Francisco Astorga

From: Charles Stormont <cstormont@fabianvancott.com>
Sent: Tuesday, October 04, 2016 4:02 PM
To: Treasure Comments
Cc: THINC; Francisco Astorga; Polly Samuels McLean
Subject: RE: Treasure Hill Conditional Use Application
Attachments: 2016.10.04 Letter to Planning Commission.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. Please let me know if you have any difficulty opening the attached file. Thank you.

Regards, Charles

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October 4, 2016

Via Electronic Mail
treasure.comments@parkcity.org

Park City Planning Commission
PO Box 1480
Park City UT, 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 my public comments at the September 14, 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.

To begin, THINC would like to reiterate what it believes is the maximum density that could possibly be justified by the 1986 Sweeney Properties Master Plan ("SPMP"). Some of this information was presented in my September 2, 2016 letter to the Planning Commission, but based upon several comments expressed during the September 14, 2016 Planning Commission meeting, THINC wants to reinforce what it believes is the proper approach to calculating the maximum density that can be justified.

As Commissioner Joyce noted during his comments on September 14, 2016, the SPMP expressly limits density when it states that "[t]he approved densities are those attached as an Exhibit, and ***shall be limited to the maximums identified thereon***." December 18, 1985 Revised Staff Report at 3 (emphasis added). As Commissioner Joyce correctly pointed out, the Town Lift Mid Station Sites and Creole Gulch sites were zoned HR-1 and Estate at the time of the SPMP. *See id.* at 8. These zoning classifications did not permit ***any*** retail or service commercial uses at the time of the SPMP. *See* 1985 LMC §§ 7.1, 7.12 and Land Use Tables at 7-35 to 7-37. As such, we believe that Commissioner Joyce is correct that a compelling argument exists that the 19 commercial UEs provided for by the SPMP are an ***absolute maximum*** on any and all commercial space that can be approved if the SPMP is to be honored. Given that the SPMP expressly states that "conformance with the approved Master Plan" is required, any amount of commercial space in excess of 19 UEs (or 19,000 square feet) would necessarily exceed the maximum limit stated in the SPMP. Additional support for this conclusion is found in the fact that 19 commercial UEs

equates to almost exactly 5% of the square footage permitted by the 197 UEs, which in turn corresponds to the 5% of total hotel floor area that could be dedicated to meeting rooms and support commercial areas contemplated by § 10.12 of the 1985 LMC.
THINC recognizes that Jody K. Burnett's April 22, 2009 Memorandum concludes that "the provisions of the Land Management Code in effect as of the date of that original approval in 1986 should…be applied to calculation of any additional meeting space and support commercial areas without requiring the use of unit equivalents of density." Burnett Memo. at 3. In light of Commissioner Joyce's comments and analysis, we would request that the Planning Commission reconsider this conclusion. With density "limited to the maximums" identified in the SPMP, Mr. Burnett's conclusion would appear to give the applicant greater density than it is entitled to receive. *Accord Keith v. Mountain Resorts*, 2014 UT 32 ¶ 32, 337 P.3d 213 ("A development approval does not create independent free-floating vested property rights – the rights obtained by the submission and later approval of a development plan ***are necessarily conditioned upon compliance with the approved plan***.") (emphasis added).

However, should the Planning Commission agree with Mr. Burnett's conclusion with respect to additional meeting space and support commercial, THINC notes again that the calculation of the ***amount and types*** of such space that can be approved without the use of unit equivalents is limited. Under § 10.12 of the 1985 Land Management 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 the applicant has any vested rights, those rights include only (1) the unit equivalents approved; (2) corresponding underground parking; (3) and specific types of space that may be built without counting towards unit equivalents, namely meeting spaces/support commercial up to 5% of total hotel floor area and circulation spaces outside of units.

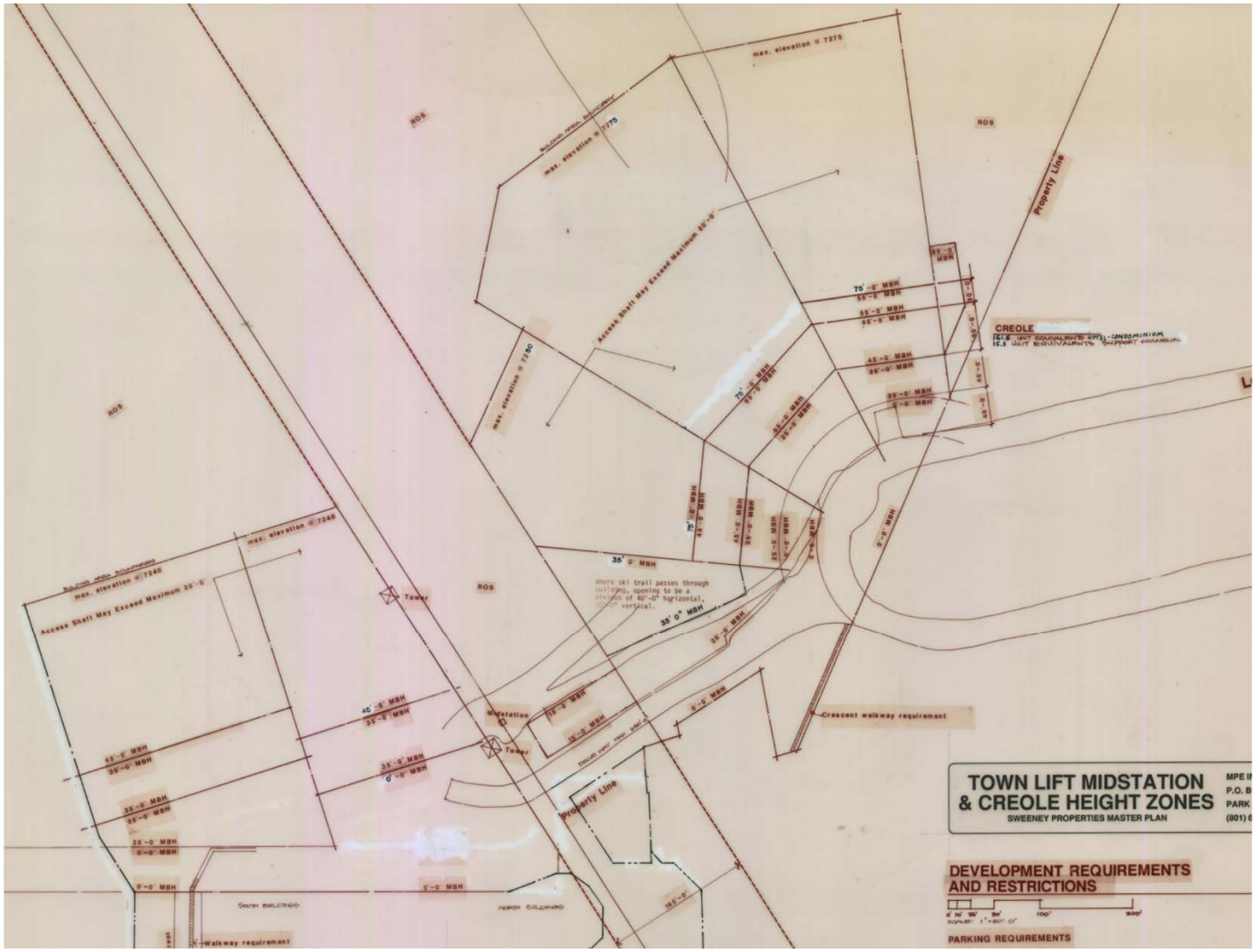
The applicant's current proposal exceeds these rights in numerous ways. Pages 79 to 92 of the September 14, 2016 Planning Commission Packet provides a detailed analysis by Staff of the specific square footages permitted using Mr. Burnett's conclusions relating to support commercial and meeting space and the actual approvals contained in the SPMP. In summary, and in light of the current proposal, 5% of hotel floor area is 11,740, thus permitting a total of 424,740 square feet pursuant to the SPMP, exclusive of parking and circulation space outside of units. As detailed at page 79 of the September 14, 2016 Planning Commission Packet, the current proposal includes 49,539 square feet of support commercial and meeting space, which is 37,799 square feet in excess of that permitted by § 10.12 of the 1985 LMC. The applicant also proposes 136,301 square feet of "accessory space" that has no justification in the SPMP or the 1985 LMC. Thus, the application seeks to add 174,100 square feet of space that should count toward commercial unit equivalents, which is ***nearly ten times the 19 UEs of commercial square footage actually approved*** by the SPMP under even the most generous interpretation for the applicant.

To emphasize just how excessive the current application is, THINC would ask that the Planning Commission consider the numerous uses that the applicant has attempted to categorize under the "accessory use" label. Where the 1985 LMC allows at most meeting spaces/support commercial and circulation spaces without the use of unit equivalents, the applicant seeks additional uses under the guise of "accessory uses" that include: (1) service elevators; (2) receiving spaces; (3) maintenance spaces; (4) storage spaces; (5) a lift ticket sales office; (6) employee housing; (7) service corridors; (8) a pool building; (9) a stair building; (10) restrooms; (11) employee lockers; (12) service areas; (13) ski storage; (14) offices; (15) a public lounge; and (16) a laundry facility. These myriad additional types of "accessory uses" have no basis in the SPMP or the 1985 LMC, and cannot be approved through a conditional use application unless they all fit within the 19 UEs approved by the SPMP, which they clearly do not. *See* § 15-6-4(I) of the 2003 and current LMC.

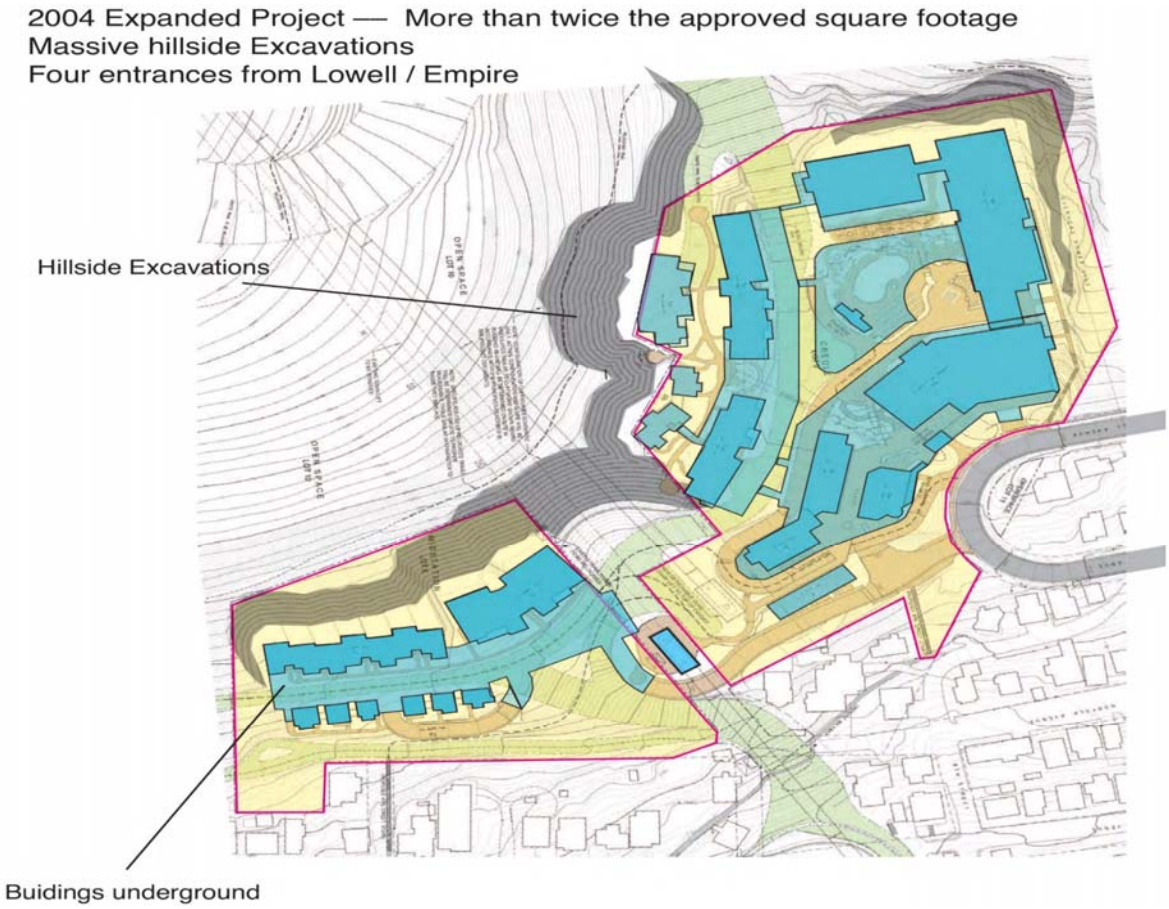
Further, as several Planning Commissioners noted, there are tremendous inefficiencies with the applicant's proposed parking and circulation spaces. These inefficiencies coupled with the applicant's request for nearly ten times the commercial space that could even arguably be approved, result in tremendous impacts because of larger buildings, excessive massing, additional traffic, and other environmental impacts, none of which can be mitigated as Staff correctly notes at page 90 of the September 14, 2016 Planning Commission Packet and page 136 of the August 10, 2016 Planning Commission Packet. Given that the applicant does not seek to reopen the SPMP, *see* pp. 133-34 of September 14, 2016 Planning Commission packet, THINC would encourage the Planning Commission to follow Staff's recommendation to deny the application in light of the numerous violations of the SPMP with respect to density.

An additional issue that has been discussed at Planning Commission meetings that THINC would like to reinforce and highlight relates to the tremendous excavation proposed by the applicant. Clear and express limits on such excavation were highlighted at pp. 5-6 of my September 2, 2016 letter. But there is an additional violation of the SPMP that deserves attention. Page 11 of the SPMP includes the following statement: "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." On page 12, it goes on to state that "we recommend that the building envelope proposed for the Coalition properties ***be limited*** in accordance with the exhibits prepared and made a part of the approval documents." (Emphasis added). These recommendations were approved by the City Council.

The building envelope restrictions can be found on sheet 22 of the exhibits to the SPMP, and is labeled the SPMP Development Restrictions and Requirements exhibit. A screen shot of a portion of the exhibit follows:



Zooming in on the exhibit, the outline of the "Building Area Boundary" is clearly delineated, with areas outside of the boundary labeled "ROS." Yet the applicant's current proposal includes tremendous excavation and destruction of the open space outside of the "Building Area Boundary." This can be seen most clearly on page 8 of John Stafsholt's slide presentation that was presented at the September 14, 2016 Planning Commission meeting. A portion of that slide appears below:



As can be seen, nearly all of the excavation is well outside of the boundary (which appears in red in the above image). This is a clear violation of the building envelope restrictions imposed by the SPMP. It also eliminates tremendous areas of Recreation and Open Space in violation of the requirement that such areas be rezoned as such. *See* SPMP at pp. 8, 10, 11. Where the SPMP contemplated and required smooth terrain and transitions, the current application proposes retaining walls, drop offs, and exposed buildings. Such alterations within the ROS zone are not appropriate. *See* 1985 LMC § 7.11, 2003 LMC § 15-2-7. Of course, excavation of this magnitude creates additional issues that we understand the Planning Commission will consider later (*e.g.*, the profound environmental impact of excavating so much potentially toxic soil), but at even the most basic level, the applicant is not honoring its obligation to construct within the Building Area Boundary, and thus its application should be denied for this additional reason.

THINC would next like to note its concerns about the reported conduct of the applicant as it seeks approval of its CUP application. It was revealed during the September 14, 2016 Planning Commission meeting that the applicant had proposed a joint statement to City Staff in an effort to reach agreement on issues that were not specifically identified. The Park Record also recently published an article reporting on this issue that provides a few additional details. *See*

http://www.parkrecord.com/news/park-city/park-city-and-treasure-cannot-even-agree-on-points-of-agreement/. The applicant also indicated that it wanted to request a working session with the Planning Commission, which Commissioner Strachan assured me and members of THINC would be done in conformance with the Utah Open Meetings Act, Utah Code § 52-4-101 *et seq*. While THINC has no reason to believe that the letter of the Open Meetings Act has been violated, we are concerned that the spirit of the Act is being disregarded by the applicant. Seeking to side-step the Planning Commission and reach side agreements with Planning Commission Staff without any opportunity for public input or participation does not facilitate confidence in the process among members of the public. THINC appreciates that Staff did not entertain the applicant's proposed joint statement and would encourage the applicant to consider the implications of its conduct as this process moves forward.

With respect to the working session that has been proposed for October 12, 2016, THINC notes its concern that the applicant appears to be treating the CUP application process as a negotiation. This is not, however, a situation where a party can make an unreasonable offer in an effort to negotiate its way to an approval that still exceeds anything to which it is legitimately entitled. Rather, the CUP application process requires compliance with the standards set forth in the Land Management Code. *See* Utah Code § 10-9a-507. And the SPMP itself requires that any application conform with the limitations of the SPMP. Whatever concessions or compromises the applicant may be willing to offer, it must bring its proposal in line with both the SPMP and the Land Management Code. THINC has serious concerns about whether that can ever be achieved, particularly given information that has arisen in the last 30 years regarding environmental issues on the applicant's property and its potential effects on Park City's water supply. We appreciate the Planning Commission's continued willingness to carefully consider each and every element of the SPMP and the Land Management Code as the process moves forward.

During my public comments on September 14, 2016, I touched upon numerous portions of the applicant's letter that appears as Exhibit X to the Planning Commission Packet for the meeting. I will attempt to summarize those points below. First, the applicant attempts to tie the current proposal to findings by staff made in 2005. *See* September 14, 2016 Planning Commission Packet at pp. 127-31. In a similar vein, the applicant alleges there are inconsistencies between early staff reports and more recent staff reports relating to support commercial and meeting space. *See id.* at 132-33. The applicant's arguments, however, do not consider the significant changes to its proposal that were made in 2006, when more than 167,000 square feet of space were added to its proposal. Nor has the applicant considered the additional analysis undertaken by Mr. Burnett and the conclusions he reached in his April 22, 2009 Memorandum with respect to support commercial and meeting space. The applicant's one-sided portrayal of history should not be considered. Moreover, as several Commissioners and Staff noted, the Planning Commission is charged with responsibility for making the ultimate determination of whether to approve or reject the CUP application. As such, much of the applicant's letter is irrelevant to what must actually be decided by the Planning Commission.

The applicant's efforts to undermine the requirements of the Park City General Plan are also not well-founded. *See* September 14, 2016 Planning Commission Packet at pp. 131-32. The General Plan is not "generic 'purpose' and 'intent' statements prefatory to specific sections of the code" as the applicant argues. Instead, the General Plan is expressly incorporated into the Land Management Code. Specifically, "[t]he City shall not issue a Conditional Use permit unless the Planning Commission concludes that…the Use is consistent with the Park City General Plan, as amended[.]" 2003 LMC § 15-1-10(D)(3). The applicant has made no argument that the current application is consistent with the General Plan, but instead attempts to rely on arguments about prior and different versions of its application. Such an argument is not relevant and highlights that the application is not consistent with the Park City General Plan.

The applicant next argues that reopening the SPMP would be inappropriate. It asserts that Mr. Burnett has told it that the basis for reopening the SPMP can be found in § 1.22 of the 1985 SPMP. *See* September 14, 2016 Planning Commission Packet at p. 133. The applicant argues that § 1.22 "is a general provision addressing the vesting of rights under an existing zoning ordinance when a development application is submitted." *Id.* This is a sharp deviation from the applicant's prior position that § 1.22 '"permitted [the applicant] to 'take advantage of changes in zoning that would permit greater density or more intense use of the land[.]'" July 13, 2016 Planning Commission Packet at p. 115. The inconsistency of the applicant's positions aside, the applicant elsewhere concedes that the 2003 Land Management Code "applies to all matters related to the review and approval of the 2004 CUP Application." September 14, 2016 Planning Commission Packet at p. 136. As such, § 15-6-4(I) would appear to control. It provides:

> 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. If the modifications ***are determined to be substantive, the project will be required*** to go through the pre-Application public hearing and determination of compliance as outlined in Section 15-6-4(B). (Emphasis added).

The significant and substantive changes in density, unit type, and configuration sought by the current application are detailed by Staff at various portions of the September 14, 2016 Planning Commission Packet. For example:

- p. 86 (the proposal exceeds the maximum residential UEs at the Creole Gulch site by 2.20 residential UEs);

- pp. 89-92 (noting the proposed commercial UEs far exceeds the approved 19 commercial UEs); and

- pp. 93-103 (noting modification of grade by over 100 feet, violating the building envelope limitations of the SPMP and creating tremendous scale, mass, and bulk issues that cannot be mitigated).

If the applicant persists in obtaining these substantive modifications to the SPMP, reopening the SPMP is not only permitted, but it is required by § 15-6-4(I) of the 2003 LMC. If the applicant does not seek to obtain approval for such modifications, the Planning Commission should deny the CUP application because it does not conform to the SPMP or the Land Management Code.

The applicant concludes its letter by repeating its argument that the 2003 Land Management Code is all that it must comply with in order to obtain approval. THINC has addressed this argument in its July 22, 2016 letter to the Planning Commission, and reiterates that the SPMP's express terms require conformance with the limitations set forth in the SPMP. *See also Keith v. Mountain Resorts*, 2014 UT 32 ¶ 32, 337 P.3d 213 (noting "the rights obtained by the submission and later approval of a development plan ***are necessarily conditioned upon compliance with the approved plan***.")

THINC would like to again reiterate how much it appreciates the thorough work that the Planning Commission and its Staff have dedicated to the review of this conditional use application. THINC is also optimistic that a continued public dialogue will benefit the citizens of Park City as this process moves forward. We look forward to an open dialogue on each of the items that the Planning Commission will review with respect to this conditional use application, and appreciate your consideration of THINC's concerns.

Very truly yours,
FABIAN VANCOTT

Charles A. Stormont

cc: Brian Van Hecke