

## **Anya Grahn**

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**From:** Sanford Melville <smelville@outlook.com>  
**Sent:** Monday, October 08, 2018 5:18 PM  
**To:** Melissa Band; Sarah Hall; John Kenworthy; John Phillips; Mark Sletten; Laura Suesser; Douglas Thimm  
**Cc:** Anya Grahn  
**Subject:** 638 Park Avenue (Kimball Garage) - October 10, 2018 Planning Commission meeting - City Council Remand of CUP for Event Facility  
**Attachments:** Kimball CUP Conditions of Approval.docx

Dear Planning Commission,

In reading the October 10, 2018 staff report for the proposed Kimball Event Center CUP, the most significant observation that I have is that **nothing has materially changed in almost two (2) years of review**. The CUP proposal continues to be for an event facility for up to 480 people, allowed to operate 365 days a year, from 8am to midnight, with music and speakers allowed on the outdoor rooftop deck portion from 11am to 10pm, subject only to City noise codes. All of this in an already congested area of town adjacent to a residential neighborhood.

As explained below, the directions of City Council in its Remand to you nearly 18 months ago (Exhibit A) are **not** reflected in the proposed CUP approval in the staff report. Also, there are significant issues with the proposed Conditions of Approval, and incorrect Findings of Fact, as also discussed below.

### **City Council's Remand**

#### **On-going monitoring:**

Council suggested "on going monitoring" by the Planning Commission to ensure compliance with the Conditions of Approval of the CUP (Remand para. 13). Council suggested "an affirmative review by the City incrementally by the use, more frequently than just once a year." (Remand para. 23).

Instead, the proposed Conditions of Approval #28 and 29 include only review at 6 months and 1 year. This is insufficient, and must continue after the first year, at least annually, due to likely ownership changes, management changes, changes in scheduled events, and changes in the community.

Further, the "on-going monitoring" of compliance is shifted by the Conditions of Approval to the citizens and neighbors to make "complaints" and somehow "register them with the City. (Conditions #25 and 26). How anyone could actually do this is undefined, unworkable, and puts an unreasonable burden on ordinary citizens. On this issue, the Park City Police Review report dated June 12, 2018, made two very appropriate recommendations that have been ignored in the proposed Conditions of Approval:

"b) A provision for a representative of the establishment to meet with neighbors upon request in order to attempt to resolve neighborhood complaints regarding the operations on the business premises;

l) A readily available on-site point of contact representative for conflict mitigation/problem solving able to act as a liaison for complaints and/or operational coordination including noise complaints, crowd management, traffic related issues, emergency management plans, evacuations, etc."

This Police report was provided to you by staff at the last hearing on this CUP, but has not been included or addressed in the current staff report.

#### **Noise:**

Council was concerned that “human chatter”, as well as amplified outdoor music, could violate the City’s noise ordinance. (Remand para. 4). No provision has been made to measure of control “human chatter” or similar party noise.

Council was also concerned that use of the second level rooftop deck “was too unrestricted and not compatible in use to neighboring structures” and “too public and too impactful to the surrounding neighborhood”. (Remand para. 10, 17). Council suggested “keeping the sound inside the space” (Remand para. 20); limits on use of the outdoor deck beyond ancillary uses which are permitted and include removing speakers (Remand para. 21); and restricting usage and hours to limit noise impacts. (Remand para. 25). None of these concerns have been addressed.

In addition, as stated in the staff report at page 69, staff’s own acoustic study concluded that noise violations were possible from amplified noise. Notably, the applicant’s proposed reliance on technology to control amplified noise from music on the deck has not yet been tested nor shown to actually work and is not addressed at all in any of the acoustic studies.

The staff report goes on to state at page 69:

“regardless of noise code violations, the proximity of the site in relationship to residential properties creates a high probability of long-term noise fatigue which staff will not have an ability to enforce against.” [emphasis added]

I couldn’t agree more, and this concern is significant.

### **Traffic Bottle-necking:**

Council found likely unmitigated “bottlenecking” of the street corners and streets around the event center, particularly during peak load-in and load-out times, including for deliveries and patrons. (Remand para. 6, 18, and 19).

These concerns are not adequately addressed by the proposed Condition #15 that a Traffic Management Plan be prepared for planned events of 250 or more persons. Events of far fewer persons are likely to cause these same problems. At the very least, any time an event is held, there should be some City-approved persons managing traffic at this congested section of town, paid for by the event operator.

Further, and very importantly, there is no basis or reason to allow the applicant to take the public street parking on Heber Ave. and convert it to a 15-minute loading zone as proposed in Condition #20. The lack of an onsite loading/unloading zone is a fact of the applicant’s own making and decisions. The applicant chose to remove the previously existing parking lot and loading area from the property and instead build square footage on it. This choice by the applicant does not require that the City should take the parking on the public street and convert it to a loading zone that the applicant can use to alleviate its choice to not maintain a loading zone on its own property.

As stated in the staff report on page 72, this solution was previously rejected in the September, 2017 work session by the Planning Commission, who were “not supportive of the applicant’s proposal to reduce parking or permanently convert parking along Heber Ave. into a 15-minute loading/unloading zone.” [emphasis added]

Instead, the applicant has the responsibility to limit the use of its facility and manage traffic to fit the limitations of the Event Facility it has designed and constructed.

### **Conditions of Approval Issues**

The applicant has continued to construct the building, which they have every right to do. But the use of the space is in your hands. I urge you to give City Council’s thoughtful concerns about the use of this space careful review for its impact on the City as you consider the staff report. Further, I urge you to deny the CUP,

or at the very least add strict and enforceable Conditions of Approval. A list of my proposed additional needed Conditions of Approval is attached, which I have updated to reflect the contents of the staff report. In reviewing the proposed Conditions of Approval contained in the October 10, 2018 staff report there are several numbered Conditions that I question and have comments on, listed below, which need your serious review:

10. There are numerous owner responsibilities listed to minimize the sound impacts, but how does the City ensure these responsibilities are actually carried out?
11. Who will verify that the doors are kept closed when there is music in the interior space?
12. Who will verify there are no elevated stages and speakers.
13. What is “approved outdoor dining”? Is there a City code for outdoor dining speakers?
14. This requires the public to both measure and complain about noise code violations. Why is the burden on the public?
15. This situation of “written notification” to the City by the operator of an event scheduled for 250 or more persons will likely never occur. Why would the operator ever voluntarily go through the work of providing the information detailed in this Condition when he could always state the event is 249 people? Who from the City will count the number of guests at an event? These requirements should be for every event or at least for events of 100 or more guests. Finally, the term “violations” used in this Condition is undefined and should be clarified.
20. Is the proposal to convert Heber Ave. to a loading zone or a parking zone? As stated above, any proposed taking of public parking for creation of a loading zone for the benefit of this applicant is totally unacceptable. The precedent this will set for other businesses who will wish to do the same is immense.
25. What is a “sustained complaint”? Who does a citizen complain to? How do citizens register a complaint - email, phone, in-person? How does it get logged? How does the City ever learn of the complaint? How does the Planning Department determine what is a nuisance and what is a simply a complaint? This Condition puts the burden of enforcement on the citizens, and does so without providing any clear method for the citizens to do so.
26. What are “sustained violations”? The CUP should come back to Planning Commission annually, for all time, to account for event management changes, ownership changes and changes in the community. A permanent approval defies common sense.

### **Incorrect Findings of Fact**

There are several Findings of Fact in the staff report that I believe are incorrect. Following are the incorrect Findings and the reason why they are incorrect:

**37.** This finding is incorrect and misleading in that it gives the false impression that these “design” features have been shown to have any impact on minimizing noise. Nothing of the sort has been provided in any of the noise studies. To be correct, this Finding must include the additional sentence: “Applicant has not provided any evidence or shown that these design features have any actual effect of minimizing noise.”

**38.** The following statement is entirely unsupported and incorrect: “The applicant has sufficiently addressed limiting the types of events, hours of operation, and duration of events at the site.” In fact, the applicant has made no changes limiting these issues since its original application.

**39.** Likewise, the statement that “the applicant has reduced the hours of operation and occupancy load on the rooftop terrace in order to further limit[ed] noise” is simply untrue. No such reduction has occurred since its original application.

In addition, the statement that “the applicant has mitigated the impacts for potential amplified music and sound on the balcony through use of design elements” is entirely unsupported by any facts or expert opinion, as stated above regarding Finding #37.

There is also nothing to support the statement that these “design elements” have any effect at all as “a means of controlling the non-amplified noise that is caused by a talking crowd.”

Further, the statement that the “applicant has mitigated the impacts for potential amplified music and sound on the balcony through use of...technology” is misleading since there have been no actual showing or expert analysis that the mentioned “technology” will in fact work. Such “technology” whatever that is, has yet to be installed or tested or shown to be effective to limit noise on the deck. To be factually correct, this statement should be corrected to state: “The applicant has proposed to provide technology to mitigate the impacts for potential amplified music and sound on the outdoor rooftop balcony, but this technology has not yet been installed not tested nor shown to actually work to control excessive noise in this environment.”

**41.** The statement is incorrect that “The applicant has met the minimum requirements for...loading/unloading as outlined in the Municipal Code and LMC.” The applicant has provided no loading/unloading facilities as part of its project, and in fact, applicant removed the previously existing loading/unloading facilities on the site.

**42.** The entire last sentences of this Finding are not correct and are not supported by any facts. The applicant has not demonstrated that any loading/unloading of guests attending private events will not add to the already congested intersection of Park Ave. and Heber Ave. and Main St. and Heber Ave. The opposite is inevitable. They also have not “demonstrated that loading/unloading will not impede bus traffic and circulation.” In fact, the traffic study shows the opposite.

**45.** There is nothing to factually support the applicant’s highly objectional assertion that “The proposal contributes to maintaining the Historic Main Street District as the heart of the City for residents...”. Nothing about this CUP will benefit neighboring residents of this event center, who will instead endure the burden of noise, traffic, and other negative quality of life impacts caused by this event center CUP.

## **Conclusion**

In conclusion, I urge the Planning Commission to deny this CUP in accordance with LMC 15-1-10 Conditional Use Review Process. The impacts of this large Private Event Space in the very heart of Park City cannot be reasonably predicted and cannot be substantially mitigated. The City has a procedure for managing and controlling large events and that is the Administrative CUP and that is the procedure that should be utilized for the Kimball Private Event Space.

Respectfully submitted,

Sanford Melville

## **Needed Additions to Conditions of Approval for Kimball Garage Event Center CUP**

- A. The Planning Commission shall periodically review the CUP approval for the Event Center to determine compliance with the LMC and conditions of approval, and these reviews shall occur at least annually. At such reviews Planning Commission shall review compliance, take public input, and determine if additional conditions of approval are needed to mitigate the impacts of this CUP under LMC 15-1-10.**
- B. Owner shall not convert the currently existing public parking along Heber Avenue to a permanent loading/unloading zone. This area must remain public parking. The Event Center owner/operator must obtain a permit from the City for singular events which may justify the use of public parking for purposes of loading/unloading.
- C. No events can be scheduled at the Private Event Center until a mechanism is established by the City, by way of published and readily accessible telephone contact, email, etc., whereby the public can register with the City complaints regarding events and/or operations at the Event Center.
- D. A single page summary of the Conditions of Approval to be enforceable by the Police Department upon receiving noise, traffic, congestion, or other complaints shall be prepared and approved by the Planning Department. The summary must be provided to the Police Department and it must be visibly posted inside the lobby of the Event Center at all times.
- E. Any event for over 75 guests requires an administrative CUP.
- F. Any event for over 100 guests requires that a City-approved compliance officer be on-site during the event, to be paid for by the operator of the event. This compliance officer must be available to take complaints from the public during the event, make a record of the complaint and the action taken to address the complaint, and must supply a copy of all such records to the City.
- G. For any event of over 100 guests, the event center operator must provide at least two (2) traffic control persons on the street to help control traffic and assure traffic flow is not impeded while vehicles are loading and unloading event attendees or equipment.
- H. Events are limited to the indoor spaces of the Event Center only. Use of the rooftop terrace for any event is for accessory uses only (such as "catching a breath of fresh air" by attendees), and no scheduled use of the rooftop terrace is permitted for portions of any event.
- I. [alternately]: Use of the rooftop terrace for any event is limited to daytime hours, and no use of or access to the rooftop terrace for events is permitted after sundown.*
- J. No lights are permitted on the rooftop terrace, except for lighting above the doorway.
- K. No speakers or amplification of music or voice is permitted on the rooftop terrace.
- L. Shades must be provided on the west-facing glass doors and windows adjoining the rooftop terrace, and the shades must be lowered after sundown to prevent light pollution from the large amount of west-facing glass windows adjoining the rooftop terrace.
- M. All deliveries and removals of equipment and supplies for the Event Center must comply with Municipal Code 9-8-3, limited to the hours of 7am and 12 noon.