

Francisco Astorga

From: Charles Stormont <cstormont@fabianvancott.com>
Sent: Friday, September 02, 2016 2:10 PM
To: Treasure Comments
Cc: THINC; John Stafsholt; Francisco Astorga; Polly Samuels McLean
Subject: Treasure Hill Conditional Use Application
Attachments: 2016.09.02 Letter to Park City Planning Commission.pdf; 2016.08.10 THINC Presentation.pdf; John Stafsholt mass scale excavation 8-10-16 Presentation.pdf

Attached please find additional correspondence that THINC requests be included with the public comments relating to PL-08-00370, Treasure Hill Conditional Use Application, Creole Gulch and Town Lift Mid-station Sites. I have also attached a copy of the slide presentation I used during the August 10, 2016 Planning Commission meeting, along with the slides that were presented by John Stafsholt at the same meeting. We request that both slide presentations be included with the public comments. Please let me know if you have any difficulty opening the attached files. Thank you.

Regards, Charles

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September 2, 2016

Via Electronic Mail:

treasure.comments@parkcity.org

Park City Planning Commission
P.O. Box 1480
Park City, Utah 84060

Re: Treasure Hill Conditional Use Permit Application

Dear Members of the Park City Planning Commission:

I write on behalf of THINC, Inc., a non-profit organization comprised of hundreds of Park City residents, business owners, and home owners. This letter is intended to supplement and clarify my public comments at the August 10, 2016 meeting of the Planning Commission with respect to Project Number PL-08-00370, Treasure Hill Conditional Use Permit Application, Creole Gulch and Town Lift Mid-station Sites.

First, as previously discussed in my public comments and letter to the Planning Commission of July 22, 2016, THINC notes its concern that the treatment of the 1986 Sweeney Properties Master Plan ("SPMP") as a valid, continuing approved Master Planned Development is error. We recognize, however, that the Planning Commission has made that determination, and we will not repeat our prior comments, but wish to note our continued concern in that regard.

Even if the SPMP is treated as valid, the current application suffers numerous fatal issues. As we have previously noted, the SPMP was expressly "predicated upon the following terms and conditions" and the applicant was "bound by and obligated for the performance of the following:"

- "...ensuring conformance with the approved Master Plan."
- "The approved densities are those attached as an Exhibit, and shall be limited to the maximums identified thereon."

THINC believes the Planning Commission Staff Report does an excellent job outlining the limits on support commercial and meeting space square footage that may be allowed without requiring the use of unit equivalents of commercial space at pages 133-138 of the August 10, 2016 Planning Commission Packet. These limits derive from the requirements and obligations imposed on the applicant by the SPMP, and we encourage the Planning Commission to ensure that such obligations are enforced.

THINC takes great exception to the applicant's claim that the Woodruff Drawings included as exhibits to the SPMP can be used to establish that a development of 875,000 square feet was contemplated. *See* Applicant's August 5, 2016 Letter, Planning Commission Packet p. 175. As the applicant simultaneously notes, the Woodruff Drawings were conceptual in nature, thus it is hard to understand how they could be used to establish specific square footage rights. The applicant has also come forward with new analysis and details that were not part of the SPMP. THINC respectfully requests that this new information not be permitted to influence the analysis of what was actually approved 30 years ago. Rather, as the SPMP states, "[t]he applicant requested that only general development concept and density be approved at this juncture." 1985 Revised Staff Report at p. 7. The claim to 875,000 square feet from such a "general development concept" is not supported.

I have attached as an exhibit the Power Point presentation I used during my comments of August 10, 2016, which highlight that in some instances, the applicant's current claims regarding square footage match the unit equivalents shown on the Woodruff Drawings, while in other places, the applicant's current claims far exceed the unit equivalents shown on the Woodruff Drawings. These discrepancies highlight that the applicant's approach is not supportable. Indeed, the Woodruff Drawings themselves highlight that they are conceptual in nature. For example, the site plan for the Coalition West and East Sites refers to an "example" of unit equivalent configurations. THINC would suggest that such language in the Woodruff Drawings highlights that the approach to determining what was approved (and therefore what is vested) stated by Commissioners Suesser and Strachan at the conclusion of the August 10, 2016 meeting is proper.

Further, as the Staff Report notes on page 138 of the Planning Commission Packet, "[t]he original Master Plan exhibits did not quantify overall total square footage." At most, the square footage provided on the site plan at page 16 of the original Master Plan exhibits shows a total of 317,500 square feet for 5 buildings (which are admittedly not all of the buildings contemplated for the sites at issue). The square footages calculated for these buildings are tied to a unit equivalent analysis for each building, and further highlights that the applicant's current attempts to justify greater square footage is not supported by the Woodruff Drawings.

Moreover, as has been previously noted (including in Mr. Burnett's April 22, 2009 letter), the calculation of additional space that does not require the use of unit equivalents is limited by section 10.12 of the 1985 Land Management Code. Under that provision of the Code,

only two categories of space were contemplated as not counting against unit equivalents: (1) “Within a hotel, up to 5% of the total floor area may be dedicated to meeting rooms, and support commercial areas without requiring the use of a unit equivalent of commercial space.”; and (2) “Circulation spaces including lobbies outside of units, including lobby areas, do not count as floor area of the unit, or as commercial unit equivalents.” Thus, to the extent that the applicant has any vested rights, those rights include only the unit equivalents approved, corresponding underground parking, and specific types of space that may be built without counting towards unit equivalents. Any additional types of space are not vested, and must count toward unit equivalents. If the applicant persists in requesting density in excess of that which was originally approved, its conditional use permit should be denied. The proper mechanism for such an expansion and modification of the original MPD is through the MPD Modification process set forth in both the 2003 and current LMC § 15-6-4(I). As that provision states:

Changes in a Master Planned Development *which constitute a change in concept, Density, unit type or configuration of any portion or phase of the MPD will justify review of the entire master plan and Development Agreement by the Planning Commission*, unless otherwise specified in the Development Agreement.

(Emphasis added.) For the site at issue, the original MPD contemplated a total of 197 residential unit equivalents (with 2,000 sq. ft. constituting a unit equivalent), 19 commercial unit equivalents (with 1,000 sq. ft. constituting a unit equivalent), underground parking, up to 5% of total hotel floor area as support commercial/meeting space within a hotel, and circulation spaces/lobbies outside of units. This equates to a maximum of 394,000 residential square feet, 19,000 commercial square feet, 5% of hotel floor area as support commercial/meeting space within a hotel, required parking, and circulation spaces outside of units.

As the current Staff Report notes at page 136 of the Planning Commission Packet, for the current proposal, 5% of hotel floor area results in a total allowable square footage of 11,740 square feet of support commercial/meeting space. This number could vary depending on the type of configuration proposed by the applicant. But for the current proposal, we can conclude that a total of 424,740 square feet, exclusive of parking, is permitted pursuant to the SPMP. Some additional circulation space outside of units would also be permitted, but it is hard to imagine how a development with almost 800,000 square feet (excluding parking) could be justified by such circulation space outside of units. As the current Staff Report shows at pages 126-129 of the Planning Commission Packet, the current proposal includes numerous and vast uses that are not circulation spaces. As such, the application should be denied.

As further support for this approach regarding what was approved by the SPMP, it should be noted that some flexibility was built into the approval with respect to parking. Specifically, page 9 of the 1985 Revised Staff Report notes: “Depending upon the character of development and unit configuration/mix proposed at conditional use approval, the actual numbers of parking spaces necessary could vary substantially.” No such flexibility, however, is contemplated with

respect to the additional types of commercial and accessory uses that the current application seeks. Instead, the SPMP clearly states that approved density was “limited to the maximums identified” on the exhibit to the SPMP. Those densities contemplated specific amounts of residential and commercial square footage, and only certain kinds of square footage beyond those amounts as permitted by Section 10.12 of the 1985 Land Management Code. Additional and other types of square footage were not approved. As such, the proper method to seek approval for such an expansion of the concept and density that was actually approved is the MPD Modification process, not a conditional use application.

The applicant goes a step further when it states “had the Woodruff Drawings actually been developed under the 2003 LMC, the actual floor area would have been closer to 1,000,000 square feet once additional accessory uses were added to the base design.” Applicant’s August 5, 2016 Letter, Planning Commission Packet p. 175. The applicant persists in claiming that the 2003 LMC somehow permits it to expand square footage beyond the density limitations that were actually approved throughout its letter. As previously noted by THINC in its July 22, 2016 Letter at pages 2-5, however, the approach taken by the applicant ignores that the SPMP expressly requires “conformance with the approved Master Plan” in addition to complying with the code in place at the time of application. We would respectfully refer the Planning Commission to our prior comments on this improper attempt to expand density, and ask that the Planning Commission keep in mind that the SPMP not only granted rights, but it also imposed obligations on the applicant. Those obligations should be strictly enforced. *See also* 2003 LMC § 15-6-4(J) (requiring review of the conditional use application of an approved MPD for compliance with the MPD approval).

THINC is also concerned with the applicant’s attempts to rely on statements from the 1985 Revised Staff Report as somehow justifying the current application. The applicant quotes various portions of the Revised Staff Report in section 2.2 of its August 5, 2016 Letter. *See* Planning Commission Packet pp. 175-176. THINC would suggest that the findings in the 1985 Revised Staff Report bear no applicability to the current application given the vast differences in uses, concept, density, massing, etc. that exist between what was actually approved in 1986 and what is currently proposed. THINC believes the current Staff Report does a good job of capturing this issue on page 138 of the Planning Commission Packet. The quoted portions of the 1985 Revised Staff Report could only fairly be said to apply if the applicant were to vastly reduce the scale of the project currently proposed in a manner that is consistent with the SPMP.

The applicant next argues in section 3.4 of its August 5, 2016 Letter that its “increase in square footage is a function of the applicant responding to the Planning Commission’s and Staff’s request for more detail.” *Id.* at p. 181. The fact that the original application in 2004 was not done in great detail can hardly be adequate reason to justify exceeding the density limitations set forth in the SPMP. The applicant goes on to explain that the “increase in square footage of the project from the preliminary 2004 estimates to the current, more detailed refinements was the result of understanding the practical and logistical needs of the project and the inclusion of additional uses that are vested under the 2003 LMC.” *Id.* at p. 182. Whatever the “practical and

logistical needs of the project” may be, those needs must be met within the confines of the density and other obligations imposed upon the applicant by the SPMP. They are not a valid justification for exceeding those obligations. The legal concepts of impossibility and frustration of purpose are valid defenses to the enforcement of a contract, but they alleviate all parties of their obligations; they do not provide relief to one party and hold the party all of its commitments. *See generally Western Properties v. Southern Utah Aviation, Inc.*, 776 P.2d 656, 659 (Ut. Ct. App. 1989) (noting that defenses of impossibility or frustration of purpose discharge both parties to a contract).

The applicant goes on to compare itself to other hotels and resorts, claiming they show that its requests are reasonable. Applicant’s August 5, 2016 Letter, Planning Commission Packet p. 183-86. What may have been approved in different parts of the City at different times under different Land Management Codes, and without a 30-year-old approved MPD, should have no bearing on whether the current application is approved or denied. Instead, the approach being taken by the Planning Commission to review the application pursuant to the process set forth in the 2003 LMC for conditional use permits, which uses standards that consider compatibility with surrounding uses (not uses in other parts of the City) is proper.

Section 4 of the applicant’s August 5, 2016 Letter attempts to justify the volume of the current proposal. *See* Planning Commission Packet at pp. 186-90. Given the current proposal’s vast expansion over the density actually approved by the SPMP, THINC would suggest that the claimed volumes are similarly excessive. This problem is exacerbated by the manner by which the applicant seeks to expand various commercial uses beyond the density limitations imposed by the SPMP. Specifically, the applicant explains that “24% of floor areas with floor heights in excess of 14 feet that are above grade are for uses that typically require greater floor heights, including things like public lobbies, ballrooms, meeting spaces, stairs and elevators, and certain commercial uses.” Many of these are the accessory uses that section 10.12 of the 1985 LMC requires count towards unit equivalents. By exceeding the 19 commercial unit equivalents that were actually approved, the applicant’s claimed volumes are necessarily excessive. That many of the applicant’s attempts to expand beyond approved density also have floor heights in excess of 14 feet only makes the problem worse.

The increased density and volume, in turn, create considerably greater massing (as shown on the final slide of the attached Power Point), and requires excavation that was never contemplated as part of the SPMP.¹ This excavation, in turn, destroys many of the required open space dedications. Where there was smooth terrain and transitions contemplated by the SPMP, there are now retaining walls, drop offs, and exposed buildings. Such considerations may be more appropriately considered under different CUP criteria (e.g., item 15, which includes “Slope retention, and appropriateness of the proposed Structure to the topography of the Site” as considerations), but they are clearly tied to the increased density requested by the applicant, so

¹ I have also attached the Power Point slides presented at the August 10, 2016 Planning Commission Meeting by John Stafsholt, which address concerns relating to excavation at pp. 4-14.

THINC wanted to note its concerns at this time. While the SPMP included flexibility in certain areas, with respect to massing and excavation, it placed clear and express limits, again highlighting that the current proposal should not be approved unless and until the MPD Modification process is followed. For example, the 1985 Revised Staff Reports states:

- “Building heights *shall be limited* to the maximum envelope described on the Restrictions and Requirements Exhibit.” Page 3 (emphasis added).
- “Scale... The concentration of density into the Creole Gulch area, which because of its topography and the substantial mountain backdrop...helps alleviate some of the [scale] concern[.]” Page 10.
- “Visibility...Instead, the *tallest buildings have been tucked into Creole Gulch where topography combines with the densely vegetated mountainside to effectively reduce the buildings' visibility*. The height and reduction in density at the Mid-Station site has been partly in response to this concern. The staff has included a condition that an exhibit be attached to the Master Plan approval that further defines building envelope limitations and architectural considerations.” Page 11 (emphasis added).
- “Building Height...An exhibit defining building ‘envelopes’ has been developed to define areas where increased building heights can be accommodated with the least amount of impact.” Pages 11-12.
- “Grading... Various conditions supported by staff have been suggested in order to verify the efforts to be taken to minimize the amount of grading necessary and correlated issues identified.” Page 14 (emphasis added).
- “Fire Safety... The proposed development concept locates buildings in areas to avoid cutting and removing significant evergreens existing on the site.” Page 15 (emphasis added).

Such a vast increase in massing alone is sufficient reason to deny the current application, as the impacts on surrounding areas by destroying views and open space requirements cannot be mitigated. It also highlights just how different the current proposal is from anything contemplated by the approval of the SPMP.

In conclusion, THINC would like to again thank the Planning Commission and its staff for the time, effort, and incredibly detailed work that has gone in to the consideration of the current application. THINC would also like to extend its thanks to the applicant for its willingness to provide significant information about its proposal. Not all developers would be willing to be so forthcoming with information, and despite our differences, THINC is grateful that all of the citizens of Park City will benefit from the open dialogue related to the proposal.

We look forward to a continuing dialogue on each of the items that must be reviewed as part of a conditional use application, and appreciate the Planning Commission considering our concerns.

Very truly yours,

FABIAN VANCOTT



Charles A. Stormont

cc: Brian Van Hecke
John Stafsholt
Francisco Astorga (fastorga@parkcity.org)
Polly Mclean (pmclean@parkcity.org)



August 10, 2016 Planning Commission Meeting

Woodruff UEs Do Not Add Up to Current Claims

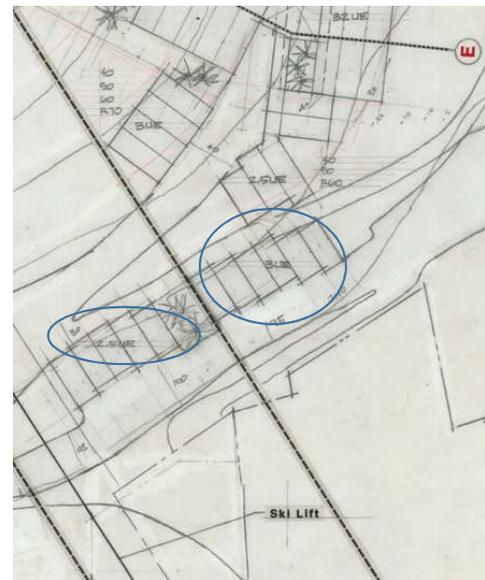
Building E – Lowest Levels – Current Claim



North:
 L(-3) 2,972 sf
 L(-2) 2,972 sf
Total: 5,944 sf

South:
 L(-3) 2,602 sf
 L(-2) 2,602 sf
Total: 5,204 sf

Woodruff UEs Correspond to Current Claimed Square Footage



North:
 3 UEs
 3 x 2,000 = **6,000 sf**

South:
 2.5 Ues
 2.5 X 2,000 = **5,000 sf**
5,000 X 5% = 250 sf
5,250 sf

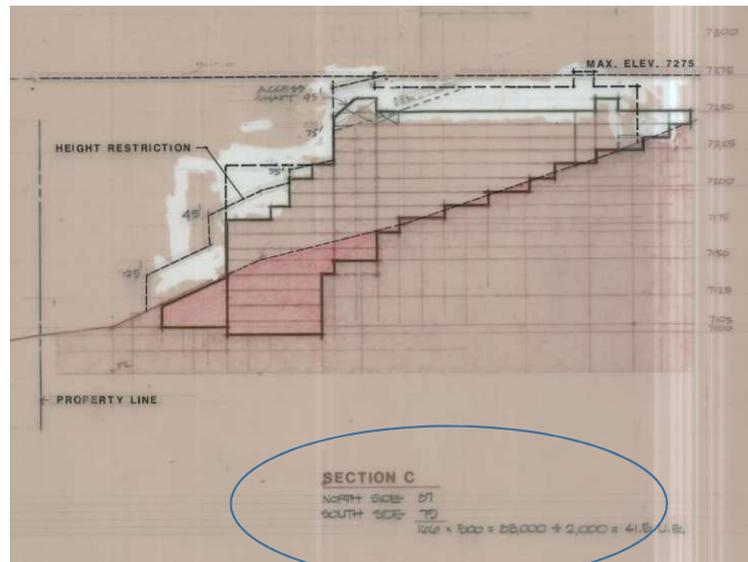
Woodruff UEs Do Not Add Up to Current Claims

Building C – Current Claim



Exhibit Y Total:
154,406 sf

Original Woodruff Drawing Shows Far Less

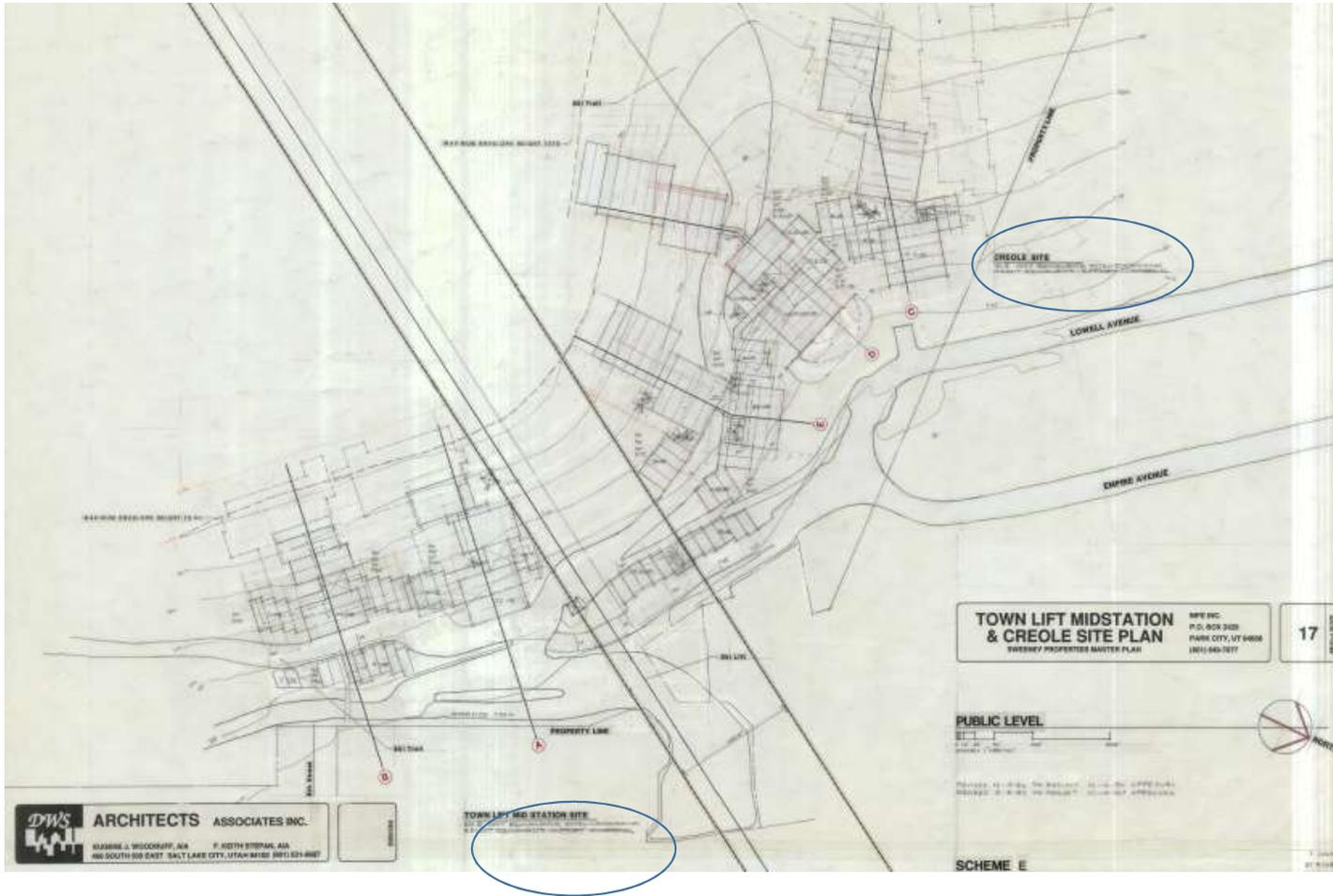


North Side 87
South Side 79

$166 \times 500 = 82,000$ sf
 $82,000 \div 2,000 = 41.5$ UE

Add 5% = **92,400 sf**

Woodruff UEs Do Not Add Up to Current Claims

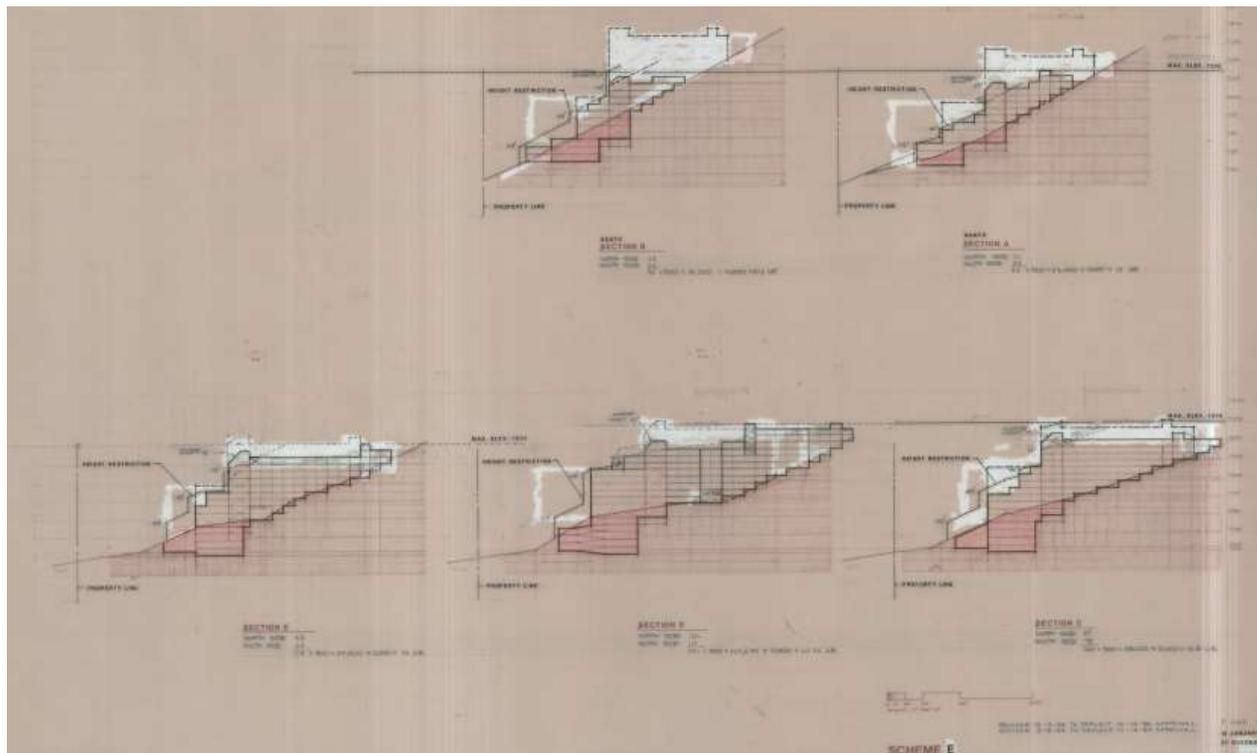


Creole Site:
161.5 UEs Residential
15.5 UEs Support Commercial

Town Lift Mid Station Site:
35.5 UEs Residential
3.5 UEs Support Commercial

Total:
197 UEs Residential
19 UEs Support Commercial

Woodruff UEs Do Not Add Up to Current Claims



Section A: 24,000 sf, 12 UEs
Section B: 21,000 sf, 10.5 UEs
Section C: 88,000 sf, 166 UEs
Section D: 120,500 sf, 60.25 UEs
Section E: 64,000 sf, 32 UEs
Total: 347,500 sf, 173.75 UEs
(Leaves: 23.25 UEs Res., 19 UEs Comm.)

Increased Massing is Extensive



1986 WOODRUFF CONCEPT & 2009 TREASURE CUP

Treasure Hill is in Historic Old Town Park City

* As stated in the [original](#) PC Planning Department Revised Staff Report: [Dated 12/18/1985](#) page 8

Hillside Properties

By far the largest area included within the proposed Master Plan, the Hillside Properties involve over 123 acres currently zoned HR-1 (approximately 15 acres) and Estate (108 acres). The development concept proposed would cluster the bulk of the density derived into two locations; the Town Lift Mid-Station site and the Creole Gulch area. A total of 197 residential and an additional 19 commercial unit equivalents are proposed between the two developments with over 90% of the hillside (locally referred to as Treasure Mountain) preserved as open space. As part of the Master Plan, the land not included within the development area boundary will be rezoned to Recreation Open Space (ROS).

*Almost all of the Hillside density comes from 15 acres of HR1 zoned properties. It is very important to note that all the Mid-station and Creole Gulch underlying zoning is in the historic zone either HR1 or Estate.

Treasure Hill is in Historic Old Town Park City

- Treasure Hill is in the historic district and must be compatible with the scale already established.
From the same original PC Planning Department report from 12/18/1985 on page 10.

Scale - The overall scale and massiveness of the project has been of primary concern. Located within the Historic District, it is important for project designed to be compatible with the scale already established. The cluster concept for development of the hillside area, while minimizing the impacts in other areas, does result in additional scale considerations. The focus or thrust of the review process has been to examine different ways of accommodating the development of the property while being mindful of and sensitive to the surrounding neighborhood.

- At the time of submittal for Conditional Use Approval the project must comply with the adopted codes and ordinances in effect at the time.
- This includes: Historic District Design Guidelines, LMC, and PC General Plan.
- That is the intent of the MPD approval & importantly the most restrictive governs.
- Treasure Hill is in the historic district and must be compatible with the scale already established.

Treasure Hill Must Comply with the Historic District Design Guidelines

* Again this is stated in the same original 1985 Planning Dept report on page 4.

6. At the time of project review and approval, all buildings shall be reviewed for conformance with the Historic District Design Guidelines and related architectural requirements. No mechanical equipment or similar protuberan-

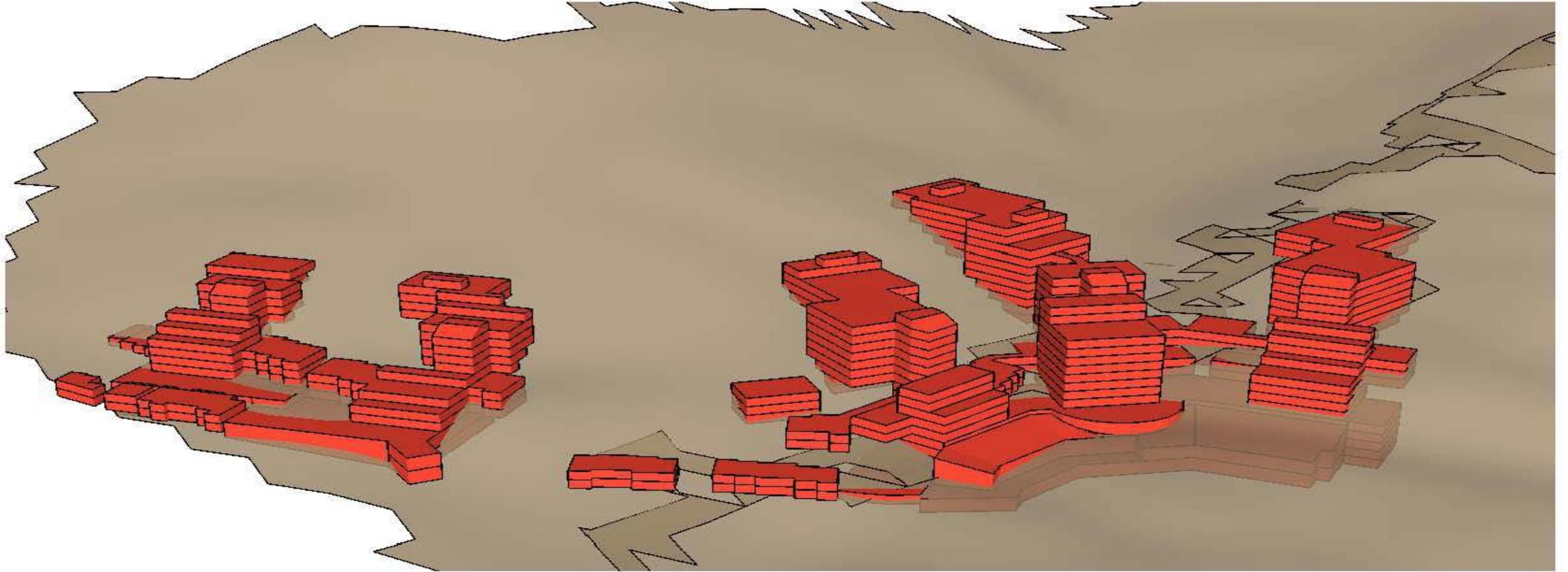
* The city council called up Treasure Hill in 1986 and lowered the heights allowed for the project.

* If a “deal is a deal” why does Treasure keep coming back larger and larger each time.

* Why are the Creole Gulch buildings with a maximum height of 75’ being submitted with 13 stories and over 140’ tall?

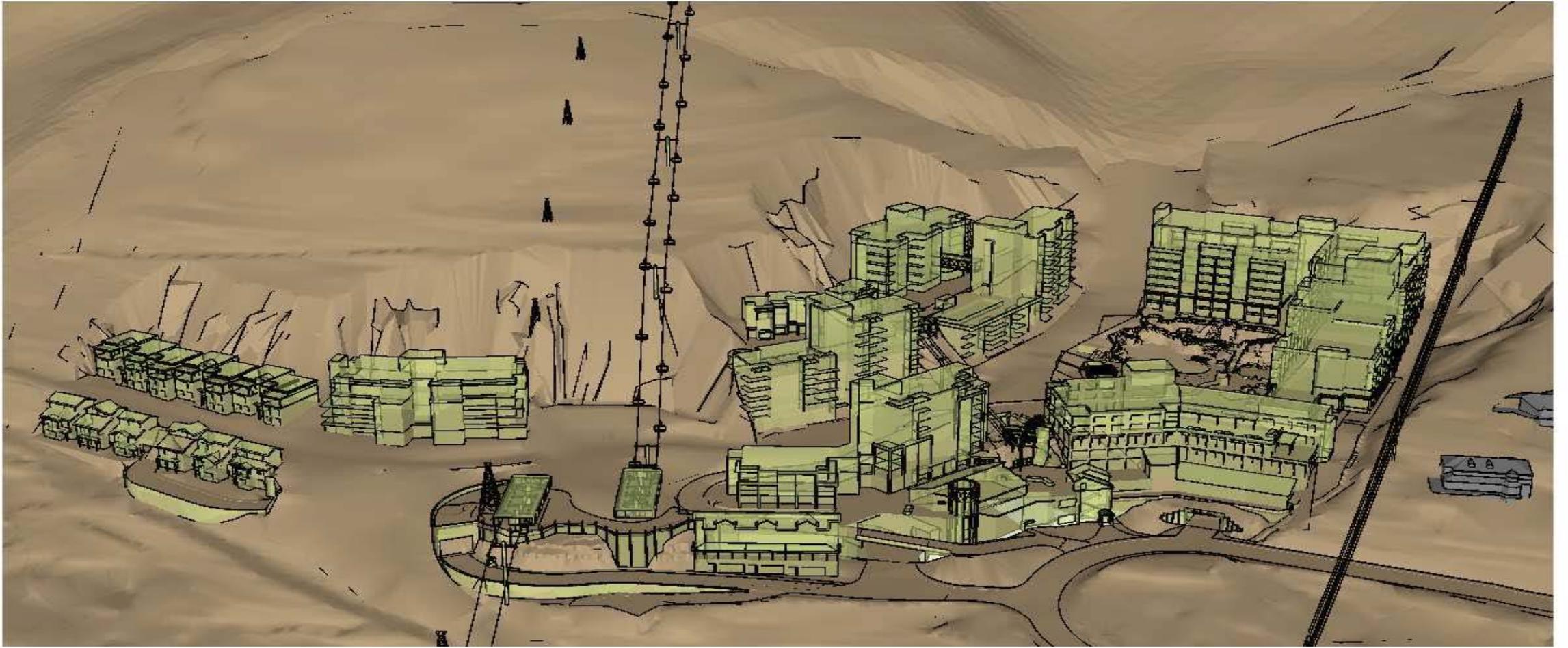
* Why are the Mid-Station buildings with a maximum height of 45’ being submitted with 7 stories & over 90’ tall?

CUP Criteria #1: Size and location of the Site; LMC 15-1-7 (E) Review (1)

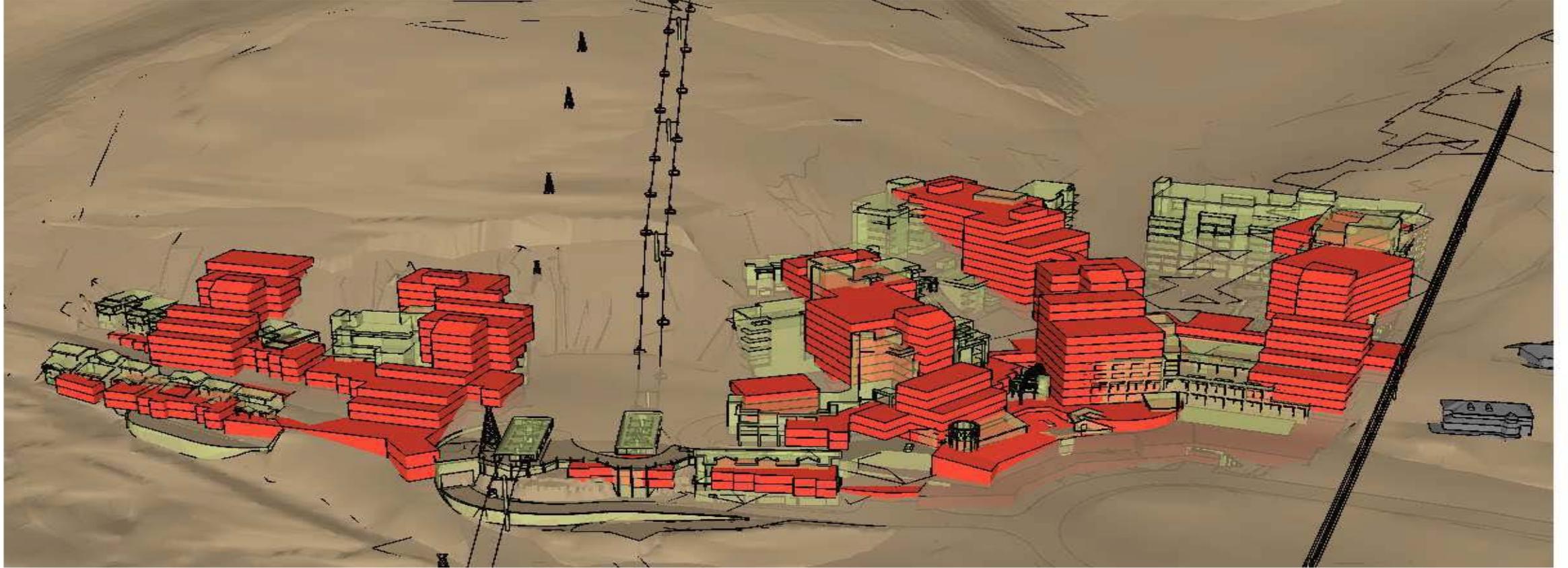


1986 WOODRUFF CONCEPT

1986 Concept drawings show project stepping up site
Buildings working with natural grade MPD site planning requirement LMC 15-6-7 (F) SITE PLANNING
“The project should be designed to fit the Site, not the Site modified to fit the project.”



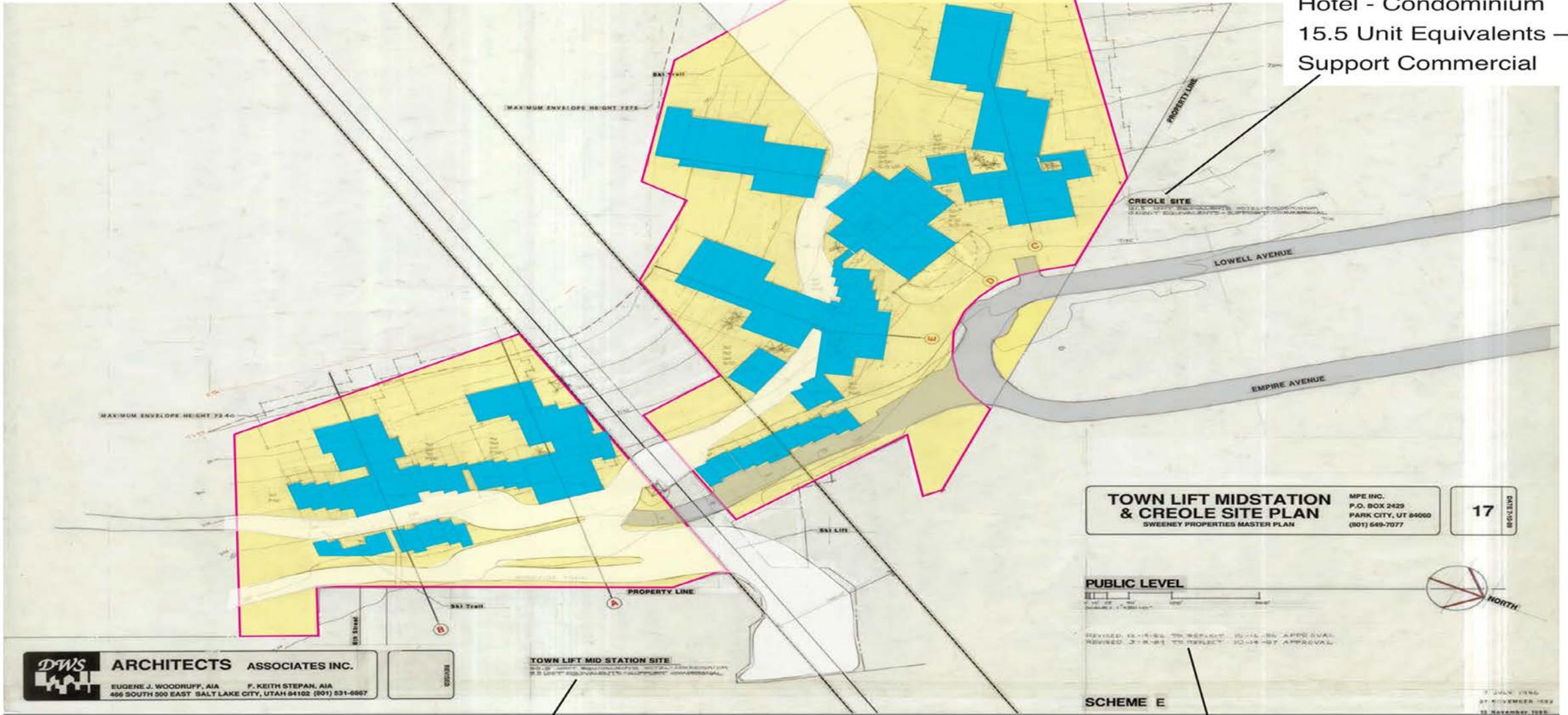
2009 TREASURE CUP



1986 WOODRUFF CONCEPT & 2009 TREASURE CUP

1985 / 86 Approved Site Plan, Footprints and Density
 Buildings work with the natural grade – No excavated hillsides
 Only Two entrances from Lowell / Empire

Creole Site
 161.5.5 Unit Equivalents –
 Hotel - Condominium
 15.5 Unit Equivalents –
 Support Commercial



Town Lift Mid Station Site
 35.5 Unit Equivalents Hotel - Condominium
 5.5 Unit Equivalents – Support Commercial

Revised 12-19-86 to reflect 10-16-86 Approval
 Revised 3-8-89 to reflect 10-14-87 Approval

2004 Expanded Project — More than twice the approved square footage

Massive hillside Excavations

Four entrances from Lowell / Empire

145' Cut

Hillside Excavations

150' Cut

140' Cut

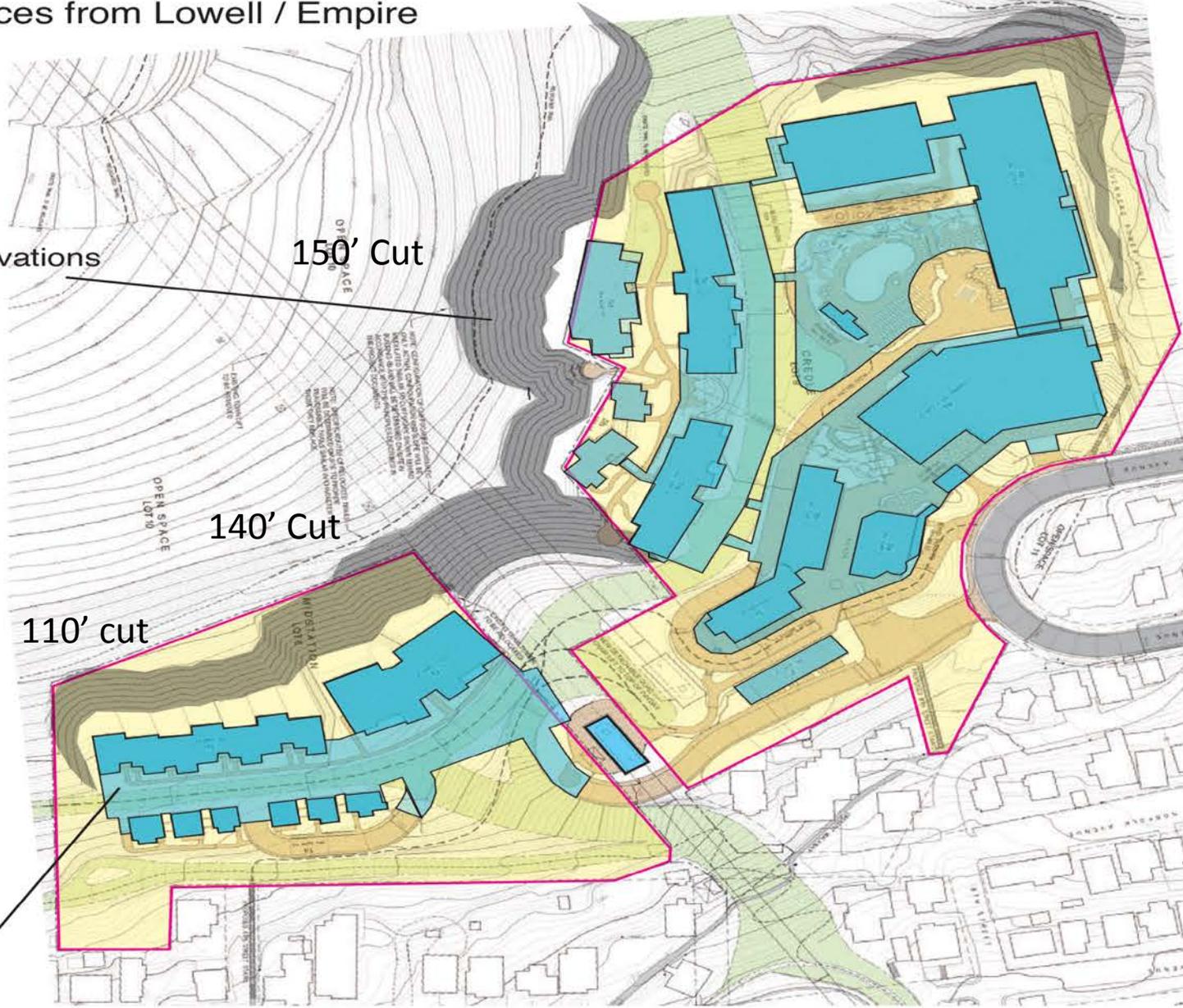
110' cut

11.5 acres in Old Town
Every tree, bush, blade of grass gone.
Excavation of entire zone of at least 20'.

*“The project should be designed
to fit the Site, not the Site
modified to fit the project.”*

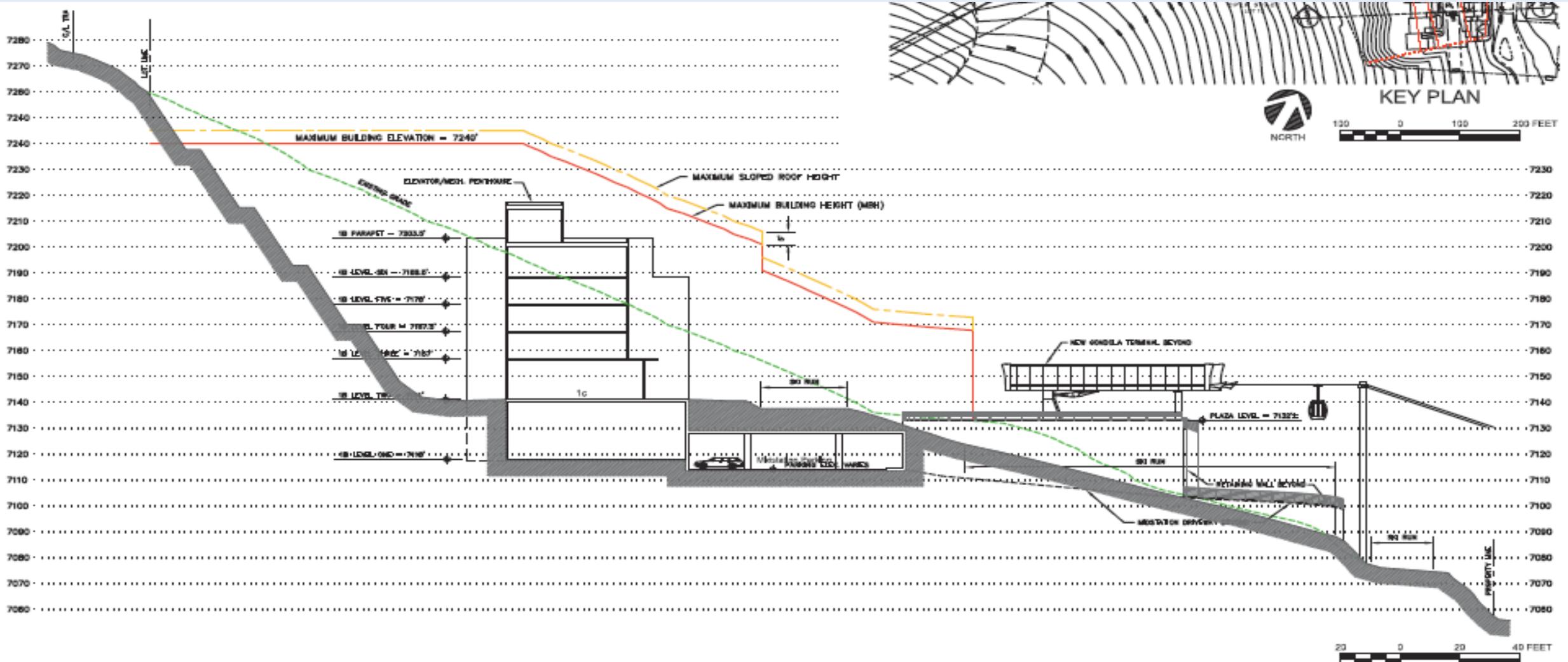
LMC 15-6-7 (F) SITE PLANNING

Buidings underground

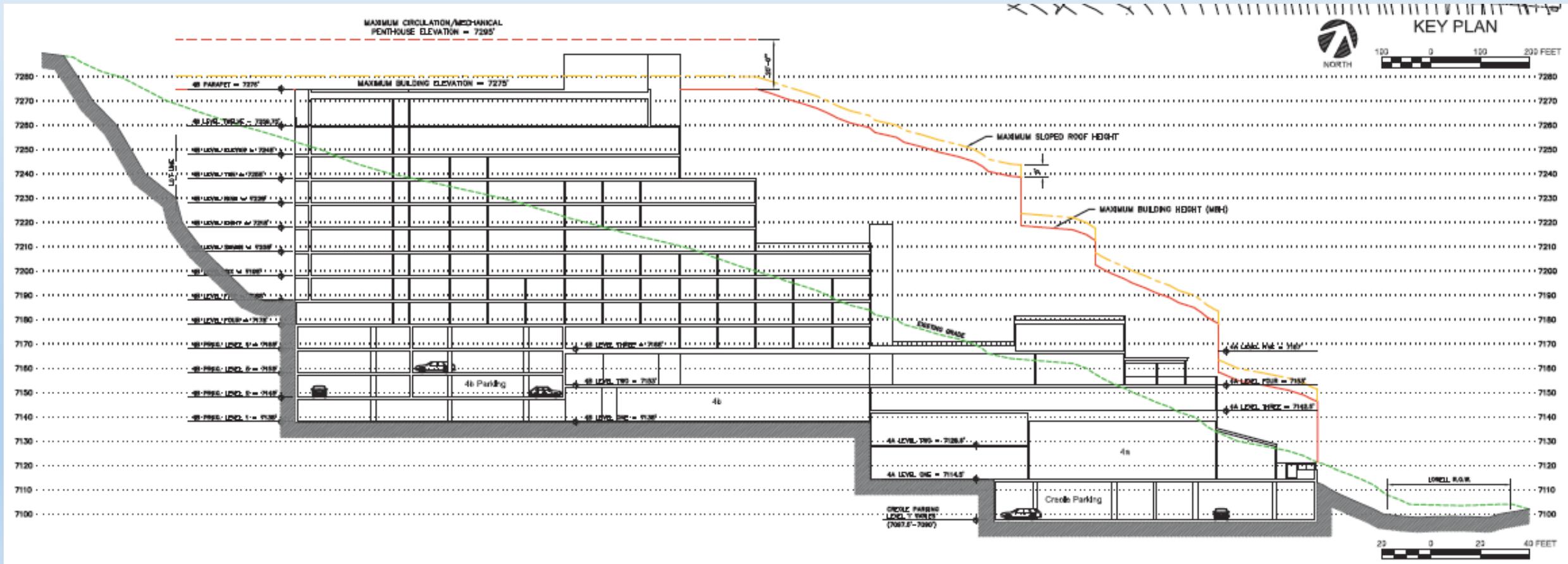


Mid-Station site: Most Visible from Main St.
MPE Section drawing S.2 through Bldg 1B
Excavations of 80'- 140' MAX

NOTE: what was envisioned in 1985 approval is between the green & red lines



MPE Section drawing S.8 through Building 4B Excavations of 110'- 145' MAX



(E) **BUILDING HEIGHT.**

If and when the Planning Commission grants additional height due to a Site specific analysis and determination, that additional height shall only apply to the specific plans being reviewed and approved at the time.

Additional Building Height for a specific project will not necessarily be considered for a different, or modified, project on the same Site. ...

(F) **SITE PLANNING.**

An MPD shall be designed to take into consideration the characteristics of the Site upon which it is proposed to be placed. **The project should be designed to fit the Site, not the Site modified to fit the project.**

Excavation of Site: Impacts

- MPE's site plan calls for an estimated 960,000 cubic yards of excavation.
 - Avg dump truck = 12 cubic yards.
 - That is **80,000 single dump truck loads** travelling through Old Town.
- MPE states it will keep all dirt on site.
 - How? 4 mining sites within project boundaries. 3 have elevated lead & arsenic.
 - There is no approved soil remediation plan in place for Treasure. It is required.

Montage Comparison?

- **MPE compares the Montage with Treasure.**

- Compare: Montage size 780,000 sq ft (smaller) and expected excavation 50,000 CY (much smaller)
- Treasure plans almost **20 times** the excavation at the Montage.
- Montage had extensive geotechnical work done finding 4 mining sites prior to commencing excavation.
- 4 more mining sites were found after excavation started requiring 40,000 CY more to be excavated. Almost doubling the excavation. (Also some skiers found additional sites while skiing DV)
- No GeoTechnical evaluation has been done on Treasure to date. This should be required.

- **Treasure excavation & Park City's drinking water**

- No approved soil remediation plan is in place at Treasure.
- Treasure is in the Spiro Drinking Water Protection Zone. (PCMC's letter 8/28/06)
- "In addition, the City would consider such placement within the Creole Mine Shaft as a potential **"pollution source"** for the Spiro Drinking Water Protection Zone, which is prohibited per PCMC's Drinking Water Protection Plan ordinance detailed in section 13-1-28.