

PARK CITY MUNICIPAL CORPORATION
PLANNING COMMISSION MEETING MINUTES
COUNCIL CHAMBERS
MARSAC MUNICIPAL BUILDING
JANUARY 9, 2019

COMMISSIONERS IN ATTENDANCE:

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

EX OFFICIO: Planning Director, Bruce Erickson; Francisco Astorga, Planner; Anya Grahn, Planner; Laura Newberry, Planner; Jody Burnett, Outside 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 Commissioners Kenworthy and Suesser, who were excused.

ADOPTION OF MINUTES

December 12, 2018

Commissioner Thimm referred to page 36, second paragraph, second line. He thought the sentence as punctuated gave the opposite meaning than what was intended. He re-punctuated the sentence to correctly read, Commissioner Thimm stated that if they continued to a date uncertain, he doubted that much would happen. During the winter in terms of preservation, he believed it was a matter of urgency because each year there is more deterioration.

Commissioner Sletten referred to page 3, third paragraph, and changed no to correctly read **not**.

Commissioner Sletten noted that during the comments regarding the Kimball Garage, Commissioner Hall had asked about the distance for noticing the neighbors and Director Erickson offered to confirm the requirements. Director Erickson stated that he had checked the noticing requirements and found that it was not a 300-foot notice. Only the adjacent property owners are required to be noticed. He was still trying to determine whether adjacency included properties across the street.

MOTION: Commissioner Sletten moved to APPROVE the Minutes of December 12, 2018 as amended. Commissioner Hall seconded the motion.

VOTE: The motion passed unanimously.

PUBLIC COMMUNICATIONS

There were no comments.

STAFF/COMMISSIONER COMMUNICATIONS AND DISCLOSURES

Vice-Chair Phillips reported that after speaking with the Staff prior to the meeting, the two items on the Regular Agenda would be reversed. Anticipating that 1293 Lowell Avenue would require less discussion, it was moved to the first item on the agenda.

Director Erickson appreciated the Commissioners who were willing to give their time to meet again on January 23rd. Currently, the Staff was calendaring the February 13th Planning Commission meeting.

Director Erickson announced that Anya Grahn had taken a senior planner position in North Carolina and would be leaving the Planning Department next Thursday, January 17th. He reported that other Staff changes would be taking place but those changes would be positive. Director Erickson stated that he was exceptionally proud of Anya and the work she has done in getting the Historic District Guidelines in place, making sure the Grant Program is in place, and many other things she did for the Historic District during her career in Park City.

Planner Grahn thanked Director Erickson and everyone for their kinds words. She appreciates the time she has spent with all of them working through many projects.

Vice-Chair Phillips thanked Planner Grahn for all she has done for Park City. She made a huge impact and he hoped she would visit Park City throughout her life to see the fruits of her work.

CONSENT AGENDA

1. 1012 Lowell Avenue – Steep Slope Conditional Use Permit – The applicant is proposing to construct a new Single Family Dwelling with a Building Footprint in excess of two hundred square feet (200 sf) located on an existing Slope of 30% or greater.

Vice-Chair Phillips opened the public hearing. There were no comments. Vice-Chair Phillips closed the public hearing.

MOTION: Commissioner Sletten moved to APPROVE the Consent Agenda consisting of the 1012 Lowell Avenue Steep Slope CUP. Commissioner Hall seconded the motion.

VOTE: The motion passed unanimously.

Director Erickson noted that this was the project that came in before the Code change to make these applications Administrative CUPs.

Findings of Fact – 1012 Lowell Avenue

1. The property is located at 1012 Lowell Avenue.
2. The site is located in the Historic Residential-1 Density (HR-1) Zoning District.
3. The lot contains 1,875 square feet. It is a downhill lot.
4. This application is a request for a Steep Slope Conditional Use Permit (CUP) for construction of an addition to a historic single-family home, when the Building Footprint of the addition is in excess of 200 square feet if the Building Footprint of the addition is located upon an existing Slope of 30% or greater.
5. The applicant is proposing to build a new single family house on a vacant lot.
6. The allowed footprint for a lot measuring 1,875 square feet is 844 square feet; the applicant is proposing a footprint of 843 square feet. The total house size will be 2,793 square feet.
7. The required front and rear yard setbacks are 10 feet, for a total of 20 feet. The applicant is proposing a 15-foot front yard setback and a 13-foot rear yard setback.
8. The required side yard setbacks are 3 feet for a total of 6 feet. The applicant is proposing 3 feet on both the north and south sides, totaling 6 feet.
9. The zone height is 27 feet, and the tallest portion of the structures measures 27 feet above Existing Grade.
10. The zone requires that the maximum height from the lowest finished floor plane to the top of the highest wall top plate that supports the ceiling joists or rafters is no more than 35 feet. The applicant is proposing an interior height of 34.94 feet.
11. Final grade must be within 4 vertical feet of the existing grade around the periphery of the structure, and the maximum proposed difference between existing grade and final grade will be no more than 4 feet.
12. On July 27, 2018, the City received an application for a Conditional Use Permit (CUP) for "Construction on a Steep Slope" at 1012 Lowell Avenue; the application was deemed complete on September 11, 2018.
13. This is a downhill lot, and the average slope of the lot is about 29.3%. The slope

drops drastically immediately east of Lowell Avenue, with portions of the grade having a slope as much as 40%.

14. The property is located outside the Park City Landscaping and Maintenance of Soil Cover Ordinance (Soils Ordinance) and therefore is not regulated by the City for mine related impacts.

15. The development has been located and designed to reduce visual and environmental impacts of the Structure. The house will be built on a standard Old Town lot. The small lot size dictates a narrow house. Much of the bulk and mass of the house will be hidden behind the façade and not visible from Lowell Avenue. The applicant has incorporated front and rear yard setbacks that will provide greater green space on the lot.

16. The proposal minimizes impacts of the project by incorporating screening, slope stabilization, erosion mitigation, vegetation protection, and other items. The proposed single-family house fits within the context of the slope, neighboring structures, and existing vegetation. The proposed house complements and contributes to the established pattern along the east side of Lowell Avenue with a pedestrian entrance beneath a porch and a single garage door overshadowed by a second level balcony. The proposed materials, scale, and fenestration pattern break up the mass of the building and complement existing development along the street.

17. Access points and driveways have been designed to minimize grading of the natural topography and reduce overall building scale. The applicant is proposing a single car driveway that will lead to a single-car garage. On-site parking will be provided in the driveway and garage. Landscaping will be used to visually minimize the dominance of the driveway.

18. The project includes retaining walls and terraces to retain Natural Grade. The applicant has proposed a series of retaining walls that are no more than 3.5 feet in height and will not change existing grade by more than 4 feet. These walls will be located in the side yard setbacks and not visible from the street.

19. Buildings, access, and infrastructure must be located to minimize cut and fill that would alter the perceived natural topography of the Site. The new single-family house is sited in such a way that the original grade of the site will not be drastically altered by this construction project. The design has maximized opportunities for open space and there is no Significant Vegetation to preserve as the site is overgrown. New landscaping will be incorporated to maintain the hillside and provide visual separations from neighboring properties.

20. Where Building masses orient against the Lot's existing contours, the Structures must be stepped with the Grade and broken into a series of individual smaller components that are Compatible with the District. The design for the new single-family house steps with the grade to reduce the perceived bulk and mass of the structure. The overall mass of the building is relatively small due to the lot size, and this mass is broken up further into modules and components reflective of residential

developments. The prominence of the garage on the façade has been reduced by the adjacent porch-covered pedestrian entrance and second-level balcony. The proposed design is consistent with the Design Guidelines for New Construction.

21. The proposal minimizes the creation of a “wall effect” along the Street front. The applicant has introduced increased front and rear yard setbacks to further breakup the mass of the building. The mass of the façade has been broken up by changes in materials, roof forms, decks and porches, as well as projections. This has allowed the house to contribute to the streetscape overall while not creating a solid wall effect along the street. The increased front yard setback has also allowed a greater landscaped area along Lowell Avenue.

22. The volume of the structure has been restrained to minimize its visual mass and mitigate differences between the scale of the historic house and new addition. The proposed design is articulated and broken into compatible massing components. The design includes setback variations and lower building heights for portions of the structure. The proposed massing and architectural design components are compatible with both the volume and massing of single family dwellings in the area. The design minimizes the visual mass and mitigates the differences in scale between the proposed house and surrounding structures.

23. The maximum Building Height in the HR-1 District is twenty-seven feet (27'). The proposed new construction meets the twenty-seven feet (27') maximum building height requirement measured from existing grade. The roof has been designed to allow for a front and side-facing gables along the street front, consistent with adjacent structures. As designed the house is compatible in mass and scale with houses in the surrounding neighborhood.

24. The property was posted and notice was mailed to property owners within 300 feet on December 21, 2018. Legal notice was also published in the Park Record in accordance with requirements of the LMC on January 5, 2019.

25. The findings in the Analysis section of this report are incorporated herein.

Conclusions of Law – 1012 Lowell Avenue

1. The CUP, as conditioned, is consistent with the Park City Land Management Code, specifically section 15-2.2-6.
2. The Use is consistent with the Park City General Plan, as amended.
3. The effects of any differences in use or scale have been mitigated through careful planning.

Conditions of Approval – 1012 Lowell Avenue

1. All Standard Project Conditions shall apply.
2. City approval of a construction mitigation plan is a condition precedent to the

issuance of any building permits. The CMP shall include language regarding the method of protecting adjacent structures.

3. City Engineer review and approval of all lot grading, utility installations, public improvements and drainage plans for compliance with City standards is a condition precedent to building permit issuance.

4. This approval will expire on January 9, 2020, if a building permit has not been issued by the building department before the expiration date, unless an extension of this approval has been requested in writing prior to the expiration date and is granted by the Planning Director.

5. Plans submitted for a Building Permit must substantially comply with the plans reviewed and approved by the Planning Commission on January 9, 2019, and the Final HDDR Design.

6. Modified 13-D residential fire sprinklers are required for all new construction on this lot.

7. All excavation work to construct the foundation of the new addition shall start on or after April 15th and be completed on or prior to October 15th. The Planning Director may make a written determination to extend this period up to 30 additional days if, after consultation with the Historic Preservation Planner, Chief Building Official, and City Engineer, it is determined that an extension is necessary based upon the need to immediately stabilize an existing Historic property, or specific site conditions such as access, or lack thereof, exist, or in an effort to reduce impacts on adjacent properties.

8. The property is located outside the Park City Landscaping and Maintenance of Soil Cover Ordinance (Soils Ordinance) and therefore not regulated by the City for mine related impacts. If the property owner does encounter mine waste or mine waste impacted soils they must handle the material in accordance to State and Federal law.

REGULAR AGENDA - DISCUSSION/PUBLIC HEARINGS/ POSSIBLE ACTION

1. 1293 Lowell Avenue – Condominium Plat for the approved Multi-Unit Dwelling consisting of fifteen (15) residential affordable housing units.

Planner Francisco Astorga reviewed the application for the Kings Crown Housing Condominium Plat, in compliance with the approved vested applications.

Commissioner Hall asked if the affordable and attainable units were being filled. Rory Murphy, representing the applicant, stated that the affordable units are four to five deep. They have two attainable units left to sale. They were currently working on the foundations and the project was moving along.

Commissioner Thimm stated that based on the Housing Report the target was 80% AMI. He noticed that some of the residences were being offered at deeper targeted level. He thanked Mr. Murphy for doing that because there is such a need. Mr. Murphy stated that the intent was to cover a wider range.

Vice-Chair Phillips opened the public hearing.

There were no comments.

Vice-Chair Phillips closed the public hearing.

MOTION: Commissioner Hall moved to forward a POSITIVE recommendation to the City Council for the Kings Crown Condominium plat at 1293 Lowell Avenue, based on the Findings of Fact, Conclusions of Law, and Conditions of Approval found in the draft ordinance. Commissioner Thimm seconded the motion.

VOTE: The motion passed unanimously.

Findings of Fact – 1293 Lowell Avenue

1. The site is located at 1293 Lowell Avenue, Lot 1 of the Kings Crown Re-Subdivision.
2. The site is located within the Recreation Commercial District.
3. On January 10, 2018 the Park City Planning Commission approved the Kings Crown Master Planned Development and a Conditional Use Permit for Multi-Unit Dwellings throughout the development for market rate and affordable housing units.
4. The approved Master Plan included Building A – Affordable Housing which included 15 deed-restricted affordable housing units totaling 16,520 square feet within a Multi-Unit Dwelling.
5. On February 1, 2018 the Park City Council approved the Kings Crown Re-Subdivision Plat per Ordinance No. 2018-05.
6. On June 13, 2018 the Park City Planning Commission ratified the Development Agreement required by the approved Master Planned Development.
7. On June 14, 2018 Summit County recorded the Development Agreement -entry no. 01093392.
8. On May 16, 2018 Summit County recorded the Kings Crown Re-Subdivision Plat – entry no. 1091847.
9. On August 30, 2018 the Park City Housing Authority approved the Kings Crown Affordable Housing Mitigation Plan.

10. On November 8, 2018 the Park City Building Department issues a building permit for the Affordable Housing Building A.
11. The Affordable Housing Building A building permit was found in compliance with the approved Master Plan, Conditional Use Permit, Re-Subdivision Plat, and Affordable Housing Mitigation Plan.
12. On November 5, 2018 the Park City Planning Department received a complete Condominium Plat application for Building A – Affordable Housing.
13. The proposed Condominium Plat memorializes common, limited common, and private areas that would that allows the units to be sold individually.
14. The proposed Condominium Plat consists of fifteen (15) deed-restricted affordable/attainable units within the Kings Crown Building A, to be platted as Kings Crown Workforce Housing Condominiums.
15. The unit boundaries of each private unit would be set forth on the recorded plat.
16. The size of the private units within the multi-unit dwelling ranges from 662 – 1,377 square feet.
17. Common areas include an underground parking garage, internal circulation, exterior walls and internal bearing walls/columns, exterior spaces and patios, owner's storage and mechanical space, footing and foundation, roof, etc.
18. Limited common areas include eight (8) front elevation and two (2) rear elevation decks.
19. The approved Master Plan and Housing Mitigation Plan included 8.55 affordable unit equivalents in the form of seven (7) deed-restricted units; furthermore, the applicant included an additional 9.07 affordable unit equivalents in the form of eight (8) deed-restricted attainable units as approved in the Affordable Housing Mitigation Plan.
20. The proposed Condominium Plat is consistent with the approved Master Plan Development and Affordable Housing Plan as it provides the seven (7) deed restricted units equating to 8.57 affordable unit equivalents.
21. The recordation of this Condominium Plat would allow the applicant to sell each unit.
22. There is Good Cause for this Condominium Plat as it reflects compliance with the approved Master Plan, Conditional Use Permit, Re-Subdivision Plat, Affordable Housing Mitigation Plan, and issued Building Permit.

Conclusions of Law – 1293 Lowell Avenue

1. There is good cause for this Condominium Plat.
2. The Condominium Plat is consistent with the Park City Land Management Code and applicable State law regarding Condominium Plats.
3. Neither the public nor any person will be materially injured by the proposed Condominium Plat.

4. Approval of the Condominium Plat, subject to the conditions stated below, does not adversely affect the health, safety, and welfare of the citizens of Park City.

Conditions of Approval – 1293 Lowell Avenue

1. The City Planner, City Attorney, and City Engineer will review and approve the final form and content of the plat and CCRs for compliance with State law, the Land Management Code, and the conditions of approval, prior to recordation of the plat.
2. The applicant shall record the Plat at the County within one year from the date of City Council approval. If recordation has not occurred within one (1) years' time, this approval for the plat will be void, unless a request for an extension is made in writing prior to the expiration date and an extension is granted by the City Council.
3. All conditions of approval of the Master Planned Development, Conditional Use Permit, Kings Crown Re-Subdivision Plat Ordinance No. 2018-05, and approved Housing Mitigation Plan shall continue to apply.

2. **Amended Lot 38 West Ridge Subdivision Phase II Plat Amendment adjusting the Reserved Open Space Line.**

Planner Astorga stated that he and Laura Newberry worked together on this application and co-authored the Staff report.

Planner Astorga introduced Nick Frost, the applicant's representative. He also noted that 20 minutes earlier the Planning Department received an Affirmation of Sufficient Interest signed by the property owner indicating that Mr. Frost was one of their current representatives.

Planner Astorga provided an overview of what was being proposed and noted that the Planning Department was recommending that the Planning Commission forward a negative recommendation to the City Council.

Planner Astorga stated that the site is located 2563 Larkspur Drive, which is Lot 38 of the West Ridge Phase II Subdivision. The current amendment would modify a platted reserved open space area. It is not a zoned boundary, but the area was designated on the original subdivision.

Planner Astorga presented the Exhibit shown on page 83 of the Staff report. The yellow line identified the existing reserved open space boundary towards the rear of the property. The pink/purple line was the requested modification. Planner Astorga stated that the requested modification follows somewhat of an unusual configuration. It was

done by the applicant and surveyor, and this was a second version that results in no net loss in the current open space. The original application had a different version that took away some of the platted reserved open space area.

Planner Astorga reviewed an Exhibit shown on page 85 of the Staff report, which was a simple survey of the site that the applicant had provided. It showed the entire north end portion of the concrete patio that was built within the reserved open space area without City permits. He pointed to three retaining walls; an iron wall, a concrete wall on the other side of the door to the west, and another concrete wall towards the east.

Planner Astorga outlined other improvements within the reserved open space area that were built without City approval. The improvements included a hot tub and its concrete pad; and the rock path; a landscaping perimeter that was placed on the survey; a rock platform; and artificial turf around the hot tub and concrete pad west of the concrete patio.

Planner Astorga stated that the proposal requests to maintain most of these improvements, other than the hot tub, the rock platform and the rock pad. The applicant would like to maintain the iron retaining wall and the concrete path.

Planner Astorga reviewed another Exhibit that was the overview of the West Ridge Subdivision Phase II with an overlay of the reserved open space area. The next Exhibit identified the lot. In addition to delineating the reserved open space, the plat also delineates a building pad with specific setbacks. Planner Astorga stated that Exhibit L on page 140 showed that all the improvements were on the south side of the reserved open space within the buildable portion of the lot.

Commissioner Thimm asked if Planner Astorga knew the heights of the retaining walls. Planner Astorga thought all three retaining walls were under 4'.

Planner Astorga presented an Exhibit showing the approved building permit, and compared it to the improvements indicated on the survey. He noted that the design that was approved by the City placed the patio back towards the buildable portion of the lot. The design did not have the corner clip on to that specific boundary.

Planner Astorga presented another Exhibit of a site plan that was amended in January 2017, which was submitted to the City for occupancy purposes. This exhibit was also shown on page 143 of the Staff report. Planner Astorga believed the site plan was reviewed over the counter on January 31st, 2017. It was amended in preparation for the Certificate of Occupancy.

Vice-Chair Phillips asked if it was amended prior to construction. Planner Newberry replied that it was amended during construction but prior to the final inspection. Planner Astorga clarified that the original permit was approved in 2015.

Commissioner Sletten asked if the amended site plan was submitted days or months before the CO was issued. Planner Astorga replied that it was months before the CO was issued.

Planner Astorga referred to the site plan on page 143 of the Staff report that was amended on January 31, 2017. The general notes indicate that in order to achieve occupancy, these plans are amended to show a treated wood landing outside of every exterior doorway. He had circled in red where these platforms were to be placed. Vice-Chair Phillips pointed out that underneath the stamp it read "temporary decks only". Planner Astorga remarked that the approved site plan was amended during construction to accommodate for these temporary decks in preparation for occupancy.

Planner Newberry believed the file was finalized and closed on March 24, 2017; however, she did not have the actual Certificate of Occupancy to verify the date.

Planner Astorga explained that the applicant was not able to landscape because they were seeking occupancy in March. Due to weather issues in Park City, the Building Department allows a bond for specific landscaping and issues a Certificate of Occupancy. Once the area is landscaped, the Building Department refunds the bond. While inspecting the landscaping in the Fall of 2018, the Planning and Building Departments discovered all the improvements that were built outside of their scope and without City permits.

Planner Astorga stated that currently there are specific citations with the Building Department. The applicant's approach was to move forward with the plat amendment application to remove the shift and modify the reserved open space area. Vice-Chair Phillips clarified that the landscaping was done after the Certificate of Occupancy. Planner Astorga replied that he was correct.

Planner Astorga reported that the Chief Building Official, Dave Thacker, was not able to attend the meeting this evening; however, he had provided a list of bullet points for their review. Planner Astorga commented on a discrepancy with the LOD that was shown on page 141 of the Staff report. He referred to the approved building permit from 2015 and noted that the original site plan did not have a listed Limit of Disturbance, which is required before the City can issue a building permit. The LOD is typically reviewed by the Building Department. Planner Astorga stated that because the Planner and the Building and Plan Checker who approved the site plan no longer work for the City, he

did not have specific verification, but he assumed he was correct based on the documents. His reason for believing there were two separate plans was because it was missed during the first round of review and when the Building Department later requested it, a new sheet was printed. Planner Astorga did not dispute that a line was drawn on the second site plan that was part of the original building permit that follows the easement lines along the perimeter of the site. This was the LOD indicated on the building permit. The Staff acknowledges that the LOD was an oversight because the site plan was stamped approved by the Building Department. However, the Staff did not find that the approval gave the applicant permission to build improvements that were not shown on any approved set of plans.

Planner Astorga pointed out that the plans were prepared by the applicant and their consultants. As indicated in the Staff report, the original request was approved by the City at the applicant's request. All improvements within Park City Municipal require specific types of permits and a specific building permit process.

Planner Astorga reviewed the list of bullet points that Dave Thacker had provided. Mr. Thacker indicated that the Limit of Disturbance on the approved plans showed the entire lot, including the platted reserved open space area, with the exception of the approximate setbacks. This was not verified prior to permit issuance due to a Building Department error. The approved plans did not show landscaping improvements in the platted reserved open space area; and the Staff did not approve any improvements in the platted reserved open space area. A Stop Work Order for the platted reserved open space area is still in place. The LMC Building Codes are required to be followed regardless of the approvals. It is regulated by the plat. The plat does not allow improvements within the platted reserved open space area.

Planner Astorga explained how the layout of the specific area created an angle towards the back of the property. The way the house was placed on the property, it was not squared off on the lot. This was shown in the Exhibit on Page 83 of the Staff report. Planner Astorga believed that was the trigger for squaring off the rear portion patio. It was unfortunate that it took place without City approval, but the Planning Department was having difficulty finding good cause for this plat amendment. He felt the applicant was asking for forgiveness rather than permission. Planner Astorga thought the applicant was trying to modify the site to fit a specific proposal; however, it should be the opposite and the proposal should fit the site. He noted that the original architect, Bill Mammen, respected the reserved open space. It was identified on the original survey that was part of the original building permit application, which is why the Planning Department approved the application.

The Staff recommended that the Planning Commission conduct a public hearing and consider forwarding a negative recommendation to the City Council based on the Findings of Fact, Conclusions of Law.

Planner Astorga pointed out that in the past the City had other requests where either a property owner or the HOA wanted to encroach onto the reserved open space area; and the City has been very consistent in not allowing that to occur.

Planner Astorga noted that the CC&Rs also have specifically language regarding the reserve open space, where these specific types of improvements are not allowed within this platted area.

Planner Astorga reported that the Planning Department received public comment that came in after the Staff report was prepared, and those comments were forwarded to the Planning Commission via email. The public comment came from neighbors within the development supporting the current plat amendment. The Planning Department also received a letter from Nick Frost. Planner Astorga apologized for a mistake he had made on the noticing sign that was placed on the site. The sign indicated that the public hearing would begin at 6:00 p.m. rather than 5:30 p.m.

Commissioner Thimm referred to Exhibit I in the packet called Maintenance Covenant on page 132 of the Staff report. He noted that it talks about the City's Right of Enforcement, and Identification of a Violation and the steps taken. He asked if any of those steps had started. Planner Astorga stated that they have not in terms of the Maintenance Covenant Exhibit. They were able to find a Planning Department approval stamp on the draft; however, this document was not found to be recorded anywhere. Planner Astorga stated that the document was referenced in the actual plat. He assumed the applicant was trying to determine how to handle the reserved open space area, and at some point they thought about an easement, but instead decided to move forward with the delineated space as a plat designation. Planner Astorga stated that currently the Staff was working with an ACE violation through the Building Department, as confirmed on the Stop Work Order.

Nick Frost, representing the applicant, stated that he had forwarded a letter to Planner Astorga earlier that day. He was unsure whether the Planning Commission had the opportunity to see it. Vice-Chair Phillips informed Mr. Frost that the Commissioners had read his letter.

Mr. Frost highlighted some of the points in his letter. He clarified that this proposal was a request; not a demand of right or a shift of responsibility or blame. It is only a request for a plat amendment made by homeowners who were taking full responsibility. The

ROS line is apparent on the plat and outlined in the CC&Rs. It was on the initial survey that was conducted prior to construction. Mr. Frost stated that the architect, Bill Mammen, had originally drawn the improvements within the ROS. At some point there was a shift between a regular architect and a landscape architect. He had spoken with the landscape architect and he also takes full responsibility. She is a family member of the homeowner, and she is a licensed landscape architect in California. She was unaware of the process but was not using that as an excuse. However, it was the reason for what happened and why they were before the Planning Commission today. Mr. Frost explained that when the landscape architect took over and drew out the improvements, she did not recognize what the ROS meant. She also did not recognize that the City required permits. Mr. Frost emphasized that these reasons were not being put forth as an excuse. He only mentioned it as background information.

Mr. Frost stated that this request was being made by homeowners who tried to make and construct a low impact environmentally-friendly house that was currently under consideration to be LEED Certified. He remarked that the metal wall and the artificial turf that encroach into the ROS area are made of recycled material as part of the low impact, environmentally-friendly initiative. Mr. Frost noted that the homeowners were surprised when they realized that some of the improvements were in back of the ROS area. Upon that realization they immediately did another survey and began talking with the City. The conversations progressed to where the homeowner wanted to remove all the improvements that encroach into the ROS area, as Planner Astorga previously outlined. Mr. Frost remarked that it was more difficult to accomplish that with the concrete patio and the metal retaining walls because it will require a significant amount of excavating, as well as excavators and dump trucks, which will further disturb this ROS area. Mr. Frost stated that their thought was to remove everything that could possibly be removed from the ROS area, and to do a shift in the ROS boundary line for the improvements that would be more onerous to remove, in exchange for the same amount of land immediately adjacent. He noted that it was a discussion generated through conversations with the City Departments.

Mr. Frost thought David Thacker had done a good job in explaining the LOD fencing. Mr. Frost stated that as part of the investigation the homeowners did try to figure out what had happened and how they had missed the process. They reviewed the approval from the Building Department on the LOD fencing, and in doing so, they realized that the LOD fencing was installed around the easement perimeter of the lot. Mr. Frost showed the stamped approval from the Building Department where the Chief Building Official had drawn the red line around the LOD area. The owners paid their landscaping bond according to the square footage of the LOD area. Mr. Frost believed that blurred the line when the homeowners were trying to figure out what had happened. He believed that if the fence had been installed along the ROS line, the

mistake would not have been made. Mr. Frost thought it was one more thing that added to the confusion.

Mr. Frost stated that prior to the CO, the homeowner looked at the site plan revision for the temporary wooden step-downs from the egress doors. He believed that also showed some of the future improvements they had contemplated to go over the ROS line. Mr. Frost clarified that his clients were not trying to hide the fact that they had planned improvements that went over the ROS line. The problem is that they got it wrong.

Mr. Frost commented on the solutions discussed with the City. It is a net zero change to the ROS. It removes everything that can be removed without significantly disturbing the ROS area. The end result is a small alteration. He understood that the effects may be bigger, but the adjustment to the line is relatively small.

Mr. Frost addressed some of the public comments. He stated that in discussing solutions, his clients and the City originally discussed moving the ROS line entirely up to accommodate many of these improvements without giving back any ROS space. He believed many of the public comments were geared towards that proposed solution, rather than the current proposal. Mr. Frost stated that the owner, Ms. Gardner, talked to many of the neighbors in the area and received a lot of support. Most neighbors found this to be a very reasonable solution to the problem. Mr. Frost reiterated that his clients did not want this problem. They wanted an eco-friendly LEED Certified home. He also recognized that neither the City Departments nor the Planning Commission wanted this problem; but the problem exists. Mr. Frost asked the Planning Commission to consider the requested plat amendment as a way to remedy this issue.

Vice-Chair Phillips opened the public hearing.

Cameron Boone stated that he is a realtor in town and he sits on the Board of the Park City Community Church. He is a neighbor to the east of the subject property. His family bought their home in 2006 and both lots were vacant at the time. He has had the privilege of seeing two beautiful homes built to his east and to his west. One was done right and one was done wrong breaking the rules. Mr. Boone stated that he was speaking on behalf of himself and his family. What happened is that things were built without a permit in open space. Someone got caught and they were here today asking for forgiveness and not permission. Mr. Boone urged the Planning Commission to deny this request for the lot line amendment, because it sets a very dangerous precedent in the City that respects open space and respects the due process surrounding the open space. That was evident last November. Mr. Boone remarked that there are 24 lots on the northeast side of Park Meadows that range from Columbine Court to Uintah View

Court. If this gets accepted, people will want to know why they could not do the same. Mr. Boone again urged the Planning Commission not to reward this process. Regardless of whether it was done intentionally or accidentally, the result is the same. Open space has been torn up and he has had to look at it for two years. The City should not be about giving people everything they want.

John Raskin stated that he lives in West Ridge. When he purchased his house in 2008 he was well aware of the green space restrictions. When they did some renovations they had to build a triangular shaped deck because that was what the HOA approved, and what was required by the zone restrictions and the protected green space. Mr. Raskin has spoken with the HOA President and Vice-President. The HOA does not support this plat amendment or the prior plat amendments. Mr. Raskin stated that he has built a couple of spec houses, and through genuine errors they made a mistake. Fifty-percent drainable coverage was required and they failed to meet that because they did not incorporate the platforms for the HVAC and the generator. As a consequence, he had to tear out almost 100 feet of pool deck. It was expensive and it was not easy, but it was the correct thing to do and he accepted it. Mr. Raskin did not believe that making a plat amendment to accommodate an error was an acceptable resolution, and he was opposed to it.

Richard Smith stated that he lives next door to Mr. Boone on the other side. He first noticed this in November 2017 when he and his wife came back into town and noticed that the non-disturbance limitations had been ignored and the entire area had been graded. On November 21, 2017 he sent a note to the HOA President asking if someone had changed the CC&Rs or whether the City had a different policy. At that point the President told him no, and later copied him on a letter he had sent to Ms. Gardner on November 24, 2017 telling her that they were in violation of the non-disturbance area limits. Mr. Smith clarified that he was only bringing this up because he believed it occurred before the final landscaping design was put in place.

Vice-Chair Phillips closed the public hearing.

Planner Newberry stated that she and Planner Astorga met with the Chief Building Official and the applicants regarding the requirements if the plat is denied, and how the owners would resolve the encroachment into the ROS. The applicant did not give specifics, but they mentioned that one possibility would be to drill a few holes into the concrete to allow water to go through; adding a wall along the existing ROS; and filling in the area with dirt. It would be covering the concrete rather than tearing it out. Planner Newberry explained that it would add a wall where the original approved plan showed a stepping wall along the ROS; and then drilling some holes into that concrete patio so the water could drain through. Vice-Chair Phillips clarified that the concrete

would be buried but the holes would allow the water to continue through. Planner Newberry answered yes. She stated that the wall along the ROS would retain the dirt that covers the patio.

Planner Astorga noted that page 108 of the Staff report was a good indication of the platted reserved open space line. He stated that the Chief Building Official was using common sense in terms of the damage done and; therefore, he was willing to work with the applicant to reduce the cost as much as possible. Planner Newberry pointed out that it was better than tearing out concrete and creating noise and dust.

Commissioner Sletten wanted to know what would happen to the retaining wall in that portion of the reserved open space. Planner Astorga replied that the wall would be covered up so it would not be visible. Planner Newberry stated that it could be removed if the applicant preferred to remove it.

Vice-Chair Phillips thought it was unfortunate for something like this to occur. In listening to Planner Astorga and Mr. Frost, and looking at the overall big picture, he tried to consider whether he would have approved this if it had come to the Planning Commission prior to all this. His answer was no. He was concerned about the precedent it would set for the rest of the neighbors. Others could not be held to a different standard if they allow this plat amendment.

Commissioner Hall stated that precedent was forefront in her mind. However, now that everyone was more aware of how it actually occurred, she did not think it was done intentionally or maliciously. In her opinion, that was different from someone who willfully breaks the rules.

Vice-Chair Phillips understood her point. He clarified that he was looking at it from the standpoint of someone new moving into the neighborhood and possibly making a similar mistake. He did not believe anyone would purposely put themselves in this position. Vice-Chair Phillips agreed that this applicant had not done this on purpose. However, the LMC is required to be followed regardless of any approval process. Vice-Chair Phillips could not find good cause to approve the requested plat amendment. He thought the problem could be rectified in other ways without it being a big ordeal. Even if it was a big ordeal, it would be low on his list of reasons to approve. Vice-Chair Phillips supported the Staff recommendation. He sympathized with the homeowners. Everyone makes mistakes, but there is a process to follow and it is difficult to find good cause to change it.

Commissioner Sletten concurred with Vice-Chair Phillips. He was conflicted by the various letter because they were compelling on both sides of the argument. Looking

forward ten to 15 years, the precedent will be buried in Staff report notes. Commissioner Sletten believed this was an important issue and the Planning Commission should hold the line. He supported the Staff recommendation.

Commissioner Thimm concurred with his fellow Commissioners. He understood Commissioner Hall's comment about this being a precedent that establishes a milestone that could be put in place to keep others from doing it again. However, the Planning Commission has to look at the requirements of the LMC. Commissioner Thimm thought it was unfortunate that this accidentally occurred. In looking at the Exhibit on page 108 of the Staff report, it's apparent that the whole hillside has been disturbed rather than undisturbed, but it has never been undisturbed again. He thought natural landscape would take over and he appreciated that the Building Department had weighed in on a potential solution. Commissioner Thimm would like the line to be returned as it was in the original plat to be as undisturbed as possible. He hoped the City would continue to work with the applicant on finding a solution. Commissioner Thimm concurred with the Staff recommendation.

Commissioner Hall stated that if the general feeling among the Commissioners was to follow the Staff recommendation for a negative recommendation to the City Council, she asked if they would consider giving the applicant the choice to continue the item this evening for the opportunity to discuss another option.

Director Erickson stated that because this was a recommendation to the City Council for the plat amendment, the applicant would have another opportunity for discussion and the public would have another chance to comment. Given the time already spent on this application, he was not in favor of a continuance.

Director Erickson recognized that the Staff rarely recommends a negative recommendation; however, their position on this application was that the reserved open space was the good cause on the original subdivision.

Mr. Frost appreciated their comments. He reiterated that his clients concern in building the house was to be as low impact and environmentally-friendly as possible. Trying to obtain LEED Certification is an onerous process and he thought it was ironic that they actually encroached with improvements made from recycled materials. Mr. Frost stated that his client's main concern was to find a solution that will be the least impactful to their property. Before they move forward with a negative recommendation, Mr. Frost requested that they have the opportunity to explore some of the remedies that Mr. Thacker had suggested.

Director Erickson stated that this item would probably not be scheduled on the City Council agenda for a couple months. They will have to re-notice and re-write the Staff report, and the agendas are full through the end of Sundance. Director Erickson remarked that it was a difficult recommendation to make because he does not like negative recommendations. However, the core value throughout the town and the 15,000 acres of open space is to prevent the intrusion of the built environment, whether LEED certified or not, into the natural environment. That was the core value in supporting the General Plan and the Land Management Code. Director Erickson pointed out that the subdivision regulations call for good cause. He noted that this was not unique to the West Ridge Subdivision. He named other subdivisions that have reserved open space regulations. Director Erickson recommended that the Planning Commission send a strong message to the City Council and let the City Council sort it out. In the interim, the applicants could work on a solution.

Vice-Chair Phillips believed the Planning Commission was firm on holding the ROS line. He suggested that Dave Thacker would be the best resource for the applicant to work out a solution.

MOTION: Commissioner Sletten moved to forward a NEGATIVE recommendation to the City Council for the Phase II Plat Amendment to the West Ridge Subdivision, based on the Findings of Fact and Conclusions of law found in the Staff report. Commissioner Thimm seconded the motion.

VOTE: The motion passed unanimously.

Findings of Fact – West Ridge Subdivision Phase II Plat Amendment

1. The subject property is located at 2563 Larkspur Drive within the Residential Development District within the Sensitive Lands Overlay.
2. The subject property consists of Lot 38 of the West Ridge Subdivision Phase II.
3. The lot is 15,190 square feet (0.35 acres).
4. There are eleven of thirteen (11 of 13) lots within this platted subdivision that contain Reserved Open Space areas.
5. The property directly north of the subdivision is within the Recreation Open Space (ROS) zoning district and is a City protected open space area.
6. The Final Plat for West Ridge Phase II was approved by the City Council in April 1991.
7. Good cause is not associated with this Plat Amendment request that would, in essence, authorize improvements already constructed and/or installed without proper permission from the City which does not comply with the platted Reserved Open Space delineation shown on the official plat.

8. The proposal is not in harmony with the purpose of the Residential Development District and the Sensitive Lands Overlay in that the proposal should be designed to fit the site, not the site modified to fit the proposal.
9. The City approved the applicant's requested application as it complied with applicable code.
10. When the West Ridge Subdivision Plat was approved there was great concern regarding the Reserved Open Space / Limits of Disturbance.
11. The City supported the parameters of the Reserved Open Space area as its intention was to be left in its undisturbed natural condition.
12. No existing vegetation, other than noxious weeds, is to be removed within the Reserved Open Space.
13. No grading, excavating, or filling is permitted within the Reserved Open Space.
14. No new vegetation may be planted except for replacement of the existing plants, or the addition of native species that would grow on the site.
15. No portion of the Reserved Open Space is to be irrigated.
16. No structures of any kind are permitted in the Reserved Open Space and no vehicles will be used, operated or stored on the reserved Open Space of any Lot.
17. In 2012 the Home Owners Association further confirmed the parameters of the Reserved Open Space / Limit of Disturbance by indicating in the Declaration of CCRs amendment that the variations in lot sizes, building pad sizes and habitable space allowances within the Subdivision was intended to preserve view corridors, open space, and cluster the structures, and to maintain an appropriate limit on lot coverage.
18. The City has consistently been upholding the intent of the Reserved Open Space parameters as it has recognized that the purpose of the open space reserve area was to create visual open space corridor through the project.
19. It has been the City's consistent policy not to allow disturbance within the open space.

Conclusions of Law – West Ridge Subdivision Phase II Plat Amendment

1. The proposed Plat Amendment is not consistent with the original intent of the recorded Subdivision Plat.
2. The public will most likely be materially injured by the proposed Plat Amendment as the proposal to realign the Reserved Open Space line is not compatible with the direct neighborhood, including the adjacent protected public open space area.
3. Approval of the Plat Amendment adversely affects health, safety, and welfare of the citizens of Park City.
4. There is a lack of Good Cause to approve the proposal as the Plat Amendment would cause harm on adjacent property owners because the proposal is not

compatible with existing lots in the near proximity.

The Park City Planning Commission Meeting adjourned at 6:49 p.m.

Approved by Planning Commission: _____

APPROVED