The Applicant takes exception to the outrageous statements in the August 10, 2016, Staff Report suggesting that if the Applicant seeks more square footage for Support Commercial and Meeting Space uses than the Staff presently believes is appropriate, the City will “re-open[] the entire Master Plan” for a “full blown, new compatibility and Master Plan/CUP review.” (August 10, 2016 Staff Report, p. 138.)

Although the Staff Report fails to explain the legal basis of this threat, the Planning Commission’s Special Counsel, Jody Burnett, has told the Applicant that the position is based on [Section 1.22 of the 1985 LMC](#), titled “Vesting of Zoning Rights.” That section provides, in relevant part, that “[t]he project owner may take advantage of *changes in zoning* that would permit greater density or more intense use of the land, provided however, that these changes may be deemed a modification of the plan and subject to the payment of additional planning review fees.” (emphasis added). The Staff seems to believe that by seeking more space for Support Commercial and Meeting Space uses than the Staff believes is allowed, Staff may unilaterally deem this action to be a modification of the SPMP Approval.

Section 1.22, however, does not apply to the SPMP Approval or the Support Commercial and Meeting Space issue for several reasons. First, Section 1.22 is a general provision addressing the vesting of rights under an existing zoning ordinance when a development application is submitted. Basically, the provision codifies existing Utah Supreme Court precedent holding that an application is vested under the existing code at the time it is submitted. Section 1.22 is not specific to MPD agreements or to amendments to MPD approvals.

Second, even if Section 1.22 were to apply to MPD approvals, it does not state what Staff seems to think it states. The language of Section 1.22 applies to “changes in zoning” that result in “greater density or more intense use of the land.” But the Applicant’s position that the Support Commercial and Meeting Space provisions of the 2003 LMC apply to the CUP Application, rather than the provisions of the 1985 LMC, has nothing to do with “changes in zoning.” **It is not changes in zoning that allow the Applicant to take advantage of the 2003 LMC but the Utah state statutes, as acknowledged by the Park City Attorney and numerous prior Staff Reports.**

Finally, the Applicant believes the City’s threat to reopen the SPMP and breach the contract represented by the SPMP Approval over the parties’ disagreement about correct application of legal principles—particularly given the City’s prior positions—smacks of bad faith in the extreme. Threatening the Applicant with dire consequences that have nothing to do with the issue—a disagreement over less than 4% of the total project square footage—raises serious questions about the City’s motives.

### **3.3 As the Applicant Has Previously Explained, the Fiftieth Edition of Park City’s Land Management Code (“2003 LMC”) Applies to the CUP Application.**

The Applicant previously explained in great detail why the 2003 LMC applies to the CUP Application, including to the Support Commercial and Meeting Space determination, in its submission to the Planning Commission dated July 6, 2016.<sup>4</sup> Without repeating the entire discussion, the Applicant reiterates the following points:

- Utah statutes provide that “[a]n applicant who has filed a complete land use application . . . is entitled to substantive land use review of the land use application under the land use laws **in effect on the date that the application is complete . . .**” Utah Code Ann. § 10-9a-509(1)(a)(i) (emphasis added).
- The SPMP Approval recognized that “[a]t the time of conditional use . . . review, the staff and Planning Commission shall review projects for compliance with the adopted codes and ordinances **in effect at the time.**” (MPD Revised Staff Report at 3 (emphasis added)).
- In an August 25, 1999, letter to the Applicant, Mark Harrington, Park City’s then Interim City Attorney, stated that “Square footage and floor areas for the Unit Equivalents (UEs) are calculated as provided in the Land Management Code and Uniform Building Code adopted by Park City, **at the time of application.**” (emphasis added).

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<sup>4</sup> Even though the Applicant has *repeatedly* informed the City and Planning Staff that its position is that the 2003 LMC governs the Support Commercial and Meeting Space question (*see, e.g., July 6, 2016, Applicant Memorandum*, p. 4 n.8), Staff continues to claim that the Applicant “utilized the 2008/2009 LMC to calculate the support commercial area and meeting space within the development,” which is simply false (*August 10, 2016, Staff Report*, p. 136). The Applicant is at a loss as to why Staff would continue to misrepresent its position when the Applicant has made that position clear and unambiguous.

- In an April 9, 2004, memorandum to the Planning Commission, Mark Harrington, Park City's then City Attorney, again stated that "Square footage and floor areas for the Unit Equivalents (UEs) are calculated as provided in the Land Management Code and Uniform Building Code adopted by Park City, **at the time of application.**" (emphasis added).

BJM: