

Please also include

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As part of the appeal submitted today, August 8, 2016 by Brooke Hontz, et al.

Date: August 5, 2016

APPEAL OF: Alice Claim south of intersection of King Road and Ridge Avenue – Conditional Use Permit for Retaining Walls six feet (6') in height or more. Alice Claim Gully Site Plan, south of intersection of King Road and Ridge Avenue – PL-15-02669

APPELLANTS: Respectfully, the following appellants have submitted this appeal and reserve the right to provide additional testimony:

Appeal by: Brooke Hontz
Address: 209 Daly Ave, Park City Utah 84060
Phone: 435-640-1941

Appeal by: Tom Gadek
Address: 291 Daly Ave, Park City Utah 84060
Phone: 510-914-1896

Appeal by: Charlie and Mary Wintzer
Address: McHenry Ave, Park City Utah 84060
Phone: 434-640-1099

Appeal by: Carol Sletta
Address: 135 Sampson Ave, Park City Utah 84060
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Appeal by: Clay Perfall
Address: Ridge Ave, Park City Utah 84060
Phone: 435-615-9176

Appeal by: Kathryn Deckert
Address: Daly Ave, Park City Utah 84060
Phone: 435-649-9565

Appeal by: Holger Vogel
Address: 97 Daly Ave, Park City Utah 84060
Phone: 847-308-6494

Thank you, Jim Doilney

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STANDING TO APPEAL: *All appellants have standing to appeal a Final Action per:*
All appellants submitted written comment or testified on a proposal before the Planning Commission.

APPEAL: This appeal asserts that the Planning Commission erred in their decision to approve the Conditional Use Permit for the Alice Claim Retaining Walls (per above) for the following reasons:

- 1) This CUP does not meet any of the required Standards of Review.**

Per LMC 15-1-10; Section D. **STANDARDS FOR REVIEW**. The City shall not issue a Conditional Use permit unless the Planning Commission concludes that:

1. the Application complies with all requirements of this LMC;
2. the Use will be Compatible with surrounding Structures in Use, scale, mass and circulation;
3. the Use is consistent with the Park City General Plan, as amended; and
4. the effects of any differences in Use or scale have been mitigated through careful planning.

In this case, the application fails to meet any of the standards of review listed above, as the application for retaining walls is ONLY needed due to the fact that the applicant/owner never secured reasonable access over an existing road (where likely the historic right of way was intended to go). No massive retaining walls or removal of historic vegetation is required if the existing paved access is utilized. City condemnation of a private driveway in this case would create fewer environmental impacts and create less traffic hazards than the conditional use permit approval of multiple retaining walls that are NOT required without the development of 9 lots where, currently, only one parcel is allowed. This is a false application and set of “mitigation” standards as the impacts themselves can be completely avoided without the ridiculous location of an access drive via a potentially non-legal right of way.

There have been additional arguments made that indicate the proposed access – which is the only reason for the retaining walls CUP – is not legal as the existing King/Sampson road is not within the platted location at the proposed junction of the right of way that was not platted nor dedicated to the City. The land is too steep and vegetated in the area of the right of way to ever have prescriptive use and therefore there is no legal access across private land to access the area where the retaining walls are built.

The specific issues of each of the items to consider when reviewing the standards are included in number 3, below.

2) This CUP application is unnecessary. The retaining walls will not be built unless the subdivision of one meets and bounds parcel into multiple lots occurs AND suitable access is not found to access the new subdivision. One cannot separate that this application from the Subdivision – although they have different legislative processes. There can be no finding of suitable mitigation for a conditional use, if in fact, the impacts from the use are completely avoidable. We, as appellants have made additional comments on the record on how the impacts from the CUP have not been addressed; and these arguments are also listed below.

3) This CUP fails to appropriately address and mitigate the following items per the Code requirements (see below the list for our response):

Per LMC 15-1-10; Section D

1. size and location of the Site;
2. traffic considerations including capacity of the existing Streets in the Area;
3. utility capacity, including Storm Water run-off;
4. emergency vehicle Access;
5. location and amount of off-Street parking;

6. internal vehicular and pedestrian circulation system;
7. Fencing, Screening, and landscaping to separate the Use from adjoining Uses;
8. Building mass, bulk, and orientation, and the location of Buildings on the Site; including orientation to Buildings on adjoining Lots;
9. usable Open Space;
10. signs and lighting;
11. physical design and Compatibility with surrounding Structures in mass, scale, style, design, and architectural detailing;
12. noise, vibration, odors, steam, or other mechanical factors that might affect people and Property Off-Site;
13. control of delivery and service vehicles, loading and unloading zones, and Screening of trash and recycling pickup Areas;
14. expected Ownership and management of the project as primary residences, Condominiums, time interval Ownership, Nightly Rental, or commercial tenancies, how the form of Ownership affects taxing entities; and
15. within and adjoining the Site, Environmentally Sensitive Lands, Physical Mine Hazards, Historic Mine Waste and Park City Soils Ordinance, Steep Slopes, and appropriateness of the proposed Structure to the existing topography of the Site.

Issues related to required review:

Related to items 1, 2, 4, 5, 8, 9,11,13, and 15:

A) Right-of-way – The proposed King Road r-o-w should not provide access to the site and is another reason why “good cause” cannot be supported. The city defines Right-of-way as:

1.222 RIGHT-OF-WAY. A strip of land, dedicated to public Use that is occupied or intended to be occupied by a Street, crosswalk, trail, stairway, ski lift, railroad, road, utilities, or for another special Use.

It does not mandate that it provide street access to a private property. The proposed layout creates a 5th point of convergence of 4 existing non-standard streets and creates the need for excavation, vegetation removal and a large retaining wall. Just because an agreement can't be made with the nearby Woodside Gulch private owner doesn't mean the City has to allow access to develop on very steep slopes from a road right-of-way and create 3 new huge retaining walls that are otherwise unnecessary.

B) Granting the access on the supposed public right-of-way allows increasing development rights on the single lot, which will facilitate a significant increase in the density of this area and will create substantial increased traffic flow in the area. Ridge Ave will undoubtedly experience a significant increase in traffic. Ridge Ave is a substandard street. The Planning Commission has previously stated as a Finding of Fact that:

“Ridge Avenue should remain narrow to protect the pattern of development in Old Town while also protecting public health, safety and welfare by keeping traffic limited and speed slow.”

Granting the increased rights that the property owner has requested will increase traffic flow on Ridge Ave and threaten the safety of surrounding residents and those driving on Ridge Ave. Widening Ridge Ave to accommodate this traffic will change the nature of the neighborhood and would be inconsistent

with previously stated intentions of the Planning Commission to allow Ridge Ave to remain a narrow street.

C) The proposed layout of the retaining walls and the subdivision location creates a 5th point of convergence of four existing non-standard streets and creates the need for significant excavation, vegetation removal. *Also see: Subdivision Purpose (G) To provide the most beneficial relationship between the Uses of land and Buildings and the circulation of traffic, throughout the municipality, having particular regard to the avoidance of congestion in the Streets and highways, and the pedestrian traffic movements appropriate to the various Uses of land and Buildings, and to provide for the proper location and width of Streets and Building lines.*

D) All roadways near the proposed CUP for the retaining wall and subdivision are substandard streets. The Streets master plan says that "Roadways which are severely substandard pose real life and safety hazards, which should receive top priority. The most pressing problems exist in the old part of town. It may be appropriate in the most critical areas to prohibit additional development until roadway improvements are assured".

E) King Road is the proposed main access to the nine lots (9). King Road is a steep and narrow street that is mostly built outside its platted location.

F) To make King Road safe, the road would need to be widened. Widening King Road may not be possible due to required eminent domain procedure and the cost of the buyout of the land holders.

G) Snow removal on both King Road and Ridge Avenue may be difficult or delayed during winter months. Snow removal on the access drive created by this CUP may be impossible during winter months and increase the snow slide hazard above the top wall.

H) Hazardous vehicle and pedestrian conditions exist on King Road and Ridge Ave when snow and/or slippery conditions are present.

I) Staff analysis of other Old Town roads (July 2016 City Council Packet) Ontario Avenue has a long list of problems that will be extremely difficult to correct, the road section south of Rossi Hill Drive is not in the ROW, the road section north of Rossi Hill Drive is steep and narrow with housing built immediate to the road. If Ontario Avenue was re-constructed, there are very few improvements that staff would be able to accomplish. THESE ARE THE EXACT SAME ISSUES THIS AREA FACES.

J) Traffic Analysis:

- a. The *Traffic Impact Study and Traffic Considerations* Letter dated July 7, 2015 provided by Fehr and Peers to the Applicant, Fehr and Peers indicate there will be an additional 114 trips per day from the 9 lot development and traveling over the access created by the CUP.
- b. The Fehr and Peers transportation planner on July 7, 2015 letter does not indicate when the traffic counts were taken which is an important factor in determining if the figures are realistic to conditions in Park City.
- c. Total trips per day is a relevant way of looking at traffic for a road and traffic engineers are required to understand that element of the development in order to size a roadway appropriately. Peak hour counts are typically used when discussing intersections. While

the intersections at the top and bottom of King and Hillside and Main are all important in this discussion; the roadway widths of King and Ridge and all of the roads to get to those substandard roads are the issue. I stand by my statement that 114 new vehicle trips are an unacceptable amount of traffic for these roads. No additional traffic generation is safe in this area.

- d. Typical roadway conditions used by the ITE and typical TIS utilize clear conditions with warm dry weather – think Phoenix AZ. They do not, unless stated in the assumptions of the report use cold, icy, snowy conditions which affect the report findings.
- e. The snow, steep grades, length of steep grades, short sight lines/distance and narrowness of the road (which gets narrower in the winter) are all key elements that must be taken into account in a traffic impact study and reasonable analysis.
- f. The clear issue with traffic remains as previously stated that there is a lot of traffic generated by this Application for a one and a half lane sub-standard road with a long steep grade and no outlet. This traffic has to go to the end of a dead end and add additional traffic to our roads which residents of Park City found to have unsatisfactory levels of service this winter. Assuming this subdivision would open the door and access to other lots in the area; it is feasible to assume 390 additional vehicle trips a day up and down King, Ridge and Daly.
- g. The Traffic Impact Study and Traffic Considerations Letter dated July 7, 2015 from Fehr and Peers do not discuss how the total day trips will affect the width and safety of King Road and Ridge Ave. Peak travel is not the only, or the most important, factor for a development located at the end of a very steep dead end street with icy and slippery hazardous conditions during the winter months.

K) Wild land/Urban Interface Public Safety: The Park City Planning Commission, the Park City Planning Department, the Park City Council and the Park City Fire Department should be fully aware of the resident safety implications and threat to the life of any inhabitants of existing homes along Ridge Avenue and any future homes above Ridge Avenue who may choose to utilize Ridge Avenue or King Road as an emergency exit in the event of a wildfire. The intensity of such fires can be extreme as was demonstrated in the 2015 Southern California wildfire which set vehicles on fire in a traffic jam along Interstate 15 (July 18, 2015, <http://www.nbcnews.com/news/us-news/cars-catch-fire-after-california-brush-fire-jumps-freeway-n394241>). Fortunately, nobody was killed in this event as they were able to escape on foot along the 68-foot-wide freeway (four 12-foot freeway lanes and two 10 foot shoulders). This is not likely possible along Ridge Avenue with its 12-foot width and absence of any shoulders or on King Road with steep slope and also narrow width.

It is the narrowest and slowest point along any route that determines speed of access and egress. The access to and egress from the Alice Claim will be limited by the width of Ridge Avenue, no matter how wide any new roads above it are. I have noted that the Park City Fire Department seems to prefer to take their trucks up Daly to Ridge when they are driving around familiarizing themselves with the neighborhood of Ridge and King. In a fire situation, both King and Ridge are likely to quickly fill with residents leaving downhill while the PCFD tries to get uphill. Ridge Avenue as a neighborhood choke point in access/ egress is precisely why the Commission should consider the 12 foot width of Ridge Avenue and risk associated with it at this time. Particularly before any number of roads and developments are built above it.

The fire experts who analyzed the Oakland Hills/ Tunnel Fire of 1991 concluded that: ‘The lesson here is to resist making concessions on initial development patterns, lot configurations, road alignments or

infrastructure standards. Emergency ingress and resident egress are critical and should not be compromised. Once a neighborhood is populated, fire response will have to adapt to these initial approvals and may always be compromised. Access, lot size and the footprint of development cast the die for every community.’ This lesson seems particularly pertinent here in the denial of the CUP for retaining walls for the Alice Claim development and any future development above Ridge Avenue. The proposed development negatively impacts neighborhood safety. Enough future development beyond the Alice Claim above the intersection of Ridge and King will eventually exceed the capacity of both streets as emergency access and egress routes from this choke point.

L) We believe that granting the rights that the property owner has requested for Alice Claim would be in conflict with the stated intentions of existing code in a number of respects. The code is intended to keep development off Ridgelines and Sensitive areas. All six Purpose Statements of the code address this:

HRL---15-2.2-6 Steep slope (1) (5) (8) (9), 15-2.2-9 Vegetation
HR-1---15-2.2-6 Steep slope (5), 15-2.2-10 Vegetation
E---15-2.10-6 Sensitive lands, 15-2.10-10 Vegetation
SLO---15-2.21-2 Analysis (A), 15-2.21-4 Slope Protection, 15-2.21-5 Ridge Lines Area,
15-2.21-8 Wildlife

M) The proposed project does not meet the purpose of the HRL zone in which some of the development and retaining will need to take place, notably the first purpose as listed in LMC Section 15-2.1-1(A), which states: “Reduce density that is accessible only by substandard Streets so that Streets are not impacted beyond their reasonable carrying capacity...”

N) LMC HR-1 15-2.2-6 *Development on Steep Slopes must be environmentally sensitive to hillside Areas, carefully planned to mitigate adverse effects on neighboring land and Improvements, and consistent with the Historic District Design Guidelines.*

O) Restrictions due to the Character of the Land: Land Management Code Section 15-7.3-1(D) shall apply, and states: “Land which the Planning Commission finds to be unsuitable for Subdivision or Development due to flooding, improper drainage, Steep Slopes, rock formations, Physical Mine Hazards, potentially toxic wastes, adverse earth formations or topography, wetlands, geologic hazards, utility easements, or other features, including ridge lines, which will reasonably be harmful to the safety, health, and general welfare of the present or future inhabitants of the Subdivision and/or its surrounding Areas, shall not be subdivided or developed unless adequate methods are formulated by the Developer and approved by the Planning Commission, upon recommendation of a qualified engineer, to solve the problems created by the unsuitable land conditions. The burden of the proof shall lie with the Developer. Such land shall be set aside or reserved for Uses as shall not involve such a danger.”

P) The findings of fact included in the staff report regarding the environmental remediation are not factual and are misleading. They include the following “5. The applicant would never have spent upwards of \$1 million in the middle of The Great Recession to complete the voluntary cleanup if it had no assurance from Park City of developing nine homes to recover applicant’s cleanup costs. – *We have no idea what the applicant would or would not have done – as there was a financial incentive offered by the EPA and a mandate to clean up the land or be fined and NOT BE ABLE TO DEVELOP. It was in the applicant’s best interest to “opt-in” at the time for many, many reasons of their own volition.* 6. As a

Voluntary Cleanup Co-Applicant with King Development in cleaning up the Park City parcel in Alice Claim and applicant's property, the City manifested its approval of developing nine homes in Alice Claim. *This may be the applicant's take however the City did not sign or document any development agreement or other instrument giving vested rights IN ANY DENSITY. It was up to the applicant to remediate and THEN apply to see if they could get a subdivision of any size.* 7. The extensive cleanup and revegetation of Alice Claim property and the City's property completely changed the site from an unsightly polluted mine dump to a beautiful vegetated site with significant improvements to water quality. *While many people agree the area is now beautiful, most people also think the historic look of the mine structures that remained were amazing. Although the environmental issues cannot be argued, the actual beauty and historic nature of the site has been altered forever – and not for the better.*

Q) Park City LMC codes provides the following definition of structure: 1.264 **STRUCTURE**. Anything constructed, the Use of which requires a fixed location on or in the ground, or attached to something having a fixed location on the ground and which imposes an impervious material on or above the ground; definition includes "Building".

The CUP is required for the retaining walls because they are considered Structure and proposed to exceed the height standard. In this zone, "A Structure shall have a maximum height of thirty-five feet (35') measured from the lowest finish floor plane to the point of the highest wall top plate that supports the ceiling joists or roof rafters." This application allows the development of a structure which, as designed, is higher than 35' from the lowest plane of the lowest wall to the highest top plate of the highest retaining wall when measured from nearly all locations along the 100' feet. No Structure can be permitted to be built higher than the zone height of 35'. Measured from Sampson Ave at the first wall it appears that you have at least 43 feet of wall to the top of the top wall and even higher with dirt and fill for the vegetation.

In closing, please review and deny the CUP application for the Alice Claim project's retaining walls. See Section **15-1-10 Conditional Use Review Process**

"If the reasonable anticipated detrimental effects of a proposed Conditional Use cannot be substantially mitigated by the proposal or imposition of reasonable conditions to achieve compliance with applicable standards, the Conditional Use may be denied."