

PARK CITY MUNICIPAL CORPORATION  
PLANNING COMMISSION MEETING MINUTES  
COUNCIL CHAMBERS  
MARSAC MUNICIPAL BUILDING  
OCTOBER 10, 2018

COMMISSIONERS IN ATTENDANCE:

Vice-Chair John Phillips, Sarah Hall, John Kenworthy, Mark Sletten, Laura Suesser, Doug Thimm

EX OFFICIO: Planning Director, Bruce Erickson; Planner; Anya Grahn, Planner; Hannah Tyler; Planner; Mark Harrington, City Attorney; Jody Burnett, Legal Counsel

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REGULAR MEETING

**ROLL CALL**

Vice-Chair Phillips called the meeting to order at 5:35 p.m. and noted that all Commissioners were present except Commissioner Band, who was excused.

**ADOPTION OF MINUTES**

September 26, 2018

Commissioner Thimm referred to page 17, first full paragraph, third line, and changed 20' to the garage base to correctly read **20' to the garage face.**

MOTION: Commissioner Sletten moved to APPROVE the Minutes of September 26, 2018 as amended. Commissioner Thimm seconded the motion.

VOTE: The motion passed unanimously.

**PUBLIC COMMUNICATIONS**

There were no comments.

**STAFF/COMMISSIONER COMMUNICATIONS AND DISCLOSURES**

Planning Director Bruce Erickson reported that the Planning Commission would only hold one meeting in November, on November 14<sup>th</sup>, due to the Thanksgiving holiday.

Commissioner Kenworthy disclosed that as he has in the past, he would be recusing himself from the 638 Park Avenue item on the agenda this evening.

Regarding the LMC Amendment regarding Food Trucks, Commissioner Kenworthy stated that he is the President of the HPCA and he would not be voicing any HPCA opinion during the Food Truck discussion. However, he encouraged members of the HPCA to give their comments during the public hearing.

Commissioner Hall disclosed that she has been an occasional client of Snell and Wilmer, the law firm representing the applicant for 638 Park Avenue. She also disclosed that she ran into Logan, the architect for the Kimball project outside City Hall. During the site visit she had favored bike racks, and he told her that they would most likely not have bike racks. Commissioner Hall disclosed that after the last meeting she also ran into John, who is working with THINC, and he reiterated some of his points. Commissioner Hall did not believe any of these disclosures would affect her decision on the Kimball project.

## **REGULAR AGENDA - DISCUSSION/PUBLIC HEARINGS/ POSSIBLE ACTION**

### **1. LMC Amendments – LMC Amendments regarding Food Truck locations (Application PL-18-03846)**

Planner Hannah Tyler provided a brief background on this item. She noted that typically Food Trucks have not been allowed within the Park City limits. However, recent legislation resulted in State Code changes, which took effect in May. Planner Tyler stated that a pending ordinance came before the Planning Commission in May to address the State Code changes, and it was slated to come back to the Planning Commission after the City Council did some outreach with stakeholders. Planner Tyler stated that the City Council had provided direction and the Staff had also reached out to the stakeholders.

Planner Tyler reported that the objective this evening was to amend the LMC to align with State Code. The State Code states that if a restaurant is allowed in a zone or as a conditional use in the zone, that Food Trucks should be allowed.

Planner Tyler presented a power point presentation showing the list of zones that currently allow restaurants as either conditional or allowed uses in those zones. The City will be regulating Food Truck locations. Planner Tyler noted that the Recreation Open Space zone currently does not allow restaurants. However, it was included in the list to align the purpose statement of that zone, which is for public amenities. Planner Tyler stated that Quinn's Junction was in the zone and some City facilities. In an attempt to reduce the vehicle miles traveled during larger tournaments at Quinn's for example, because there are no services or restaurants it would be better to provide

food out there to keep people from driving into the City and contributing to traffic congestion. That was the logic for including the ROS zone.

Planner Tyler stated that since the specific of the Code changed at the State level, the City is not regulating individual food trucks in the LMC. They are only regulating the location of food trucks. Food trucks on private property will be regulated the same as public property. If the City would like to facilitate food trucks on City property it would go through the same process as a private property owner. Planner Tyler stated that food trucks will not be allowed in the right-of-way and they cannot operate from the street.

Regarding the regulation of individual food trucks, those regulations will be set forth in the Municipal Code in Title 4 as part of the business licensing. Planner Tyler stated that for purposes of the Land Management Code, they will be regulating each property owner who wishes to have a food truck in accordance with the underlying zoning requirements. The property owner will come to the Planning Department and apply for an administrative permit. They will have to specify exactly where on their land they want to locate the food truck. There needs to be sufficient room for the food truck and it has to meet the setbacks and all other requirements of a building. The Planning Director would then issue a determination letter stating whether it is or is not in compliance with the underlying zoning. Planner Tyler stated that once the private property owner has the letter showing compliance, they can have a food truck park on their property.

Planner Tyler was unsure how many property owners would be able to go through the process and facilitate a food truck on their property that would not take up required parking. If it is a common area, the HOA must sign off on the food truck. Planner Tyler pointed out that the City was not precluding food trucks from coming to Park City, and they were opening it to private property owners. However, with the current real estate market and the properties themselves, there may not be as many opportunities for food trucks.

Planner Tyler stated that the City cannot require additional health and fire inspections. If a food truck comes up from Salt Lake they will have a Salt Lake County health and fire inspection. Summit County will not be able to require an additional inspection at that level. However, Park City can require a reciprocal business license, which is a \$149 fee. The City would also require that they open up a temporary tax account so the City can collect sales tax from all the transactions that occur.

Planner Tyler stated that per State Code, the City cannot regulate food trucks that operate for less than 10 hours. For example, if a food truck comes in for two hours at a

time, two days a week, they would not be regulated under the LMC. They will have to be located on private property, but the City cannot require a business license.

Planner Tyler clarified that the State facilitating the use of public property was a City Council policy discussion that was scheduled for October 23<sup>rd</sup>. The objective this evening was only to look at the use level of the LMC to align with State Code. Planner Tyler assumed that members of the public wanted to talk about the City facilitating public property, but that was not a discussion for the Planning Commission this evening.

Planner Tyler reviewed a chart she had prepared which organized the regulations by type of property and the type of use. The chart was broken into categories of Food Trucks at Special Events; Food Trucks on private property that does not serve the public; Food Trucks on private property that serves the public; and Food Trucks on public property that serves the public. The regulations and process for each specific use were listed under the appropriate column. The last column, Food trucks on public property that serves the public, will be discussed by the City Council on October 23<sup>rd</sup>. Planner Tyler stated that if the City Council chooses to facilitate that, they would issue an RFP for interested parties wishing to operate on City property.

Planner Tyler reiterated that the City would be held to the same standard as all private property. It would have to be an allowed use in the zone, and the City would have to acquire Planning Director determination. Any food truck that operates will need business licenses and temporary tax accounts.

Planner Tyler emphasized that the objective this evening was to amend the LMC to align with the State Code through definitions of food truck, food truck locations, and the list of zones where the food trucks are allowed uses.

Director Erickson noted that this amendment has been six-months in progress. Planner Tyler and the Staff had researched food truck regulations everywhere from Monterey, California to resort towns in the west. They also attempted to respond to the commentary on the Summit County attempt on Food Trucks. That was why Planner Tyler's report had more rigor with respect to the fiscal responsibility and the comparability between a brick and mortar restaurant and a food truck restaurant in terms of sales tax.

Commissioner Sletten commented on food trucks at private parties or private events on private property as it relates to the setbacks. Using his house as an example, if someone parks a food truck in his double-wide driveway, it would violate the setbacks that would be required for a restaurant if it was allowed in the zone. Commissioner

Sletten asked if his driveway would be a permitted parking location for a food truck, or whether it would have to park somewhere else on the lot that meets the setback. Director Erickson stated that the food truck should be parked on a hard service and parking in the driveway would be permitted as long as it does not block the right-of-way. In this particular case, the setbacks would not affect the location because it is in a private driveway. He stated that the Staff was still looking for some type of leniency for a private event for a caterer.

Commissioner Suesser understood that in the scenario Commissioner Sletten described, the food truck would have to be operating for less than 10 hours. Planner Tyler answered no; however, there could only be one point of sale for a private party. Director Erickson explained that if the food truck was open to the public, it could be located on private property or somewhere else, but it would require a business license and other permits and certifications. If the food truck caters a private party, it is considered a single point of sale and a permit is not required; only a business license.

Commissioner Suesser referred to the definition of truck locations on page 63 of the Staff report. She understood that they were not addressing food truck locations on public property, but she wanted to know why the definition specifically says "on private property" if they were exploring food trucks on public property. She thought it should be removed from the definition. Planner Tyler replied that the distinction was to specify it was not a right-of-way. She asked City Attorney Harrington if the definition says private property whether it precludes it from public property or treating public property the same as private property. City Attorney Harrington offered to clarify the language. Commissioner Suesser remarked that as written, if they created different locations on public property they would have to go back and amend the LMC because the definition would be specific to private property.

Commissioner Suesser read the second sentence of the definition, "Food Truck locations may not occupy code required parking for previously approved development activity". She recommended revising the language for better clarification to say, "Food Truck locations may not occupy code required parking **areas** for previously approved development activity".

Commissioner Hall referred to the same definition and asked if one operator has four trucks and operates a different truck for 9 hours on Monday, 9 hours on Tuesday, etc., whether the physical truck is exempt or if it pertains to the company that owns many trucks. Planner Tyler replied that it is an individual truck. She clarified that ten hours a week is two hours or less each day for a total of ten hours per week. The owner could send several trucks, but each truck can only operate no more than two hours a day, ten

hours a week. Planner Tyler noted that two hours per day is in the State Code. The ten hours per week is referenced in the LMC definition.

Commissioner Kenworthy asked if a reciprocal business license was required in the City. Planner Tyler answered yes. Commissioner Kenworthy stated that health inspections were his primary concern. He understood that anyone from any county in Utah could park a food truck in Park City without a health inspection. Planner Tyler replied that per State Code the City cannot require a health inspection.

Commissioner Thimm understood that the food truck would be inspected by another municipality. Using a Salt Lake City truck as an example, Planner Tyler explained that Salt Lake County would inspect the truck under the same health and fire inspection Codes as Summit County. However, whether the inspection is done right is another issue. Planner Tyler explained that all counties use the same Health Code. It is similar to building inspections that follow the IBC and IRC wherever the inspection takes place. She understood that the same process is used for the Health Code.

Commissioner Kenworthy remarked that Wasatch County has a different process and requires a reciprocal inspection. Planner Tyler stated that she was given the direction that the City had to follow State Code and could not require an additional inspection.

Commissioner Thimm noted that the definition states that a food truck could not occupy Code required parking areas. If 22 stalls are required and there are 24 stalls in the parking lot, he presumed that a food truck could occupy the two extra stalls. Planner Tyler replied that he was correct.

Vice-Chair Phillips opened the public hearing.

There were no comments.

Vice-Chair Phillips closed the public hearing.

Director Erickson noted that Planner Tyler had prepared a recommendation for action this evening, with the amendments to the definitions as outlined by Commissioner Suesser.

**MOTION:** Commissioner Sletten moved to forward a POSITIVE recommendation to the City Council for the proposed amendments to the Land Management Code for Food Trucks as found in the draft ordinance and as amended this evening. Commissioner Hall seconded the motion.

VOTE: The motion passed unanimously.

2. **638 Park Avenue Remand – City Council Remand of a Conditional Use Permit for a Private Event Facility Back to Planning Commission for Additional Review.** (Application PL-16-03412)

Commissioner Kenworthy recused himself and left the meeting.

Vice-Chair Phillips thought there was a good likelihood that this item would be appealed. He asked the Staff to help the Commissioners understand the appeal process; as well as the unique nature of this particular application and why the Planning Commission was voting on final action.

Jody Burnett, Legal Counsel, stated that it is a ten-day appeal period for any party seeking to appeal a decision. However, sorting out the unique circumstances of an appeal going to City Council will have to be dealt with at that level. Mr. Burnett remarked that the Planning Commission is the land use authority and the thought of an appeal should not affect their decision. Mr. Burnett emphasized that the Planning Commission would be making a decision; not just a recommendation. There are unique issues and questions with respect to the success of appeals, but those would have to be with the City Attorney's Office in conjunction with the City Council.

Vice-Chair Phillips clarified that the Planning Commission would be taking final action because it is a remand, and that an appeal would go to the City Council.

Planner Anya Grahn reported that this item was a remand for a conditional use permit for a private event facility. The City Council remanded it back to the Planning Commission in March 2017. She clarified that the Commissioners would not be discussing the design of the building. The intent is to talk about the use as a private event facility. Planner Grahn explained that the Planning Commission would take final action and that action is allowed to be appealed within ten days.

Planner Grahn noted that the Planning Commission reviewed the remand in September 2017, as well as June and August 2018. At the last meeting the Planning Commission had additional comments and wanted more attention focused on noise, traffic, loading and parking. At that time the Planning Commission directed the Staff to have a third party review of both the applicant's noise study and the traffic study. The requested reviews were conducted. The City commissioned a noise study by acoustical engineer, Joe Morris of BNA consulting, as well as a traffic study by Hales Engineering. Representatives of both companies were present to answer questions.

Planner Grahn reported that the Staff has also been meeting and working with the applicant and with internal departments to make sure they addressed as many conditions of approval as possible to mitigate the impacts. She noted that internal staff included the Building Department, Code Enforcement, Engineering, Transportation, Police, Parking and others involved in developing the conditions being proposed this evening. Representatives from the Police Department, Building and Code Enforcement, Engineering, and Transportation were also present this evening.

Planner Grahn noted that any public comment that was received until 5:00 p.m. yesterday was placed online and was available to everyone. Comments received after that timeframe were provided to the Commissioners. Additional copies were available on the back table for the public.

Planner Grahn stated that the Staff and applicant had worked through as much as they believed could be mitigated, given that the project is not yet operational. She noted that several conditions of approval were drafted that were both reflective of similar conditional permits in the community; but also specific to this site. The conditions address ways to mitigate noise, amplified music and other issues of concern. Another major issue is that any event over 250 occupants should be reviewed by the City to make sure traffic mitigation and other foreseeable issues are mitigated properly. Traffic, loading, and parking were other issues addressed in the conditions of approval, as well as conditions related to operations management.

Planner Grahn reported that the Staff would like to report back to the Planning Commission at 6 months and 12 months after the facility is in operation to provide an update on how things are going and what issues are perceived. If sustained complaints are received at any point, the Planning Director has the ability to bring it back to the Planning Commission for review. If three or more complaints are received after the 6 month and 12-month reviews, it would come back to the Planning Commission.

Commissioner Thimm asked for the meaning of a sustained complaint and how it differs from an un-sustained complaint. Director Erickson replied that a sustained complaint means that either Code Enforcement or the Police documented the complaint and it was being reviewed to determine there was a Code violation. He explained that sustained is a term that requires a Notice of Violation and a review by the Legal Department. The term sustained was negotiated by City Attorney Harrington and the applicant's attorney.

Commissioner Sletten suggested that they define a sustained complaint versus a non-sustained complaint with respect to violations to clear up any ambiguity for a future



Planning Commission that may have to review this CUP. He thought both terms needed to be specifically defined.

Tony Tyler, representing the applicant, had not prepared a presentation this evening. He believed they had already gone through an extensive process that began two years ago when the application was submitted.

Mr. Tyler commented on a number of additional reports that were generated since the last meeting on both the City's behalf and the applicant's behalf in terms of review and working with Staff. The reports focused on noise and traffic. Mr. Tyler stated that when the applicant opened the building for the ability to conduct the reports, it was also open to the public to view the space. Mr. Tyler believed that was helpful to alleviate potential concerns.

Mr. Tyler believed the professional acoustical report that the City had conducted, in addition to an impromptu report that was conducted at 9:00 p.m. one evening on top of the deck, had amplified music well beyond what they anticipated having on top of the deck. He explained that it was well beyond the anticipated level because they could not get a reading on the street. Mr. Tyler believed it validated everything the applicant hoped it would in terms of providing certainty regarding the noise impacts to the surrounding areas. Mr. Tyler noted that the applicant had agreed to additional conditions related to noise that he believed were appropriate. One condition is making sure that the orientation of the equipment and the height of the speakers are away from adjacent neighbors and below the height of the railing.

From a traffic perspective, Mr. Tyler believed the single biggest mitigation the applicant has agreed to in working with the Staff, was the 250-person limit prior to an event management plan. He pointed out that the management plan includes a significant focus on traffic and load-in/load-out. The applicant felt that 250 was an appropriate number where the impacts could tip one way or the other. The applicant will have the opportunity to work with Staff to ensure that the impact an event may have with over 250 people is properly mitigated.

Mr. Tyler stated that the goal is to be a good neighbor, which is why they worked with the Staff and agreed to additional conditions. He noted that the Staff report outlined significant steps taken by the City in terms of reviewing and validating the reports that the applicant commissioned; as well as the concessions by the applicant related to the findings of those reports in an effort to ensure that the impacts associated with the site are mitigated. Mr. Tyler pointed out that the "three strikes and you're out" rule requires the applicant to come back to the Planning Commission for additional mitigation if they have three sustained complaints in a 12-month period.

Mr. Tyler remarked that it was a collaborative effort on the part of the City and the applicant to come up with the best possible approach to the use of the space.

Commissioner Suesser asked Planner Grahn to describe the loading zone that was created and whether it could be used by all Main Street businesses as a loading zone.

Planner Grahn explained that two things were done to help with the loading zone. To address the concern about bus traffic and emergency vehicles, Hale Engineering recommended extending the line further in to make sure the buses could make the turn and emergency vehicles could pull up. Planner Grahn believed the loading zone was three spaces long and the idea was that it could be used by anyone on Main Street. It is not specifically reserved for use by the Kimball.

Commissioner Suesser asked if anyone could park there or whether it was specific to business parking. Planner Grahn replied that anyone could park there. However, it is a loading zone with a 15-minute parking limit.

Commissioner Thimm referred to the physical testing that was actually performed at a noise level higher than they actually anticipate. He asked if the measurements were taken into the residential areas. Planner Grahn clarified that he was referring to the Staff's science experiment. She explained that the Staff went to the Kimball on a Tuesday night. It was a cold night and very quiet. They put two large speakers on the rooftop of the Kimball and plugged in phones playing music. She noted that they kept increasing the volume because at 65 decibels they could not hear anything. They kept increasing the volume until they reached 93 decibels. She presented the locations that were measured. Officer Jay Randall was sitting on porches across the street at the two houses along Heber and Park Avenue. She and Michelle Downard walked around to the other locations and spent several minutes with the sound meter. They recorded the measurements to create the table.

Commissioner Thimm stated that in looking at the locations it appears they also went up in elevation. Planner Grahn answered yes. They also found that the closer they were to being the same elevation as the deck, the louder the noise. It was not as noisy or obtrusive being below the deck at the street level. Planner Grahn explained that they also checked at 90 decibels because the Code allows the police to make an exception for noise during special events. When measuring at 90 decibels, the noise was incredibly intrusive. They did not notice a significant difference at 80-85 decibels, but it increased significantly at 90 decibels.

Mr. Tyler noted that the Staff did the testing before the glass railing was installed and without any landscaping. The speakers were set at 6 feet rather than 3'6". Commissioner Thimm asked for the height of the glass wall. Mr. Tyler replied that it was 3'6" above the surface.

Commissioner Suesser understood that live music would be permitted on the outdoor deck and it does not violate the noise ordinance. Planner Grahn stated that in speaking with Mr. Tyler, the goal is to have acoustical guitarists. They were no planning on having rock bands.

Vice-Chair Phillips recalled that the Planning Commission previously proposed a condition to prohibit amplified music. He was told that the Commissioners had talked about it but nothing was decided. Vice-Chair Phillips thought there was consensus among the Commissioners to prohibit amplified music. Mr. Tyler noted that it was addressed in Condition #10. The applicant had agreed to a noise limiting system that would cut-off amplified music if it exceeds a specific decibel level. He clarified that the applicant wanted the ability to have amplified music; and the Planning Commission wanted a mechanism that would automatically cut it off, rather than having an individual make that determination. The applicant agreed to that mitigation.

Commissioner Sletten recalled that the discussion related to people talking as well as music. Mr. Tyler stated that the noise level is cumulative. The input location connects to any amplified equipment, but the output only measures the ambient sound. People talking or yelling will be measured in addition to the music coming from the amplifier.

Vice-Chair Phillips opened the public hearing.

Sanford Melville, a resident on Park Avenue, thanked the Planning Commission and the Staff for conducting the additional noise and traffic studies. It was helpful and it is always good to make decisions from data. Mr. Melville specifically thanked Planner Grahn and the Staff for conducting the science experiment. It was a useful experiment to simulate the sound and to measure it. Mr. Melville also thanked the applicant for allowing access to the deck.

Mr. Melville stated that in reading over the Staff report, his most significant observation was that nothing has materially changed in the application in almost two years. The CUP proposal continues to be for an event facility up to 480 people 365 days a year from 8:00 a.m. to midnight with music and speakers allowed on the outdoor deck portion from 11:00 a.m. to 10:00 p.m. All of this in an already congested area of town adjacent to residential neighborhoods.

Mr. Melville had three main issues this evening. The first was the City Council remand that was over 18-months ago. He intended to talk about the remand issues, as well as proposed conditions of approval, which are extremely important in their decision this evening. Mr. Melville also intended to discuss some of the findings of fact.

With regard to the remand, Mr. Melville noted the three categories: 1) ongoing monitoring efforts; 2) noise; 3) traffic. He remarked that the City Council suggested ongoing monitoring by the Planning Commission to ensure compliance with the conditions of approval of the CUP. The Council also suggested an affirmative review by the City of the use more frequently than once a year. Mr. Melville noted that Conditions of Approval #28 and #29 only require a review at 6 months and one year. He believed that was insufficient. He also thought the review should continue after the first year at least on an annual basis. In addition to the three strikes clause, Mr. Melville remarked that many things will change; which include changes to ownership, changes to management, changes of City-scheduled events, and changes in the community. He believed this was a "try as you go effort", and it should come back to the Planning Commission for review and approval on a regular basis.

Mr. Melville stated that the ongoing monitoring of compliance is skirted by the Conditions of Approval to the citizens and the neighbors to make complaints, as shown in Conditions #25 and 26. He believed it placed an unreasonable burden on the ordinary citizens. On the issue of ongoing monitoring, he noted that the Park City Police made two appropriate recommendations in a report dated June 12, 2018; but those recommendations were not included in the proposed conditions of approval. One recommendation was to provide a provision for a representative of the establishment to meet with the neighbors upon request in order to attempt to resolve neighborhood complaints regarding the operations on the business premises. Mr. Melville thought there was a benefit to reaching out to the neighbors. The police department also recommended having a readily available on-site point of contact representative for conflict, mitigation, problem solving, and to act as a liaison for complaints and operational coordination. Mr. Melville thought it was a good idea to have an on-site point of contact for the neighbors. Mr. Melville noted that the police report was provided to the Planning Commission at the last meeting; however, it was not included or addressed in the current Staff report.

Commissioner Sletten informed Mr. Melville that the police report was delivered to the Planning Commission earlier in the day.

Mr. Melville commented on noise and noted that the City Council was concerned that human chattering, as well as amplified outdoor music, could violate the City's noise ordinance. He pointed out that no provision was made to control human chatter or

similar party noise. People do not have very good volume controls and that is a difficult issue to control. Mr. Melville remarked that the City Council was also concerned that the use of the rooftop deck was too unrestricted. It was too public and too impactful on the surrounding neighborhood. The Council also suggested keeping the sound inside the space and limiting the use of the outdoor deck beyond ancillary uses, including removing speakers. The City Council suggested restricting usage and hours. Mr. Melville stated that none of those concerns were addressed in the conditions of approval. Mr. Melville referred to page 69 of the Staff report and noted that the acoustic study included possible noise violations from amplified noise. He pointed out that the applicant's proposed use of technology for amplified noise from music on the deck has not been tested or shown to actually work. None of the expert studies talked about the technology. Mr. Melville read from Page 69 of the Staff report "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 the Staff does not have the ability to enforce against".

Mr. Melville noted that the City Council had traffic concerns, which included likely unmitigated bottlenecking at the street corners and streets around the event center, particularly during peak load in and load out times. Mr. Melville did not believe those concerns were adequately address by the proposed Condition #15, that a traffic management plan be prepared for planned events of 250 or more persons. He recalled that the number was 200 at the last meeting, and it was somehow increased to 250. He could visualize a significant amount of traffic being created by 150, depending on the event. Mr. Melville stated that any time an event is held, a city-approved person should be managing traffic at this congested section of town, and paid for by the event. Mr. Melville remarked that there was absolutely no basis or reason to allow the applicant to convert a public street into a 15-minute loading zone, as proposed in Condition #20. The lack of an on-site loading/unloading zone is a result of the applicant's own making in his decisions. The applicant chose to build square footage over the previous existing parking lot and loading area for the property. The choice by the applicant does require the City to convert a public street into a loading zone. Mr. Melville pointed out that it was not part of the packet that the City Council reviewed. Therefore, the issue was never reviewed by the City Council. Mr. Melville remarked that it was a point for discussion this evening, because he questioned whether the Planning Commission has the authority to convert public space to a use by a private entity.

Mr. Melville referred to page 72 of the Staff report and noted that this solution of a loading/unloading zone was rejected by the Planning Commission in September 2017 during a work session. Mr. Melville believed the applicant has the responsibility to limit the use of this facility and to manage traffic to fit the limitations of the event facility. Mr.

Melville noted that the CUP is for a private event facility; however, the traffic study did not take into account the other tenants who will be in the building.

Mr. Melville commented on his issues with the conditions of approval proposed in the Staff report. He stated that if the Planning Commission intends to approve the CUP, they need to add strict and enforceable conditions of approval. Mr. Melville noted that Condition #10 listed a number of owner responsibilities. He questioned how many on the list could be accomplished and how the City could ensure the responsibilities are actually carried out. Mr. Melville noted that the noise management plan was not included in the Staff report. He did not think the Planning Commission could take final action on the CUP without reviewing the noise management plan. Regarding Item E under Condition #10, Mr. Melville suggested that it be simplified by requiring everyone to be off the deck at 10:00 p.m.

Mr. Melville referred to Condition #11 and asked who would verify that the doors are kept closed when there is music on the interior space. Condition #12 talks about the elevate stage and speakers, but again, who would verify to ensure the condition is met. Mr. Melville referred to Condition #13 and asked for clarification of approved outdoor dining as it relates to speakers and music. He asked if there was a City Code for outdoor dining speakers. Condition #14 addressed noise and requires the public to measure the decibel level and complain about noise violations. Again, the burden should not be placed on the public. Condition #15 addresses written notification to the City by the operator of an event scheduled for 250 or more people. Mr. Melville questioned why an operator would voluntarily go through the work of providing an event and traffic management plan as detailed in the condition. He assumed an event operator would keep a large event to 249. Mr. Melville pointed out that multiple 249 person events could occur on the same day. He wanted to know if an event and traffic management plan would be required if there were more than 249 people in one day from separate events. Mr. Melville suggested that the event management plans should be required for all events of 100 or more. Condition #15 also talks about violations. He asked for clarification of the term and whether it relates to noise or traffic or something else.

Mr. Melville referred to Condition #20, which was the proposal to divert Heber Avenue to a loading zone. He reiterated that using public parking for the creation of a loading zone for the benefit of this applicant is unacceptable. He thought it set a precedent for other business who wish to do the same thing. Mr. Melville pointed out that the applicant has been paying the City for the space during construction. He did not understand how the City could charge the applicant for the use of the space for two years and then approve a CUP that allows them to use the space for free.

Mr. Melville appreciated the clarification of sustained complaint as mentioned in Condition #25. He had the same question when he read the condition. Mr. Melville wanted to know who a citizen would complain to and how a citizen registers a complaint. He wanted to know how the City hears about the complaint and how the Planning Department determines a legitimate nuisance versus a complaint from a cranky neighbor. Mr. Melville thought the process for making a complaint needed to be addressed and specifically outlined. It was not clear in the conditions of approval. Mr. Melville reiterated his recommendation that the CUP come back to the Planning Commission for regular reviews to address the impacts that occur. He believed a permanent approval defies common sense.

Mr. Melville had drafted additional conditions of approval that he submitted for the record. He highlighted the major points in his draft conditions, which matched the recommendations he had offered in his comments. Mr. Melville suggested that the Staff prepare a single page summary of the conditions of approval that are enforceable by the police department upon receiving a complaint. A copy of the summary should be given to the police department and another copy should be visibly posted inside the lobby of the events center at all times. Mr. Melville also provided a list of additional suggestions that he had drafted.

Mr. Melville commented on the Findings of Fact. He understood that Findings of Fact is a legal term they must be supported by factual evidence. He believed a number of Findings in the Staff report were incorrect and should be addressed. Finding #37 addressed design features in the building that mitigate noise. He thought the Finding was incorrect and misleading because it gives a false impression without showing any evidence that the elements have any impact on minimizing noise. Mr. Melville read from Finding #38, "The applicant has sufficiently addressed limiting the types of events, hours of operation, and duration of these events at the site". He thought the sentence was entirely unsupported and incorrect, because the applicant has made no changes limiting these issues since the original application. Mr. Melville read from Finding #39, "The applicant has reduced the hours of operation and occupancy load on the rooftop terrace in order to further limit noise". He stated that there has been no such reduction since the original application. Also in Finding #39 was a statement that the applicant has mitigated the effects for potential amplified music and sound on the balcony through the use of design elements. Mr. Melville did not believe that sentence was supported by evidence. Finding #39 further states that the applicant has mitigated the impacts for potential amplified music and sound on the balcony through the use of technology. He believed that statement was misleading since there has been no actual expert analysis that the mentioned technology will work. Such technology has yet to be installed, tested, or shown to be effective to limit the noise. Mr. Melville suggesting revising the language to state, "The applicant has proposed to provide technology to

mitigate the impacts for potential amplified music and sound on the outdoor rooftop balcony". Mr. Melville thought Finding #41 was also incorrect. He read, "The applicant has met the minimum requirements for loading and unloading as outlined in the Municipal Code and LMC". He noted that the applicant has provided no load and unload facilities as part of its project, and in fact, the applicant removed the previous existing loading and unloading area. Mr. Melville referred to Finding #42. He had issues with the last few sentences of the finding. He noted that the applicant had not demonstrated that any loading or unloading of guests attending private events will not add to the already congested intersection of Park Avenue, Heber and Main. He believed the opposite was inevitable. Mr. Melville stated that the applicant has also not demonstrated that loading and unloading will not impede bus traffic and circulation. He remarked that the current traffic study shows that it will impact. Mr. Melville read from Finding #45, "The proposal contributes to maintaining the historic Main Street District as the heart of the City for residents". Mr. Melville stated that nothing about this CUP will benefit neighboring residents who will have to endure the burden of noise, traffic, and other negative quality of life impacts.

Mr. Melville stated that if the Planning Commission intends to grant the CUP, the Findings of Fact must be correct. He urged the Planning Commission to deny this CUP in accordance with Land Management Code 15-1-10. The impacts of this large private event space in the heart of Park City cannot not be reasonably predicted and they cannot be substantially mitigated. Mr. Melville stated that the City has a procedure for managing and controlling large events, which is an Administrative CUP. He believed that same procedure should be utilized for this private event space.

Mr. Melville noted that he has been raising problems and concerns with the event center space for two years. He questioned why he continually puts himself through it, and the answer is that he is trying to protect his quality of life. He and his neighbors are the collateral damage on this project. They are all property owners and they have property rights. He urged the Planning Commission to use all the LMC tools at their disposal to protect the rights of the neighbors. He believed the most important tool was their power to deny the CUP.

Mr. Melville thanked the Planning Commission for allowing him additional time to make his comments.

Andy Byrne, a Park City resident for 35 years, stated that he has lived in the neighborhood near the event center. He has attended a number of these meetings and he could not understand why none of the problems they complained about have been mitigated. One issue was the lack of parking. He noted that every building on lower Main Street was required to build underground parking. This applicant did not. Instead,



they built on top of the 14 previous parking spots that also acted as a loading zone. After building out to the maximum, they want the City to give away seven free parking spots on Heber Avenue so it can be used for their loading zone. Mr. Byrne stated that public space should remain in the public realm. He could not understand why the City would allow this large events facility at the busiest corner of town without providing parking. Mr. Byrne emphasized that the seven parking spots are for the public domain and should not be used as a loading zone for trucks and buses for this facility. The noise and exhaust from these vehicles will creep into the neighborhood. Mr. Byrne was concerned about setting a precedent for the future. Mr. Byrne commented on other streets that get closed for various reasons, including the Silly Market, which creates circulation problems. He noted that within 100 yards of that busy intersection there have been five water main breaks in the last five years between Park Avenue, Heber and Park, and up to the Silver Queen Building. In addition, three large power poles blew up in the neighborhood in the last three years. Mr. Byrne stated that between utility issues and this busy intersection, there is already a lot that goes on in the area.

Mr. Byrne remarked that several neighbors were not able to attend this evening. He agreed with Mr. Melville's comments. They attend these meetings every six months but nothing changes and the problems are still not mitigated.

Angela Moschetta, an Old Town resident, thought this was a strange coincidence that in advance of this meeting and the last meeting, two dysfunctional and missing key information Staff reports were circulated. Also, in advance of the last meeting the public was not properly notified. She believed those were two unacceptable coincidences. Ms. Moschetta referred to the timeline in the Staff report and noted that the City Council was not in favor of the CUP and remanded it back to the Planning Commissioner. She stated that their role as Planning Commissioners was critically important. They are the line of defense between the onslaught of extracted development and the community they wish to preserve. Ms. Moschetta noted that she used the word extracted intentionally. These developers came from outside the Park City community and are working to exploit every loophole and extract every dollar they can; and at the same time lining up with third party developers and commercial real estate brokers to yell lawsuit every time something does not go their way. They are no different from the mining companies who stripped this town of its natural resources and laid waste that took decades to recover.

Ms. Moschetta stated that Park City has become one giant speculate opportunity. They need to use the tools, laws, ordinance, resources, and Commissions available to prevent being swallowed up. She remarked that the City fought against Vail when they attempted to trademark the town name. However, Vail relinquishing the trademark wasn't much of a win. It only slowed the inevitable of having big companies, national

chains, and third party developers aligning themselves to control the commercial tenants in town, own Main Street, set lodging and retail pricing and more. Ms. Moschetta believed there were three ways to slow this takeover and to protect the integrity and vibrancy of the community. One is the chain store market that they fought to stop, and once again, the developer threatened a lawsuit. Ms. Moschetta noted that the Planning Department worked through a well-reasoned and legally defensible ordinance that was unanimously supported by the Planning Commission. In the end they protected the Historic District's unique character to a certain degree. She stated that a notable exception is the ugly and concrete monolith that does not comport with the rhythm and scale of Main Street, and which the applicant is seeking exceptions for tonight. Ms. Moschetta remarked that the second way to slow the inevitable is by preserving Treasure Hill. The third way is by giving in on the issue before the Planning Commission this evening. They cannot succeed with only two out of three. They must achieve all three.

Ms. Moschetta commented specifically on the Kimball CUP. She noted that LMC 15-1-10, the Conditional Use Review process, talks about uses that may not be compatible to the adjacent neighbors or adjacent land uses and the associated impacts. She referred to the noise studies. The applicant had commissioned Henderson Engineers to conduct a third party noise study, which determined that 150 guests and two acoustic musicians would generate 72 decibels. The study argued that the proposed use would comply with the City's noise ordinance, which has commercial limitations at 65 dbas between 6:00 a.m. and 10:00 p.m.; and residential at 55 dbas. Ms. Moschetta noted that Mr. Melville had talked about the Staff simulated noise study, which puts the dba well in excess of what is allowed. She questioned whether either noise study was good enough. Ms. Moschetta wanted to know why no one had gone to the multiple events that took place over the past few months to measure the actual noise, usage, voice, and music levels.

Ms. Moschetta remarked that the stated conclusion is to rely on responsible management by the event managers. She did not trust the applicant nor the event operators to be responsible. CPP and their partners at the Canyons have been called before the Snyderville Planning Commission and the County Council for various issues. She reported that upon announcement that Park City Municipal Corp. would purchase Bonanza Park and turn it into an arts district, one of the principles of CPP Federal Trademark applications three days later, attempting to trademark Arts District Park City in the same way that Vail attempted to trademark the town name. Ms. Moschetta pointed out that CPP engaged commercial real estate brokers to pursue national chain tenants for the Kimball, which is how LL Bean and Ben and Jerry's are coming to Main Street. She thought it was worth noting that no one fought the community's collective wishes to cap chain stores on Main Street harder than CPP, its principles, and the

commercial brokers leasing their spaces. Ms. Moschetta remarked that CPP's principles are not giving in earnest to the Park City community. CPP is not a pillar of the community that has grown trust. They are string pullers and puppets in a scheme greater than anyone can fathom. Ms. Moschetta stated that CPP must earn trust and good will before they can be extended the benefit of any doubt.

Ms. Moschetta noted that Mr. Melville had talked about the proposed conditions of approval being very complex and probably not workable or enforceable. On the radio this morning, Director Erickson stated that the City does not like to be in the position of enforcement.

Ms. Moschetta remarked on the saying "It's better to ask for forgiveness than permission." If the Planning Commission approves the CUP as it is conditioned today, they would be putting CPP and Tony Tyler in a position to do as they wish and then ask for forgiveness. However, what is there to forgive in a town that admittedly shuns enforcements.

Ms. Moschetta echoed the previous comments regarding the issue with the parking spaces. This developer had parking spaces in its plat and chose to build over them to exploit and maximum revenue.

Ms. Moschetta urged the Planning Commission to deny the CUP and go back to the drawing board and require reasonable, clear, and enforceable conditions that require asking for permission; not forgiveness. She recommended her own conditions that the facility be limited to acoustic only music with absolutely with no amplified sound of any kind; or force the applicant to submit for approval on every event the same as other Old Town neighbors. If the technology referenced in the Staff report is proven to exist and function as intended, CPP should position a sensor on a portion of their building that is 25' from the event deck boundary, that would auto shut everything and auto report to the City and Police Department every time it is violated. The applicant should also pay for monthly and duly monitored calibration of said equipment. Ms. Moschetta thought three violations should result in automatic revocation of the CUP. She suggested that they carve out the lower portion of the Main Street facing side of the building and restore the parking spaces and loading zone they purposely built over in order to maximum the building square footage.

Ruth Meintsma, a resident at 305 Woodside, read from the Staff report regarding third party review, "The acoustical study found that the sound levels from traffic and construction noise largely masked any sounds made by people on the rooftop deck". She thought BNA Consulting had done more of a generic study because construction noise was an unlikely consideration in this situation. The events at the Kimball would

mostly take place in the evenings and on weekends when no construction takes place. Ms. Meintsma pointed out that a generic study does not address the specific concerns of the impacted residents.

Ms. Meintsma stated that even if appropriate decibel levels of music are accomplished, people tend to talk over music, and it escalates when people talk over each other and the music. It would be very difficult to control. Anyone making a complaint should complain about the noise level from talking rather than from music. However, she did not see how people talking too loud could be researched and documented.

Ms. Meintsma clarified that she lives on upper Woodside on the 300 block and not in the tight area around the Kimball. Her residence tends to be the least impacted by any noise and activity on Main Street. However, even though she lives in a quieter part of the Old Town neighborhood, she can still hear music on Main Street and the lyrics to the songs. It is a reminder of how much the sound travels in the canyon.

John Stafsholt, a resident at 633 Woodside, stated that the public hearing was taking a long time this evening because there were so many problems. Mr. Stafsholt thought the Planning Commission inherited a difficult decision because the Planning Department missed a few things and allowed the applicant to build to the maximum and eliminate parking. He thought the Board of Adjustment made an obvious error in when they allowed a change in the historic roof form to build a deck. Mr. Stafsholt believed the previous Planning Commission got it wrong when they made their decision. He reiterated that the current Planning Commission inherited a tough situation, but they could make it right through conditions of approval that could be enforced. At this point, the proposed conditions were woefully inadequate.

Mr. Stafsholt stated that 18 months ago the City Council remanded this back to the Planning Commission and highlighted a failure to mitigate CUP requirements 2, 4, 5, 6, 7, 10, 11, 12, 13, and 16. He noted that requirements 3, 9, 14 and 15 are not applicable. Therefore, the developer only met CUP requirements 1 and 8. Mr. Stafsholt pointed out that all 16 requirements must be mitigated for CUP approval. After 18 months, the developer's response shows an unwillingness to make changes. He walked through each of the criteria highlighted in the remand and explained how and why they were not mitigated or could not be mitigated. He believed that failure to meet Criteria 12, which addresses noise, vibration, odors, steam and other factors, was the most audacious and onerous impact on the residents of this 130-year-old neighborhood and residential community. There is no way to mitigate a 2500 square foot outdoor deck that faces directly at the residents with an aluminum building that will echo the sound. Criteria 16 talks about consistency with the goals and objectives of the Park

City General Plan. Mr. Stafsholt remarked there were too many inconsistencies with the General Plan.

Mr. Stafsholt stated that the Park City Police Department provided a recommendation on how noise could be mitigated; however, those recommendations were not included in the conditions of approval. One of the recommendations was to design and construct the building to ensure any sound level originating within the premises measured at the property line does not exceed the maximum permissible sound level. The police also recommended a provision stating that live entertainment is only located within the enclosed building. The police recommended prohibiting electronically amplified sound in any exterior portion of the premises. Mr. Stafsholt agreed with the conditions of approval that Mr. Melville had drafted and submitted this evening.

Mr. Stafsholt commented on current sound measuring devices that continuously measure sound. If the sound exceeds a specific level the electricity shuts off. Another mitigation would be to limit private event activities to indoor spaces at the event center, and only allow outdoor use for smoking or to get some fresh air. He recommended that no amplified music be allowed outdoors under any circumstance. Mr. Stafsholt suggested limiting lights on the rooftop terrace except lighting for safety. They could also prohibit heaters, tents, and amplification of any kind on the deck. Doors on the terrace could be kept closed with automatic closing devices. They could require shades to be pulled after sundown. They could also follow the Code and required deliveries only from 7:00 a.m. to 12:00 p.m.

Mr. Stafsholt believed there were examples of how noise enforcement actually works in town. In this case, all the onus is put on the neighbors and that is wrong. Mr. Stafsholt commented on the process he has had to follow when he previously called the police to complain about noise coming from events. One time he personally walked to an event with a decibel meter to measure the noise 180-200 feet away from the band. He had not called the police in this situation, but he was physically accosted. Based on his experiences, Mr. Stafsholt stated that there is no pro-active enforcement in Park City for noise violations. The police do not enforce noise issues unless the residents complain and put their names on the line. Mr. Stafsholt urged the Planning Commission to think this through and deny the CUP until they have real conditions.

Ed Parisian, an Old Town resident for 12 years, stated that he lives in lower Old Town and while he will hear the commotion, it will not be right above him like it will for other people. Mr. Parisian thought it was a travesty to be having this discussion today. He believed the HPB and the Board of Adjustment erred significantly when they allowed this Landmark historic building to be violated with the removal of one of the barrel vault roofs over the objection of the Park City Museum Historic Society. Mr. Parisian noted

that the architect's website shows a beautiful picture touting the amazing work that was done in preserving the Kimball building. He believed it was evident that this was all about greed and money, which is what this town has become. No consideration is given to the neighbors. Regarding the proposed conditions of approval, Mr. Parisian noted that the Staff had made a number of recommendations and refinements to the original approval; which were only included because of the citizens' voices and their strong opposition to this project. If it were not for the citizens, this project would be done. He remarked that the citizens have to attend every meeting to fight for what should be their rights, but apparently are ignored. Mr. Parisian believed the recommendations were superficial, after the fact policing conditions. It does not amount to mitigation of long-standing concerns of noise, traffic, and parking. A "let's do it and see what happens recommendation" is no way to do business when it concerns the lives of other people.

Mr. Parisian agreed with the previous comments on the aspects of this project. However, he wanted to concentrate on people noise. He could see no effort being made to determine verified sound levels generated by 150 occupants on the deck. The Henderson was paid for by the applicant and it was highly biased towards the applicant in its wording and conclusions. Mr. Parisian noted that according to the Henderson report the majority of the sound from events will be from people talking. He read from the report the high number of decibels resulting from loud talking. Mr. Parisian stated that it would be more than loud talking coming from these events. There will be high pitched screaming, laughing, and other expected noises from a party with people drinking alcohol. He referred to the Morris report that was commissioned by the City and, which he thought was a joke. It was a high-school regurgitation that supports the Henderson report. Mr. Parisian had done his own research and determined that if five people talking is 65 db, then 150 people would be talking 80 db. His calculation is based on the formula that doubling the number of people results in a 3 db increase each time it is doubled. Mr. Parisian believed these were insufficient reports for the Planning Commission to base their decision; particularly considering that all 150 people on the deck could be loudly speaking at once above each other and above the music. It is an endless cycle. Mr. Parisian reiterated that having 150 people on a rooftop deck on a summer evening with alcohol flowing freely, it will be clear that the human noise will be far greater than the impact from music. He remarked that the proximity of the site creates a higher probability for long-term noise fatigue that will not have the ability to enforce against. He read from the Municipal Code, "Minimum standards are in place for the making of loud noises that are detriment to the public comfort or welfare of the residents of the City". Per the web, listener fatigue is defined as constant, background noise. Symptoms include tiredness, discomfort, pain, irritability, and loss of sensitivity. Mr. Parisian referred to the examples Mr. Stafsholt had given when he attempted to complain or measure the noise level himself. He believed this was only the start and it

would only get worse if they continue to allow this to happen. Mr. Parisian emphasize that it is unacceptable to allow a permanent CUP running with the land with the proposed conditions that puts the onus on the public to make complaints. There will be no police presence at each of the potential 365 events per year. The onus should be on the City, and not the citizens, to draft a document that is compatible and enforceable without neighborhood involvement on a daily basis.

Mr. Parisian understood that the City was trying to do the best to allow the developer some rights and to avoid a lawsuit. It is unfortunate, because the party without deep pockets are the residents who purchased their homes and based their lifestyle on the promise of peaceful enjoyment. He believed that in addition to be the arbiters of the Code, the Planning Commission should also advocate for those who cannot afford a lawyer to protect themselves from deep pocketed, Code breaking developers. Mr. Parisian urged the Planning Commission to reject this CUP application. If they grant this CUP, the City will lose control over any future similar developments and contribute towards making upper Old Town a full-time year-round party zone; driving out the remaining residents in favor of more nightly rentals, open decks, and giving visitors total control over the City. It may not be the City's goal, but it will surely be the result if they continue down this path.

Sandra Morrison stated that she was speaking tonight as the past-president of the Historic Park City Alliance and the current Chair. She noted that the Park City Alliance has a number of position papers that their membership voted on and approved. One covers transportation and parking management. Ms. Morrison read from the documents, "The objective of the HPCA is to promote Historic Park City as a fun, friendly, and vibrant destination. We wish to foster an atmosphere that encourages visits by providing convenient transportation options to allow access into Historic Park City, as well as provide ample and convenient parking for those who wish to drive to the District. We believe that prolonged exposure to our businesses will increase sales and thereby sales tax revenues, and diversify revenues. Transportation options and parking durations should encourage longer stays that give pedestrians sufficient time to circulate throughout the District". Ms. Morrison stated that the HCPA agrees that a balance is needed between increased parking and maintaining traffic flows in town. She emphasized that the HPCA is not in favor of turning the public parking into a loading zone.

Caroline Crummel, a resident on upper Park Avenue, stated that she supported her neighbors' well-articulated comments.

Jim Tedford, a Park City resident, stated that he had nothing new to add, but he wanted the opportunity to reiterate a few points. One is that this whole can of worms could

have been avoided if the Board of Adjustment, the Planning Department, and the Planning Commission had listened. He stood in front of all three and pointed out the exact words in the Historic District Design Guidelines, "must maintain the original roof form". No one listened and now they were presented with a mess. Mr. Tedford stated that all the points raised in the previous comments this evening were all very relevant. He was concerned about the precedent. If this CUP is approved there could be ten more up Main Street impacting noise and traffic. Mr. Tedford realized that most of the Commissioners were not on the Planning Commission when this was originally approved, but they are the ones who now have to solve the problem. He believed they could only solve the problem by placing severe restrictions, and possibly considering dividing inside and outside on the deck. Mr. Tedford remarked that parking should not be any special privilege. It should be the same for everyone on Main Street. He acknowledged that the Planning Commission had a difficult decision; however, from the comments heard this evening he did not believe there was any way the Commissioners could approve this CUP.

Hope Melville stated that the Kimball events center is not a restaurant or bar, and it is not for a small number of events per year. She heard Director Erickson on the radio talking about this use as being unique, and something that does not fit into any previous category for precedent. She agreed. Ms. Melville remarked that this event center is not at a golf course or a ski area where there is group loading, access, and plenty of parking away from residential areas. Instead, this is commercial event center where they wish to operate all day, every day, 365 days a year. The facility includes indoor and outdoor components next to residential areas in an area already congested with substandard roads. Ms. Melville was sure that the Planning Commission already knows there will be traffic jams from every event, not taking into account traffic from the other tenants of this building. She assumed they also understood that there will be noise problems when events are held on the outdoor deck at night; particularly with amplified music and partying. Ms. Melville believed the Planning Commission also knew that the conditions of approval contained in the Staff report were unenforceable as written. It relies on the citizens to enforce them with no real way for the citizens to do so, and there is no mechanism for the City to enforce the provisions in a timely manner on the night of the event.

Ms. Melville understood that the applicant may claim property rights, but she wanted to know about the property rights of the neighbors. At the last meeting in June Tom Fey spoke at the public hearing and made practical suggestions. He said the use here needs to be split into two pieces. There should be a separate approval for the outdoor space and a separate approval for the indoor space. It should not be combined. Ms. Melville noted that Mr. Fey's comments were contained in the Minutes from the June 13, 2018 meeting. Ms. Melville stated that in addition to the enforcement problem,



there was also the noise issue and traffic congestions. She noted that the noise problems were due to the outdoor space on the rooftop deck for events, music, and partying. Traffic congestion is due to the indoor space and the number of attendees. Ms. Melville believed that splitting the uses into two pieces made sense. For the indoor space, the event center is unaffected by total numbers of attendees. They are limited to 480 guests with or without the outdoor space. She questioned how they could limit the outdoor deck to 140 people if they have 480 people at an event. Ms. Melville stated that one CUP would be limited to the indoor space with appropriate conditions of approval, including a traffic plan required for any significant number of attendees. She suggested a traffic plan for indoor events of 100 people or more. For the outside space, use of the deck for events, including music, activities, and partying should require a separate administrative CUP so the City could maintain monitoring and control to make sure there are no problems. Ms. Melville reiterated that separate appropriate approvals would go a long way in resolving the issues.

Vice-Chair Phillips asked whether Tom Fey was a Park City resident. Ms. Melville replied that Tom Fey is a citizen who lives in Park Meadows.

Vice-Chair Phillips closed the public hearing.

Wade Budge, Legal Counsel for the applicant, believed the Staff report was very complete, including the Findings and Conditions; and that most, if not all, of the questions raised had been answered.

Mr. Budge remarked that 95% of the comments made this evening would be directly applicable if they were here tonight seeking a text amendment to allow this event facility in this zone district. However, that was not the case. They were dealing with a use that is allowed as a conditional use permit in the HRC zone. Mr. Budge pointed out that all of the policy comments regarding compatibility with the neighboring zoning districts and uses should have occurred years ago when a prior Planning Commission and City Council made the decision to have an event facility identified as a use for this district.

Mr. Budge stated that there was a task tonight, and the effort by the Staff, the applicant, the Planning Commission and prior Planning Commissions to undertake that task resulted in a very lengthy set of conditions supported by very specific findings. Mr. Budge thought the conditions found in this CUP set a new high water mark not only for the City, but also for the State, in terms of specific requirements on how the use will be located within this building, and also how it will operate.

Mr. Budge stated that in considering this application, it has to be done against the context of the City Code. Park City does a very good job recognizing how the City

Code needs to interface with State law. In this situation, the task is recognizing that this use is allowed in the area as a conditional use, and then tailor the approval in a way that mitigates the impacts reasonably anticipated to be associated with this use. Mr. Budge explained that if anyone wanted to support an effort to deny this use, it requires carrying a different burden and no one has attempted to carry that burden. He pointed out that it is a fact that is clearly laid out in law and set forth in Ombudsmen opinions that he described in previous hearings.

Mr. Budge intended to focus on a few items that he thought merited extra consideration. He commented on five very key conditions that were recommended and that the applicant consented to. He believed it represented a significant recognition on the part of the applicant that they would all benefit as a community if they work together to make sure the use works in a way that is consistent with the zoning ordinance and all other codes.

Mr. Budge referred to Conditions 25, 26, 27, 28, 29. He stated that Condition #25 talks about how the applicant must comply and make sure that their use does not create complaints of glare, noise, smoke, odors, grease or traffic. If those complaints are registered, the Planning Department has to investigate those complaints and take necessary measures to ensure compliance with the CUP the applicant hopes to obtain from the Planning Commission. The condition further states that should the nuisance not be mitigated the Planning Commission may revoke the conditional use permit.

Mr. Budge commented on Condition #26. He explained that part of the requirement is to have a 6-month review at the Staff level and a 12-month report to the Planning Commission. After that occurs, the applicant will have the opportunity to come back and handle any issues where there are three sustained violations within a 12-month period following the annual review. Mr. Budge pointed out that there is an interest for the applicant to be hyper vigilant about how the use is operated. That obligation will be put on the guests and those who operate the facility to comply with all the particulars of the CUP. Mr. Budge noted that Condition #27 states that any violation of the ordinance may result in a criminal or civil action. It may also result in revocation of the CUP. Mr. Budge read from Condition #28, "Following the first six months of operation, the Staff shall meet with the applicant to discuss operations and report to the Planning Commission the results of that review". Mr. Budge read from Condition #29, "Following the first year of operation, the Staff shall meet with the applicant to discuss the operations and report to the Planning Commission at a regular meeting".

Mr. Budge noted that if there are situations where other issues need to be brought back, the Staff would come back to the Planning Commission for revocation. He thought it was important to understand that if the applicant does not meet the

requirements and their systems do not result in compliance, they would have to come back to the Planning Commission.

Mr. Budge stated that in carefully reviewing the various reports, they were not reports that led to a desired result. They were scientific reports. People may dispute them, but there was a report from the applicant on noise and a report done by the City. No one else had come forward with any other type of report. In situations where someone disputes a report as incorrect, the onus should be on the individual who challenged the report to bring forth their own report. Mr. Budge clarified that on the record this evening, no one came forward with evidence to support any of the contentions that the systems the applicant devised would not be successful mitigations; including the sound baffling, the glass walls, the height of the speakers, and the mechanism that turns off the system when noise exceeds the approved decibels. No one submitted evidence that the reports or the conclusions were incorrect.

Mr. Budge noted that some of the neighbors attacked specific individuals. He would not dwell on their comments other than to say they were completely false and have no place in this type of proceeding. Mr. Budge remarked that the individuals who were bringing forth this application were doing so consistent with law and in a way that is evident of working with the community, not against the community or ignoring City Codes.

Mr. Budge clarified that the loading zone was not being turned into a private loading zone. It will remain public space. The City has said it cannot be exclusive to the Kimball. Mr. Budge stated that no aspect of the project exceeds the parking requirements. As noted in the Staff report, this applicant was a participant in the Main Street parking assessment area. They are current in their participation and are entitled to have their projects designed and built in accordance with those approvals. Mr. Budge emphasized that the facility will not be operating at 2:00 a.m. As indicated in the conditions of approval, the deck will be cleared at 10:00 p.m.

Mr. Budge wanted it clear that he was not dismissing the public comments. They have heard these comments a number of times and they reflect concerns that the applicant has attempted to address as they negotiated the terms in the Staff report. Mr. Budge remarked that the applicant has been assisted by the conditions proposed through some of the comments heard this evening. He thanked the public for their effort in helping to achieve a better result. Mr. Budge stated that the applicant has benefitted from the process and they appreciate the opportunity people have had to share their views. He believed the applicant has reacted in a way that is consistent with the Code requirements as written, and also the spirit of the Code. They went beyond what was otherwise legally required because they want this use to operate in a way that is

beneficial and consistent with what was in the mind of a previous City Council many years ago when they approved an event center on Main Street.

Tony Tyler appreciated Planner Grahn and other Staff members for their time and efforts. The process has been somewhat onerous but it has also been positive. Mr. Tyler stated that he wanted to be a good neighbor. If he was not interested in being a good neighbor, he would have filed a lawsuit a long time ago. Mr. Tyler thought the implication that developers just file lawsuits was astounding. He believed they had achieved a good, manageable plan that is supportable from an enforcement perspective and with expert reports that address the concerns raised by the Planning Commission, the City Council, and the public.

Vice-Chair Phillips asked for the number of business that could operate out of the building. Mr. Tyler replied that they have not finished leasing. Currently, there was a custom knife store, a local art gallery, LL Bean, a custom clothing manufacturer, and the event space. There was still the potential for two additional spaces on the main floor of the historic building and the potential for two spaces in the basement.

Vice-Chair Phillips asked the Staff for the number of existing parking spaces. He understood there would be three parking spaces in short-term parking. Planner Grahn noted that this project did not have to provide parking because they paid into the Main Street parking improvement. Vice-Chair Phillips asked if Planner Grahn knew the total number of parking spaces. Planner Grahn did not have that number and offered to find the answer. Vice-Chair was interested in knowing the difference and the net loss of parking spaces. He stated understood that the recommendation to turn those parking spaces into temporary spaces is a direct result of this application; however, there was also a recommendation to extend no parking zones around the corners. He asked if those no parking zones would still be recommended regardless of the outcome of this application.

Mr. Tyler stated that there is approximately 100 feet in front of the Kimball that is currently available for parking. A typical parking stall is 9'x18'. He usually uses 10'x20', which would result in 5 parking stalls on Heber Avenue. On Park Avenue, up to the Town Lift back access, there are three parking stalls in a 70-foot area.

Director Erickson noted that people from the City Departments were present to answer questions. He stated that Code Enforcement was a separate issue that was addressed at the last meeting. Officer Randall was present this evening to address Code Enforcement techniques.

Commissioner Hall asked if someone from the City could address parking for the corners that would be marked red to facilitate the bus. Cory Legge, with the City Engineer's Office, stated that the LMC calls for 30 feet from any intersection to be designated as no parking. It is consistent throughout the City and in other areas of Old Town. He noted that Main Street on the west side is currently red striped, along with other areas on Main Street where they provide red striping to indicate no parking.

Commissioner Hall referred to the loading zone and asked if the time frame was 15 minutes between certain times; or whether loading and unloading is allowed 24/7 for 15 minutes. Mr. Legge stated that they had not yet looked into it in terms of the time limits for the 15-minute loading zone.

Commissioner Suesser understood that they would not be losing parking spaces on Main Street because those areas were already red striped. She clarified that there was currently no parking on the east side of Main Street. Mr. Legge replied that she was correct. He pointed out that the west side of Main Street is currently striped red. Commissioner Suesser understood that five parking spaces on Heber and three on Park Avenue would be affected. She asked if the three spaces on Park Avenue would also be part of the loading/unloading condition, or whether it would be completely no parking. Mr. Legge stated that the report they received shows a loading area on Heber but nothing on Park Avenue.

Director Erickson remarked that the red zone is a no parking area, and the City would have to enforce that. There could be no load/unload in the no parking zone. Director Erickson explained that in an effort to maintain the bus turning movements at that corner, the City agreed to delay red striping that area until the Kimball building was completed. He pointed out that prior to construction, Park Avenue was red striped in this location and there were temporary signs for no parking on the east side of Park Avenue for the first 15-20 feet along the Kimball garage. Director Erickson emphasized that those spaces did not previously exist, and it would go back to what is legally required rather than the casual parking that was tolerated prior to construction of this building.

Commissioner Suesser asked if consideration had been given to re-route the bus up 7<sup>th</sup> Street. Director Erickson replied that in the course of the redesign and reconstruction of Park Avenue, the City was looking at changing some of the bus routes. There may also be direction from the City Council to allow for additional bicycle traffic on Park Avenue; but that would require reducing some of the bus trips on Park Avenue. He anticipated that it could be considered in 2020 after the Transportation Master Plan is completed and in conjunction with the reconstruction of Park Avenue.

Commissioner Sletten recalled from the Code Enforcement discussion at the last meeting that a citizen who calls with a complaint is not required to give the police department or the responding officer their name and address; nor do they need to accompany the officer to the disturbance they complained about. However, during the public hearing one of the speakers gave opposite testimony on what occurred when he made a complaint. Commissioner Sletten asked for clarification.

Sergeant Randall with the Park City Police Department stated that there is an escalation type technique to bring the two parties together; however, the Park City Police Department does encourage it nor do they train for it. He was unable to speak to the particular situation that was mentioned by a citizen this evening because he was not on duty or a Sergeant at the time. Sergeant Randall stated that he oversees the noise ordinance training for the entire Police Department over the past year, and they set very strict protocols on how to respond to those types of ordinance violations. There is protocol for how to mirror and document those situations in an effort to be uniform and consistent.

Commissioner Sletten used the traffic example that the public speaker had mentioned, he asked if there was similar authority for decibel levels that exceed the LMC maximums to be able to intercede. Sergeant Randall answered yes. He commented on proactive enforcement and the number of times he has responded himself. Certain businesses on Main Street became an issue with excess noise, and he and his counterparts spent time in those areas issuing citations. He had spoken with most of the businesses and most reacted relatively well when they were asked to mitigate the problem. However, there are repeat offenders who refuse to comply.

Sergeant Randall stated that in conjunction with the Legal Department they were trying to work out any kind of issues with the noise ordinance. He pointed out that the noise ordinance is lengthy and they tried to simplify it to make it as easy as possible for the responding officers to follow a specific protocol. In doing so, they started with sending all the noise complaints to the City Attorney for review to determine compliance or a violation. Sergeant Randall explained that the officer takes a ten-minute reading, documents the findings, and passes it along to the City Attorney for review. However, there are time when it becomes so egregious that it affects more than one person and it becomes a health and safety concern. At that point, the officer can take action and issue a citation. If the issue cannot be mitigated at the scene, they contact the City Attorney for the next step. Sergeant Randall noted that on very rare occasions the person is told to either turn off the music or the police will turn it off.

Commissioner Suesser asked for the number of sound monitoring devices at the Police Department. Sergeant Randall stated that they only have one, but it is an expensive

device that is calibrated. He explained that typically the initial response is to gather the information and see whether the police can address it. In at least 95% of cases, having a kind word with the individual creating the noise is usually sufficient. If that does not resolve the problem and there is a second complaint, the police return with the metering device and go through the protocol. He expected that process to continue in the future.

Commissioner Hall asked Sergeant Randall to go through the process for someone who violates the conditional use permit versus a City ordinance. Director Erickson remarked that the Planning Department would handle CUP violations. Sergeant Randall agreed. Director Erickson explained that in accordance with previous meetings, the Planning Department provided a list of the conditions of approval on all outdoor event spaces. Police Dispatch will have access to the list and the conditions of approval. If the Planning Department or the Officers receive complaints after hours, the Staff will review the conditions with the City Attorney's office and make recommendations directly to the Planning Commission, consistent with the condition of approval and the LMC. Director Erickson stated that over the last two months in the Planning Department there has been closer coordination outside of the special event permit and outside the permit events for Sundance. He explained that officers are on the street and proactive all through Sundance for noise and occupancy.

Commissioner Hall noted that Chief Building Official Thacker spoke to the Planning Commission regarding CUP Code Enforcement online. She asked if that would be consistent with the three sustained complaints. Director Erickson replied that the sustained complaint would come through the Police Department because they would investigate and document the complaint. The sustained complaint could also be documented by Code Enforcement. Either one would be reviewed consistent with the Legal Department. Director Erickson stated that there was a current online complaint process; however, the new one Dave Thacker mentioned would be easier to navigate.

Commissioner Thimm expressed appreciation to the applicant for their willingness to work with the Planning Staff and the Planning Commission to find solutions. Commissioner Thimm read from the LMC, "A conditional use shall be approved if reasonable conditions are proposed or can be imposed to mitigate the reasonably anticipated detrimental of the proposed use in accordance with the applicable standards". He noted that the Planning Commission was here this evening to find a reasonable solution. Commissioner Thimm stated that in preparing for this meeting he went through a very thorough Staff report, as well as reviewing notes from prior meetings. He thought he would be in a position to discuss the application of more severe conditions beyond the conditions that were already in place to get to the heart of the LMC. However, in the course of the evening, he realized that he was not able to reach a point this evening to approve this CUP. Commissioner Thimm recommended

that this item be continued. He also recommended that the spirit of working together needed to continue because there was still a lot of work to be done.

Commissioner Thimm remarked that there were certain areas of direction that he was prepared to propose in terms of issues that were raised. He asked if a condition could be implemented having to do with measurement of sound. He thought sound projections and how many dbas are generated by 141 people standing on the deck trying to out shout a PA system were theoretical. Commissioner Thimm asked if there was a way to actually simulate certain situations and take measurements from various points. That type of testing would provide actual facts and considerations so they were not basing their decisions on theoretical projections. Commissioner Thimm remarked that in his profession he relies on consultants, but he also knows that actual facts are the final analysis. Commissioner Thimm thought it would be beneficial to have some testing done in advance of this item coming back to the Planning Commission for additional consideration.

Commissioner Thimm referred to Condition #15 and suggested that they reduce the occupancy load from 250 to 100 people. He believed the reduction would towards a workable condition. Director Erickson asked if Commissioner Thimm was suggesting 100 people as the maximum occupancy load, or the point of needing a special permit. Commissioner Thimm clarified that he would keep the language in Condition #15 as written, with the exception of changing 250 to 100.

Commissioner Thimm referred to Condition #26 and the first sentence, "Any time within the 12-month period after the first annual review...". He did not believe that was adequate because this was a significant issue that affects many of the citizenry. Commissioner Thimm thought it should be changed to three sustained violations within any 12-month period moving forward.

Commissioner Thimm recalled that one of the citizens mentioned having an on-site point of contact, and he recommended adding a condition that requires an on-site point of contact. When there is a complaint, the police would have a single source to contact. Commissioner Thimm stated that in looking through the Police Department recommendations, he was surprised that the recommendations were not incorporated into the conditions of approval; specifically, the one regarding no amplified sound on the deck. Commissioner Thimm believed that would solve the problem and they would not have to worry about an electronic system shutting off at a certain decibel level.

Director Erickson asked Planner Grahn if the previous Staff report included the operations plan that was prepared by the applicant. Planner Grahn believed it was included because it was part of the applicant's presentation in June. She noted that it



was linked when it was attached to the previous Staff report. Director Erickson stated that if the Planning Commission chooses to continue this item and direct the Staff to work on the conditions of approval, they will provide the link to the operations plan that talks about the number of people on the street, the operations manager, and where the approval will be posted. He noted that a condition of approval requires an operation plan; however, the pertinent information is provided in the operation plan; not in the conditions of approval. Director Erickson explained that it was purposely done that way so they could modify the operation plan if there were problems. The Staff thought that was a better process than having the Planning Commission modify a condition of approval. If the Commissioners were not comfortable with the operation plan, the Staff would work with the applicant.

Commissioner Thimm stated that in terms of traffic, he would like to know yes or no, black or white, whether this use will change and reduce the level of service for any of the streets and intersections in the immediate area. He would like to see that answer in the next Staff report. With regard to parking, Commissioner Thimm stated that his analysis shows that parking is satisfied. He did not believe there was any reason to keep revisiting the parking and saying there was not enough parking. The parking requirements that were put in place have been satisfied. Unless someone convinces him otherwise, he did not understand why they continue to discuss parking. Commissioner Thimm stated that he was not opposed to the 15-minute public use loading zone. He thought it would actually help resolve some of the issues on Main Street. Commissioner Thimm suggested the possibility of having a no idling tag added to the sign if there is an unloading zone.

Commissioner Suesser echoed Commissioner Thimm, with the exception of the parking issue. She was not convinced that the loading/unloading zone was a good idea. She also was not convinced that there would not significant congestion, and that people getting to and from the event space would create negative impacts on the intersections. Commissioner Suesser requested that more work be done to figure out how they can limit the number of Ubers and cars dropping people off. She suggested private shuttles as part of a regular plan.

Commissioner Suesser liked the idea of reducing the occupancy from 250 to 100 people. She liked the idea of an on-site point of contact. Commissioner Suesser thought the applicant saying that the deck would be cleared at 10:00 p.m. was a positive move to help address some of the issues. Commissioner Suesser stated that she was not prepared to completely prohibit amplified sound on the deck until further studies were done, as described by Commissioner Thimm, to determine how much sound is absorbed and how much will be disbursed up the hillside. Commissioner Suesser like the idea of the applicant potentially installing some type of monitoring

device for the sound generated from its facility. It is important to have that data so it can be reported back to the Planning Commission. She thought it would be helpful and much better than putting the burden on the citizens and relying on their complaints. Commissioner Suesser suggested that it be explored further.

Commissioner Sletten concurred with the previous comments. Commissioner Sletten thought the majority of the negative comments that were said about the developer during the public hearing were inappropriate and he apologized for it. Commissioner Sletten believed that many of the mitigation plans that were put in place are still inadequate. They were articulated by his fellow Commissioners and he would not repeat them. He favored a continuance until the mitigations could be fleshed out a little more with more detail.

Commissioner Hall echoed the previous comments. She noted that Condition 10(a) has a designated on-site management for each aspect of the event. She thought that was a good place to add the neighbor and police point of contact. Commissioner Hall favored that idea for maintaining a good working relationship, as well as reducing the burden on the City and the Police in terms of dealing with contentious relationships.

Commissioner Hall referred to Condition #17 and requested clarification on the Main Street core and how it works to notify people of the logistics of parking. She believed it was an important piece for letting guests know what to expect before they arrive at the event. Commissioner Hall agreed that the word "sustained" in Condition #25 should be defined and clarified. It is the biggest issue she has with the entire CUP, because everything hinges on three sustained complaints. She was concerned that the community would have a different interpretation than the applicant. Commissioner Hall agreed with having an annual review. She believed it was a simple way to keep everyone in check.

Commissioner Hall thanked the police department for submitting their recommendations. She had read through the recommendations and cross-referenced them with every point in the CUP. She appreciated the police for taking the initiative to work with the community to draft the recommendations. If it is based on enforcement and it all goes as planned, there should not be many issues. Commissioner Hall pointed out that the police recommendations went a little further than the CUP in terms of when CUP could be revoked. Even though it was addressed in the conditions of approval, she requested that the Staff use the police recommendation to bolster the conditions. Commissioner Hall concurred with Mr. Melville regarding bolstering the Findings of Fact to reflect some of the valid points he had made.

Commissioner Sletten noted that sustained complaints were defined and he would like to see a definition for sustained violations.

Commissioner Thimm asked if a photometric study was required to show that there was compliance. Director Erickson answered no. Commissioner Thimm requested a photometric study as well. He explained that a photometric analysis would tell them whether or not light meets the City standards. The Commissioners agreed with seeing a photometric study.

Commissioner Suesser noted that the police recommended outside smoking areas. Commissioner Hall asked if smoking would be allowed in the building or on rooftops. Tony Tyler was unsure, noting that they would comply with the City ordinance in terms of smoking restrictions. Vice-Chair Phillips did not believe smoking could be allowed indoors. Commissioner Hall stated that if smoking would be allowed anywhere indoors or outdoors at the facility, she recommended adding a condition that regulates smoking areas per the police recommendations.

Vice-Chair Phillips agreed with the comments and suggestions of his fellow Commissioners. He also agreed with Commissioner Thimm's suggestion for a continuance. Vice-Chair Phillips stated that there was a high water mark on this particular project. However, he believed it was a direct result of how complex it is to mitigate this unique project.

Vice-Chair Phillips thought it was in the best interest of everyone to continue to work on making sure the mitigation and the conditions are complete before making a decision. He pointed out that the applicant could operate the facility in the same fashion by going through the special events process; but the Planning Commission would not have a say on placing restrictions. Vice-Chair Phillips thought it was important to take the time to get it right because it will set a precedent for similar applications in the future, especially with the demand for real estate as the population around Park City grows.

Tony Tyler was disappointed. He thought it was an unfair characterization to call the project unique in terms of its use. The building and the location are unique, but he disputed the use as being unique. Mr. Tyler stated that every restaurant up and down Main Street operates like an event space year-round. Individual properties are held vacant specifically to hold events. Mr. Tyler stated that in his personal opinion, the difference is that they attempted to follow the Code. They applied for a conditional use permit, which is an allowed use in the zone. They have worked over the last two years to come up with reasonable mitigation standards for a use that two years ago was only a dream. He now has a building built and multiple millions of dollars invested in it. He has spent two years of time on just the use aspect, and he is being told to keep doing

more. Mr. Tyler pointed out that they have had three noise studies and a professional traffic study. They have already gone through the building permit process. He found it extremely frustrating to come to a meeting and hear members of the public say they should not have been able to build what they built and the Planning Commission should deny the use. Mr. Tyler felt that was completely inappropriate.

Vice-Chair Phillips informed Mr. Tyler that the Planning Commission was not basing their decision on those comments. Mr. Tyler understood. However, it was already October and a continuation on this particular use renders the project debunked, because the building is finished.

Mr. Budge asked if the Planning Commission had an idea of when they would like to meet again. He remarked that the things his client has been subjected to, including the comments tonight and on Facebook, were beyond what he has seen any client subjected to. The comments were very inappropriate and included anti-Semitic comments. Mr. Budge did not want his applicant to go through this process again. If the Commissioners intended to meet again in a timely manner, he would not be opposed to a continuance. However, if this process is going to continue to drag, they would rather have a denial. Mr. Budge stated that at some point due process requires a conclusion. He emphasized that the applicant has never approached this as a process that was not taken seriously or required their full attention and devotion of financial resources. Mr. Budge believed the comments made by the Planning Commission were fair and they would like the opportunity to respond; but he was not willing to go through another process that exposes the applicant to another round of disparaging comments that do not reflect the work that was done by serious people.

Mr. Tyler stated that they started the process on the building permit 3-1/2 years ago, and some of the current Commissioners were part of the original process. As part of that conversation he recalled asking the Planning Commission if he was given the ability to build the building, whether he would actually be able to use it. The comment at that time was "we will figure out a way that, with appropriate conditions, you can use the building that you build". Mr. Tyler noted that he relied on that comment to start the construction. Two years later the public comments are the same as they were two years ago.

Mr. Tyler thought the conditions of approval were manageable or he would not have agreed to them. He believed they were appropriate for the use and they have the demonstrated ability to be enforced and enforceable. However, his concern was that there was no more room in the conditions. He was unsure what else he could provide to convince the Commissioners that the mitigations were appropriate for the use.

Mr. Tyler appreciated the time the Planning Commission has given to this project, and he appreciated the Staff time. He wanted to move forward with the project and to use the building he built. He noted that the applicant had discussed putting in a restaurant with the Staff, and he could still do that. It would never come before the Planning Commission, and like every restaurant in town, it would be operated like an event space. He had elected not to do that because it was not the right process. He felt they had adequately and accurately mitigated the use to the extent reasonably possible, given that they could not demonstrate it yet. Mr. Tyler concurred with Mr. Budge. If they could agree on a short time period, he was willing to come back and talk about how to make it better. If that was not the case, he had no choice but to request a denial.

Director Erickson noted that they could not meet on October 24<sup>th</sup>. The Planning Commission could either request a special meeting or continue this item to November 14<sup>th</sup>. He explained that the process going forward is for the Staff to review the comments by the Commissioners and the public with the applicant. If there is no way to reach a conclusion, the Staff would need the opportunity to prepare findings for denial so the City Council or any other appeal body would have the facts behind their decision.

Commissioner Suesser stated that the City Council remanded this to the Planning Commission to come up with more conditions, to incorporate recommendations from the Police Department, and for further analysis. She thought they could do better than what they have and she wanted the opportunity to work on it and hopefully be ready to vote on November 14<sup>th</sup>.

Commissioner Suesser did not believe the Planning Commission had met the burden that was placed on them by the City Council. Commissioner Hall concurred. She was willing to stay later this evening if the others wanted to work on it.

Vice-Chair Phillips asked if the Commissioners wanted to stay late this evening or whether they felt the points they made were sufficient direction. Commissioner Suesser recommended a work session.

Jody Burnett recommended that the Planning Commission continue the item to a date certain. He believed the Staff needed time to work with the applicant to refine the conditions and determine whether it is possible to come to agreement. He understood that the Planning Commission had a full agenda on October 24<sup>th</sup>.

Vice-Chair Phillips asked if the applicant would accept a continuance to November 14<sup>th</sup> as a date certain. Mr. Tyler and Mr. Budge needed time to confer.

Director Erickson concurred with the Planning Commission direction on the two definitions of sustained, but he was not prepared to write a definition this evening. He noted that when they talked earlier about uniqueness, one of the difficulties in writing a mitigation strategy is that the use is highly variable. For example, it could be an event with 50 lawyers or an event with 400 college students. In order to meet the test of the LMC, the conditions need to accommodate that range of uses. Director Erickson stated that using the 100-person occupancy clause rather than the 250-person clause makes it easier to condition the changing use in an event space. He noted that 250 was the threshold to require a special permitting process. Reducing the occupancy to 100 people makes the strategy easier to manage for flexible events.

Commissioner Thimm believed the Commissioners had endeavored to prepare to provide the framework for the applicant to address the issues, so when they meet again they should be able to make a decision.

Mr. Budge preferred sooner than November 14<sup>th</sup>, but if there was not an earlier time they would agree to the 14<sup>th</sup>. Mr. Burnett recommended that the Planning Commission continue this item to a date certain of November 14<sup>th</sup>. The Staff could work with the applicant and know enough in advance whether they should prepare modified conditions or findings for denial.

Director Erickson stated that he would also review Planner Grahn's schedule to see if the Staff report could be distributed earlier than the normal review period. He would also work with Jody Burnett and Mark Harrington to see if there is a mechanism for an early response without violating the Open Meetings laws and other conditions of open meetings and public hearings.

Commissioner Hall asked if the Staff had sufficient direction on what the Commissioners wanted. Planner Grahn yes. She thanked the Planning Commission for being thorough in their proposed conditions of approval and the information provided.

MOTION: Commissioner Hall moved to CONTINUE 638 Park Avenue to November 14, 2018. Commissioner Suesser seconded the motion.

VOTE: The motion passed unanimously. Commissioner Kenworthy was recused.

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The Park City Planning Commission Meeting adjourned at 9:15 p.m.

Approved by Planning Commission: \_\_\_\_\_

APPROVED