Treasure Comments

From: Charles Stormont <cstormont@fabianvancott.com>
Sent: Monday, November 07, 2016 2:40 PM
To: Treasure Comments
Cc: THINC; Francisco Astorga; Polly Samuels McLean
Subject: Treasure Hill Conditional Use Application
Attachments: 2016.11.07 Letter to Park City 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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November 7, 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 October 12, 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.

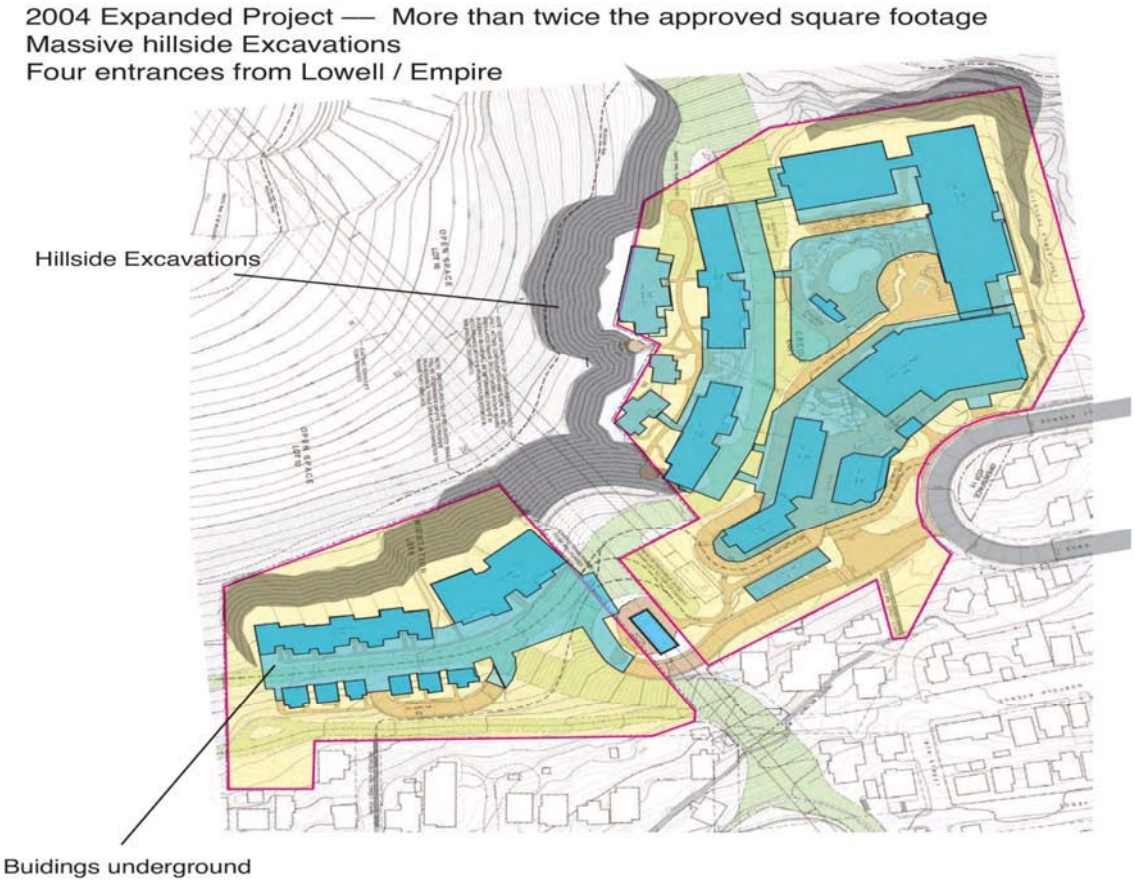
THINC would first like to re-iterate that density excesses contained in the pending application appear to be the source of numerous additional problems. A detailed analysis of the square footage limits set forth in the 1986 Sweeney Properties Master Plan ("SPMP") is contained in my letter to you dated October 4, 2016. As detailed in that letter, even using the most generous interpretation of the SPMP, the applicant must be limited to: (1) the unit equivalents approved (197 residential and 19 commercial); (2) corresponding underground parking (203,695 square feet); and (3) arguably, specific types of space that may be built without counting toward unit equivalents, namely meeting space and support commercial of up to 5% of total hotel floor, as well as circulation spaces outside of units. *See generally* 1985 LMC § 10.12; Jody K. Burnett's April 22, 2009 Memorandum; and SPMP at p. 5 (noting that the density set forth are the maximums allowed). Combing the permitted spaces using the most favorable interpretation of § 10.12, the current application would be entitled to a maximum of 628,435 square feet within certain categories, along with additional appropriate circulation space outside of units.

Instead, the applicant seeks tremendous additional commercial square footage. Rather than honor the 19 unit equivalent maximum and categories provided for by the 1985 LMC, the applicant seeks not only the full 19 unit equivalents of commercial space, but an additional 49,539 square feet of support commercial and meeting space, which is 37,799 square feet in excess of the 5% of hotel floor area that is 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. *See* September 14, 2016 Planning Commission Packet at pp. 79-80. This accessory space includes 16 different categories of space that have no foundation in the SPMP or the 1985 LMC. The applicant then seeks 173,210 square feet of circulation space, much of which is not outside of units, but that is instead intended to serve the "accessory space" to which it is not entitled. These excesses, if approved, would constitute "substantive" changes to the SPMP, notwithstanding the applicant's claims to the contrary. As such, the conditional use permit should be denied. If the applicant seeks such substantive changes, they should be required to follow the process set forth in the 2003 LMC for such changes, namely § 15-6-4(I).

These excesses also drive a significant additional problem. To accomplish the proposed square footage, the applicant seeks to engage in tremendous excavation. As you are aware, criteria 15 of the conditional use review process requires consideration of numerous items, including "Slope retention, and appropriateness of the proposed Structure to the topography of the Site." 2003 LMC § 15-1-10(E)(15). By proposing vast amounts of permanent excavation that contemplates relocating significant materials on other parts of the adjoining mountain, the application highlights that slopes are not being retained. Not only are slopes being permanently removed in the areas of construction, but materials are being relocated to other locations, thereby altering slopes in those areas. Similarly, the fact that tremendous excavation is sought by the application highlights that the topography of the site is not appropriate for the proposed structures. At the most basic level, by proposing a project that requires so much excavation, the application demonstrates that it cannot satisfy the requirements of criteria 15. Impacts from slope alterations simply cannot be mitigated.

The proposed excavation would also violate the express terms of the SPMP. Specifically, page 11 of the SPMP includes the following: "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." (Emphasis added). 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 details of the building envelopes limitations are found on Sheet 22 of the exhibits to the SPMP, which delineates the "Building Area Boundary." It is not clear if the building area boundary was intended to limit the location of construction disturbance or the footprint of permanent structures. But even assuming for the purposes of argument that construction activities could take place outside of the boundary (subject to restoration, of course), the current application would still violate the SPMP by placing permanent excavations scars, retaining walls, fences, and "cliffscapes" outside of the building area boundary. Such permanent alteration of the land would expressly violate the building envelope

limitations set forth in the SPMP.[1] As such, it provides yet another basis for denial of the conditional use permit application. To illustrate this point, below is an image where the red line shows the Building Area Boundary, and significant amounts of permanent excavation are apparent outside of that boundary:



The applicant has argued that "limits of disturbance" are to be defined during the conditional use application process, which is a correct statement in and of itself. *See* SPMP at p. 14; October 12, 2016 Planning Commission Packet at p 64. But the argument confuses two separate concepts, namely (1) limits of disturbance, which the 2003 LMC defines as "The designated Area in which all Construction Activity must be contained," 2003 LMC § 15-15-1.127, and (2) the Building Area Boundary in which the entirety of permanent building

[1] THINC would also respectfully refer the Planning Commission to § 15-7.3-3(H)(3) of the 2003 LMC, which states: "In no case, however, should a variation in the Limits of Disturbance boundary result in an increase in the amount of buildable Area." While this provision of the 2003 LMC deals with subdivision platting, it makes clear that buildable area limitations in the SPMP cannot be expanded by the concept of "limits of disturbance."

envelopes must be contained according to the plain terms of the SPMP. *Accord* 2003 LMC § 15-15-1.30 (defining Building Envelope as "[t]he Building Pad, Building Footprint, and Height restrictions that defines the maximum Building Envelope in which all Development must occur"). In other words, it tries to expand areas of permanent construction into an area where only temporary disturbances may be allowed. Yet the 2003 LMC makes clear in numerous areas that "limits of disturbance" outside of approved building areas are not permanent and require restoration. *See, e.g.,* 2003 LMC §§ 15-2.2-10, 15-2.7-7, 15-2.10-11; 15-7.3-3(H)(3).

Finally, THINC notes that much of the applicant's letter contained in the October 12, 2016 Planning Commission Packet attempts to recast the history of the applicant's dealings with the Planning Commission in a fashion that ignores important additional information. THINC has previously commented on this issue in its public comments, and will not repeat those comments here. However, to the extent that the applicant continues to attempt to convert prior staff findings relating to a different proposal into purported vested rights, THINC would point out that the Planning Commission is required to consider all of the facts before it, including new information that has come to light since prior staff reports were issued. Pursuant to Utah Code § 10-9a-509(1)(a)(ii), an applicant is entitled to approval only if its application conforms to the applicable land use ordinances and maps. Staff findings based on incomplete facts cannot relieve an applicant of this obligation. As Utah Code § 10-9a-509.5(4) makes clear: "Subject to Section 10-9a-509, nothing in this section and ***no action or inaction of the land use authority relieves an applicant's duty to comply with all applicable substantive ordinances and regulations***." (Emphasis added). Similarly, the 2003 LMC is also clear that a conditional use permit "shall not issue…unless the planning commission concludes that (1) the Application complies with ***all requirements of this LMC***[.]" (Emphasis added). The applicant's arguments would relieve it of these express statutory requirements, which is obviously not the law in Utah. While the applicant has made much of its claims to due process, THINC would ask that the Planning Commission also keep in mind the due process rights of the citizens of Park City, which are protected by these statutory requirements and would be undermined if the applicant's arguments are accepted.

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 remains 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

Charles A. Stormont

cc: Brian Van Hecke