



DATE: August 5, 2016

SUBJECT: Treasure Hill Properties' Compliance with Square Footage Limitations and Conditional Use Criteria Relating to Size and Volume

1. Background.

As the Planning Commission Staff report dated July 13, 2016, recites,

[t]he Sweeney Properties Master Plan (SPMP) was approved by the Planning Commission on December 18, 1985. . . . On October 16, 1986, the City Council approved the SPMP with amendments to the maximum allowed building heights [for the] Hillside Properties known as the Town Lift Mid-Station and the Creole Gulch sites.

The Hillside Properties consists [sic] of the Town Lift Mid-Station (Mid-station) and the Creole Gulch sites. These Hillside Properties are the last two (2) parcels to be developed within the SPMP. . . .

A combined total of 197 residential UEs and 19 support commercial UEs was approved for the 11.5 acre remaining development sites. Of the 123 acres of Hillside Property, 110 have become zoned recreation open space (ROS) due to the agreement within the SPMP.

Under the SPMP, each development site is required to attain the approval of a Conditional Use Permit (CUP) from the Planning Commission. On January 13, 2004, the applicant submitted a CUP application for the Creole Gulch and Mid-station sites. The CUP was reviewed by the Planning Commission from April 14, 2004 to April 26, 2006. A complete set of revised plans was received by staff on October 1, 2008. Additional materials were received by staff on December 18, 2008. The CUP was reviewed by the Planning Commission from January 7, 2009 to February 10, 2010. (pp.1-2.)

In April 2016, the applicant, MPE, Inc., requested that the Planning Commission place its CUP Application for the development of the Hillside Properties back on the Commission's agenda and to review the application for compliance with the applicable Land Management Code

(“LMC”) and SPMP Approval. The Planning Commission held public hearings on the CUP Application on June 8 and July 13, 2016. During the hearing on July 13, 2016, the Planning Commission requested that Planning Commission Staff and MPE address the following issues at the next scheduled hearing on August 10, 2016: (1) the total gross square footage of the development, (2) the volume of the proposed development, and (3) how the proposed development compares to other similar developments in Park City.

The topics that the Planning Commission has directed Staff and MPE to address at the next hearing touch upon a number of criteria under the Conditional Use Review Process set forth in the applicable 2003 LMC.¹ Specifically, the issues the Planning Commission has directed Staff and MPE to address cover portions of the following CUP criteria:

1. Size and location of the Site;
4. Emergency vehicle Access;
5. Location and amount of off-Street parking;
6. Internal vehicular and pedestrian circulation system;
8. Building mass, bulk, and orientation, and the location of Buildings on the Site; including orientation to Buildings on adjoining Lots;
11. Physical design and Compatibility with surrounding Structures in mass, scale, style, design, and architectural detailing; and
15. Within and adjoining the Site, impacts on Environmentally Sensitive Lands, Slope retention, and appropriateness of the proposed Structure to the topography of the Site.

The topics also touch upon several of the CUP Standards for Review, including:

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.

The topics that the Planning Commission will discuss at the next hearing also address several of the conditions of the SPMP Approval, including the building height and building envelope limits established by the SPMP Approval.

The CUP Application satisfies the CUP Standards for Review, each of the criteria set forth in the 2003 LMC, and the associated conditions of the SPMP Approval, including the criteria, standards, and conditions covered by the issues that the Planning Commission seeks to discuss at the August 10, 2016, hearing on the application.

¹ Staff and MPE agree that the Fiftieth Edition of the LMC revised on July 10, 2003 (“2003 LMC”) applies to the CUP Application.

Because “[a] conditional use shall be approved if reasonable conditions are proposed, or can be imposed, to mitigate the reasonably anticipated detrimental effects of the proposed use,” and because the CUP Application conforms to the conditions of the SPMP Approval and proposes additional mitigating factors to address the impacts of square footage and volume, the Planning Commission should conclude that the CUP Application meets the criteria, standards, and conditions relating to these issues. Utah Code § 10-9a-507(2)(a).

2. The Planning Commission and City Council Contemplated a Development of the Size Proposed in the CUP Application When They Approved the SPMP.

Planning Commission members and members of the public have asked what the Planning Commission and the City Council understood about the size of the proposed development when they approved the SPMP in 1985 and 1986. The answer is found in the records and approvals from that time period.

2.1 The SPMP Approval Shows that the Planning Commission and the City Council Understood that the Size of the Development Would Be Similar to that Proposed.

First, the SPMP Approval itself establishes what the parties contemplated in terms of the square footage and volume of the eventual development. The SPMP Approval includes the Woodruff Drawings as an appendix, which are conceptual renderings used for the purpose of arriving at development parameters for the SPMP. Because the parties relied on these drawings as part of the SPMP process, the parties understood the scope of development contemplated in 1985 and 1986. Although conceptual in nature, the Woodruff Drawings show specific building footprints, floor elevations, and other details that reveal the general size of the development contemplated by the parties. At the July 13, 2016, hearing, MPE demonstrated that the Woodruff Drawings contemplate a development of about 875,000 square feet. As MPE further explained at the hearing, had the Woodruff Drawings actually been developed under the 2003 LMC, the eventual floor area would have been closer to 1,000,000 square feet once additional accessory uses were added to the base design.

The City Attorney has previously explained that the SPMP Approval is a “contractual arrangement between the City and the applicant.” (Jim Carter Memorandum, November 12, 1992.) The Woodruff Drawings are part of the express terms of that contractual arrangement—the Planning Commission’s Revised Staff Report for the SPMP specifically refers to the Woodruff Drawings as part of the “complete development permit.” (SPMP Revised Staff Report, December 18, 1985.) Thus, the Woodruff Drawings define, in part, the contractual rights of MPE and the contractual obligations of the City, and the Woodruff Drawings set forth the parties’ mutual understanding about the size, scale, and volume of the approved development.

MPE provided the Planning Commission Staff with its complete analyses of the Woodruff Drawings and has answered Staff’s related questions. As far as MPE is aware, Staff does not dispute MPE’s conclusions about the square footage of the Woodruff Drawings.

2.2 Apart from the Woodruff Drawings, the Revised Staff Report for the SPMP Demonstrates that the Planning Commission and City Council Understood the Development Would Be Similar in Size to that Proposed in the CUP Application.

The Planning Commission Staff explained in its Revised Staff Report that:

- “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. The relocation of density from the Town Lift site was partly in response to this issue. **The concentration of density into the Creole Gulch area, which because of its topography and the substantial mountain backdrop which helps alleviate some of the concern, and the requested height variation necessary in order to reduce the mass perceived (higher versus lower and wider), have greatly improved the overall scale of the cluster approach.**” (p. 10 (emphasis added).)
- “Visibility - . . . The cluster approach, **although highly visible from certain areas, does not impose massive structures in the most prominent areas.** Instead, the tallest buildings have been tucked into Creole Gulch where topography combines with the densely vegetated mountainside to effectively reduce the buildings’ visibility.” (p. 11 (emphasis added).)
- “Building Height - In order to minimize site disturbance and coverage, the clustering of density necessitated consideration of building heights in excess of that which is permitted in the underlying zoning (28’ to the mid-point of a pitched roof with a maximum ridge height of 33’). **The various iterations submitted for review demonstrated the trade-offs between height and site coverage.**” (p. 11 (emphasis added).)
- “Land Uses - The predominant land uses envisioned at this time are transient-oriented residential development(s) with some limited support commercial. **The building forms and**

massing as well as location lend themselves to hotel-type development. . . . Although certainly a different kind of residential use than that which historically has developed in the old town area, it is still primarily residential in nature. **The inclusion of attached townhomes serving to buffer between the existing residences and the denser areas of development will also help provide a transition of sorts.”** (p. 12 (emphasis added).)

- “A variety of development concepts were submitted during the course of reviewing the proposed Master Plan. A total of eight distinct approaches to the development of the Hillside Properties were evaluated. . . . The staff, Planning Commission and general public have all favored the clustering of development as opposed to spreading it out. **Several of the alternatives prepared were in response to specific concerns expressed relative to the scale and mass of buildings necessary to accommodate the density proposed. The latest concept developed represents a refined version of the cluster approach originally submitted.”** (p. 7 (emphasis added).)

These passages demonstrate that the City well understood that the scale, mass, and size of the proposed development was a concern and that the issue was carefully and thoughtfully addressed during the master planned development process. Specifically, the City and applicant agreed to mitigate that impact, in part, by transferring density from other sites to the Creole Gulch site, which could better accommodate more density in the form of taller buildings, and approving a taller, higher development for the Creole Gulch site rather than one that was shorter but more spread out. This solution called for the stacking of the allowed density and square footage in tall buildings but on smaller building footprints. This, of course, also contributed to the City’s goal of maximizing open space on the Hillside Properties. The current CUP Application proposes exactly this configuration of the density and square footage and is therefore consistent with contracting parties’ agreement and expectations.

2.3 Similarly, the Minutes of City Council’s Discussion of the SPMP Demonstrate That the Council Was Well Aware of the Size, Scale, and Volume Contemplated by the Proposed Development.

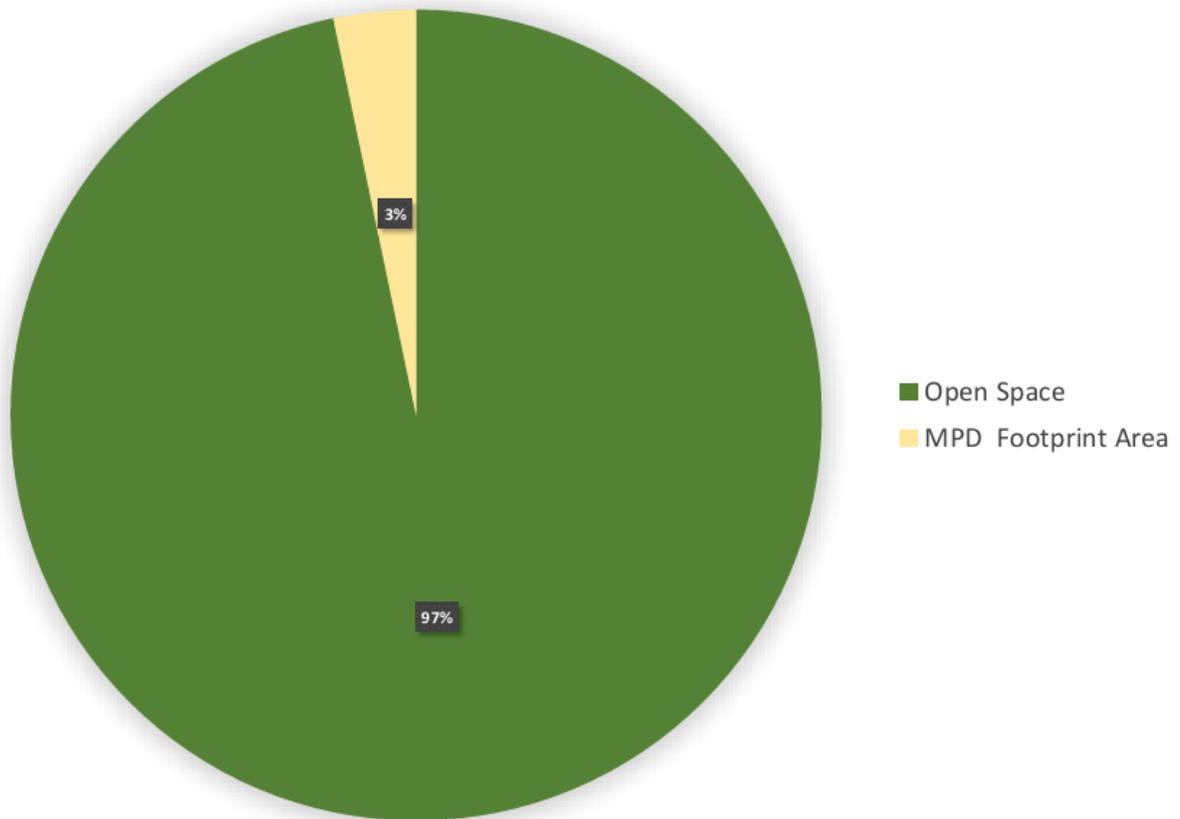
The discussion between the members of the City Council when the SPMP was approved further demonstrates that the City Council was fully apprised of the contemplated size and scope of the proposed development. In fact, the City Council members who eventually voted against the SPMP made those facts abundantly clear to the majority of members who voted for the SPMP. Councilmember Kristen Rogers, who voted against the SPMP, told the Council that “[t]he **project will have the most dramatic effect on the character of Park City in consideration of any project built or approved.** It will set a tone for the development of the community that can’t be reversed and if the rationale behind its approval is to acquire open space, **she emphasized that it may be more costly to acquire open space by allowing these large sky scraper type buildings**

to be built, than if the City actually bought the land outright. There are other ways to acquire open space that can have less of an affect [sic] on the long term of Park City.” (October 16, 1986 City Council Minutes, p. 4 (emphasis added).) The City Council nevertheless voted to approve the SPMP during that meeting—Ms. Rogers’ comments were considered by the Council and they approved the SPMP with that understanding.

Again, this passage demonstrates that when the City Council approved the SPMP and entered into the contract with the applicant, the City Council was fully advised of the size, scale, and volume of the proposed development adjacent to Old Town. Although MPE disagrees with the Ms. Rogers’ characterization of the proposed development as “large sky scraper type buildings,” her comments demonstrate that there was no misapprehension on the part of the City Council about the size, scale, and volume of the development contemplated on the Hillside Properties by the SPMP—the City Council understood the impact of development would have a “dramatic effect” on the City and that the development would be located just outside of the historic Park City Old Town.

But the City Council approved the SPMP upon the recommendation of the Planning Commission with full knowledge that the Hillside Properties development would be relatively large because it determined that the benefits of the SPMP outweighed the costs. As Councilmember Ann MacQuoid explained, “the hillside could have been stripped with roadways going up and across the hill” and “the reason for approving this master plan development” is the “trade-out for 110 acres . . . of recreational open space zoning.” (*Id.*) The City made that trade—a lot of open space for a clustered development of appreciable size, scale, and volume.

Treasure Open Space vs. Footprint Area



3. The 2003 LMC Allows the Square Footage Requested in the CUP Application.

3.1 The CUP Application under the 2003 LMC.

As discussed in numerous prior reports from Staff, the SPMP vests the project with 197 residential UEs and 19 commercial UEs between the two development areas. The 2003 LMC provides the square footage permitted for each UE: each residential UE equates to 2,000 net square feet, and each commercial UE equates to 1,000 square feet. 2003 LMC § 15-6-8(A), (E). As the Planning Commission Staff set forth on Exhibit W, the Project is therefore entitled to a total of 413,000 base square feet—394,000 net square feet in residential space and 19,000 gross square feet in allotted commercial space.

As set forth on [Sheet P.16 – Area, Unit Equivalent & Parking Calculations](#) of MPE’s submittals, MPE’s CUP Application requests less than the allowed amount of base square feet, both for residential and commercial uses, and therefore complies with SPMP Approval. The proposed net residential square footage is 393,911, and divided by 2,000 (the UE residential factor), this equates to 196.96 UEs—less than the 197 allowed under the SPMP. The proposed gross allotted commercial square footage is 18,863, and divided by 1,000 (the UE commercial factor), this equates to 18.86 UEs—again less than the 19 UEs allowed.

Planning Commission Staff and the applicant previously agreed that square footage for the residential and commercial UEs would be computed in this manner.² Indeed, this is how Staff has historically computed the square footage for UEs under this very CUP Application. Additionally, it appears this is how the Planning Commission and Staff determined the square footage for UEs for other similar projects, including the Montage.³

3.2 The Woodruff Drawings Reflect a Development of More than 875,000 Gross Square Feet.

As set forth above and explained during the July 13, 2016, hearing, the SPMP included a set of conceptual drawings (“the Woodruff Drawings”)⁴ that reflected the size, scale, and volume of the development that the parties anticipated on the Hillside Properties. MPE has carefully and thoroughly analyzed the Woodruff Drawings to determine the square footage of the development depicted on those drawings, which MPE has shared with the Planning Commission Staff.

That analysis shows that the development depicted on the Woodruff Drawings was approximately 875,000 total square feet (including below-grade space).

3.3 The Submissions with the CUP Application in 2004 Requested Approval for a Development of 849,007 Gross Square Feet.

As the Planning Commission Staff report dated July 13, 2016, explains:

The original CUP application in 2004 for Planning Commission review indicated a total of 849,007 square feet [(including below-grade space)]. The following is a breakdown of the project from the 2004 submittal:

² In an email dated December 18, 2006, then Planning Director Patrick Putt confirmed to MPE that residential UEs are “calculated as follows--2000 square feet equals one (1) U.E.”

³ Recently, Planning Commission Staff informed the applicant that Staff was considering changing how it computes square footage for vested UEs, which would reduce the total number of units allowed, although the residential square footage would remain the same or even increase. For the Staff and the Planning Commission to suddenly change their approach to this issue—and to depart from how they have treated similarly situated projects—raises serious due process and fairness concerns, particularly since Staff had previously told MPE that it would calculate the square footage for UEs in the way that MPE has in its submissions.

⁴ Although the Woodruff Drawings were clear about the overall size, scale, and volume of the development that the parties to SPMP contract anticipated, those drawings did not attempt to assign specific uses to the spaces or floor areas—a task that was left to the CUP process to flesh out. As the applicant has explained, the modest amount of additional square footage requested in the CUP Application reflects the process of turning the Woodruff Drawings into a set of specific plans and designs for the project.

Use	Square Footage
Residential	483,359
Ancillary	86,037
Support Commercial	22,653
Parking	256,958
Total	849,007

In 2006, the Planning Commission asked the applicant to provide more details on the current plan. (p. 10.)

3.4 Based upon the Evolution of Treasure Hill through the CUP Process, the 2009 Refined CUP Submittal Contemplates 1,008,808 Gross Square Feet.

As set forth on [Sheet P.16 – Area, Unit Equivalent & Parking Calculations](#) of MPE’s submittals, the CUP Application seeks approval for a development of 1,008,808 square feet (including below-grade space). Although Sheet P.16 shows a total of 1,016,887 square feet for the project, MPE has already committed to eliminating the mine exhibit from the project, which reduces the overall square footage of the project by 8,079 square feet and specifically reduces the amount of commercial space sought by that amount.

Although the Staff’s July 13, 2016, report to the Planning Commission (and certain public comments) have made much of the increase in square footage from the preliminary submissions in 2004 to the more detailed and refined submissions currently under review, the modest increase in square footage is a function of the applicant responding to the Planning Commission’s and Staff’s request for more detail.

For example, in the 2004 submissions, MPE estimated the square footage for residential units, circulation, accessory spaces such as lobbies, and other common spaces. In the course of providing more detailed submissions at the City’s request, these preliminary estimates were replaced with more specific calculations for the total floor areas needed for these spaces, which included specific residential unit configurations and associated circulation spaces. These refinements added about 56,000 square feet to the original 2004 estimates for these spaces.

Likewise, the City’s request for more detailed submissions resulted in MPE determining the floor area needed for things like central mechanical rooms, on-site laundry facilities, banquet preparation spaces, storage for all of the buildings, and underground tunnels for service and pedestrian uses between buildings that were not included in the original estimates. These spaces, many of them below grade and therefore excluded from the calculation of Gross Floor Area anyway,⁵ are specifically identified as allowable uses under the 2003 LMC that do not require UEs.⁶ Additionally, the current submissions provide for on-site employee housing, as the City has

⁵ Under Section 15-15-1.91 of the 2003 LMC, which defines “Gross Floor Area,” “Basement Areas below Final Grade are not considered Floor Area.”

⁶ See Exhibit X, MPE Memorandum on Treasure Hill Properties’ Compliance with Square Footage Limitations and Requirements, July 6, 2016; Presentation for July 13, 2016, Hearing.

repeatedly requested and required. These additional spaces account for about 50,000 square feet of space that was not part of the original preliminary estimates in the 2004 submissions.

The 2004 submissions included no square footage for support commercial or meeting space uses, which, as discussed previously,⁷ are uses that are allowed as of right under the 2003 LMC. Those spaces account for 26,729 square feet and 17,470 square feet, respectively.

It should also be noted that, where possible, the applicant reduced square footage from the 2004 estimates during the refinements that resulted in the current submissions. For example, the applicant eliminated about 25% of the parking for the Creole Site from the 2004 submissions and used some of that space for the meeting space and other uses necessitated by the refinements.

To reiterate, the current submissions were not the result of the applicant's desire to achieve a certain size of development but were instead driven by the practical needs of a project with a relatively large number of vested residential and commercial UEs and the necessary spaces and uses associated with those vested UEs. The modest increase in the 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.

3.4.1 The Changes to the Proposed Development since the Original 2004 Proposal Were in Response to Specific Directives from the Planning Commission and Staff.

From the very beginning of the Planning Commission's review of the project, the Commission and Staff directed the applicant to move density and volume away from the front edge of the project and deeper into the hillside. As early as mid-2004, the applicant revised the proposal to accommodate these directives.

During a work session in September 2004, the applicant "presented proposed revisions to address the concerns expressed by the [commissioners] and explained how they will open up the view corridors" and "will lower the height on the buildings which the Staff believed were too tall." (Work Session Minutes, Sept. 22, 2004.) During a subsequent work session, the applicant presented further modifications to the project, as requested by the Planning Commission, that "included a shift in massing." (Work Session Minutes, Oct. 13, 2004.)

As the subsequent Staff report explained, the proposed revisions included "[l]ower[ing] the entire project into the ground," and "[s]hift[ing] building volumetrics from the northern edge to the center and back of the project." (Staff Report, Oct. 13, 2004, p. 3.)

After presenting the revisions, the applicant "requested input from the Planning Commission on the massing revisions and whether [it was] moving in the right direction." (Work Session Minutes, Sept. 22, 2004.) In response, the Commission told the applicant that the revisions "were going in the right direction and [that it] appreciated the reduction in height of the buildings

⁷ See Exhibit X, MPE Memorandum on Treasure Hill Properties' Compliance with Square Footage Limitations and Requirements, July 6, 2016; Presentation for July 13, 2016, Hearing.

closest to the residential neighborhoods,” which was accomplished, in part, by pushing the buildings deeper into the hillside. (*Id.*)

The Commission encouraged the shift in volume and massing into the hillside, as proposed by the applicant in response to the Commission’s directions, noting that “a great deal of progress had been made in the massing” through the proposed revisions and that “the modification of the massing seems to work better than the previous plan.” (Work Session Minutes, Oct. 13, 2004.)

Indeed, the Commission asked the applicant to do more to push the density into the hillside, with then-Commissioner Bruce Erickson questioning why the “highest, tallest building is away from the mountain and more visible than it should be” and proposing that the “tallest buildings [be pushed] against the hillside,” just as the applicant has done with the current submissions. (*Id.*)

3.5 The 2003 LMC Allows for Additional Square Footage, and the Amount Requested in the CUP Application Is Reasonable.

As previously explained by MPE,⁸ the 2003 LMC allows for a reasonable amount of additional square footage for hotels, resorts, and residential developments over and above the square footage associated with the UEs vested in the development. The development proposed in the CUP Application includes additional square footage for uses that are expressly allowed under the 2003 LMC.

Additionally, as set forth in the application materials, the uses associated with this additional square footage are reasonable under the circumstances. *See* [P.1-P.5 – Level Use Plans](#). The additional square footage is for things like lobbies, hallways, administrative offices, equipment rental and storage, lift ticket sales, restaurants and shops for guests of the resort, meeting space, storage, and other mechanical and accessory uses that every hotel and resort needs to operate.

The additional square footage of the proposed development is entirely a function of the circulation, accessory, meeting, and commercial spaces and uses that are necessary to support a development of this size and scope. Under the 2003 LMC, the vested UEs equate to a certain amount of base square footage—2000 square feet for residential UEs and 1000 square feet for commercial. That square footage, however, is only for the particular residential and commercial units—it does not include space for hallways leading to the rooms, for elevator shafts and stairways to access those hallways, for lobby space to check in, meeting rooms, or any other areas commonly associated with hotels and resorts. The 2003 LMC contemplates that residential and resort developments will need this additional square footage in order to successfully function, and the 2003 LMC specifically and expressly allows residential and resort developments to use additional square footage for these purposes.

⁸ *See* Exhibit X, MPE Memorandum on Treasure Hill Properties’ Compliance with Square Footage Limitations and Requirements, July 6, 2016; Presentation for July 13, 2016, Hearing.

3.5.1 The Additional Square Footage Sought in the Application Is Reasonable Because It Is Necessary for the Hotel and Resort to Function.

In order to determine the additional circulation, accessory, meeting, and commercial space for the development, MPE consulted with a variety of experts in hotel and resort development and operation. MPE carefully planned and designed the proposed development so that the hotel and resort can be successfully built and operated for the long-term benefit of the community.

The square footage and volume of the proposed development are a result of the needs and requirements of successful hotels and resorts in similar locales, not a desire of the applicant to achieve a certain size of development. Each space has been carefully considered and planned so that only the necessary square footage and volume is allotted for the particular use. MPE's design is as efficient as possible given the basic needs of a hotel and resort with the number of residential units allowed under the SPMP. The size, scale, and volume of the proposed development are in line with other similar modern developments.

3.5.2 A Comparison with Other Hotels and Resorts that Park City Has Approved Demonstrates that the Additional Requested Square Footage Is Reasonable.

The Planning Commission Staff's analysis in Exhibit W demonstrates that the square footage of the proposed development aligns with the square footage of other similar developments approved by the City, including the Montage and St. Regis. In fact, because Exhibit W contained a number of apparent errors, it made the proposed development of the Hillside Properties appear virtually the same as the Montage and St. Regis from an efficiency standpoint, when, in fact, the proposed development is significantly more efficient than the St. Regis and better than the Montage as well.

The Montage

The latest Record of Survey for the Montage appears⁹ to be the Staff Report to City Council dated June 18, 2009, titled "The Hotel and Residences at Empire Canyon Resort Record of Survey." In addition, two Amendments to the Record of Survey have been made since the City

⁹ The applicant requested information from the City about its analysis in Exhibit W, as well as confirmation from the City that the information it had gathered about the Montage and St. Regis was the most accurate, up-to-date information available. Specifically, the applicant left a voicemail for and sent an email to Francisco Astorga on July 27 and 29, 2016, respectively. The City has not responded to the applicant's request for information reflected on Exhibit W. As a result, the applicant has not had the opportunity to review the information underlying Exhibit W or to clarify the apparent discrepancies between the information reflected on Exhibit W and other information in the City's records.

Note that the Record of Survey information does not contain a detailed breakdown of circulation space as opposed to other accessory uses, as apparently reflected in Exhibit W. However, since these categories are combined in Exhibit W when determining their overall percentage relative to total gross building area, the lack of detail does not affect the conclusions reached.

Council approval on June 18, 2009. The first is Ordinance No. 11-01, dated January 6, 2011, and the second is Ordinance No. 15-04, dated February 12, 2015.

Montage		
	Square Feet	% of total
Gross Floor Area (w/o parking garage)	780,173	100%
Residential (182 UEs)	364,000	46.6
Allotted Commercial (63 UEs)	58,356	7.5
Meeting Space	16,409	2.1
Accessory, Circulation, and Back of House*	341,948	43.8

* This is derived by subtracting the other floor areas from the total, with the remainder assumed to be dedicated to accessory, circulation, back-of-house, and similar uses.

St. Regis

The most current St. Regis information appears to be the Staff Report dated September 17, 2009, to the City Council titled “Deer Crest Hotel amended and restated condominium record of survey plat.”

St. Regis		
	Square Feet	% of total
Gross Floor Area (w/o parking)	416,582	100%
Residential (98 UEs)	194,750	46.7
Support Commercial**	19,481	4.7
Meeting Space	6,062	1.5
Accessory, Circulation, and Back of House*	196,227	47.1

** The St. Regis was allotted no Commercial UEs—all of the commercial space in the development is Support Commercial allowed under the LMC.

2008–09 Submissions for the Treasure project

Treasure		
	Square Feet	% of total
Gross Floor Area (w/o parking)	775,485	100%
Residential (197 UEs)	393,911	50.8
Allotted Commercial (19 UEs)	18,863	2.4
Support Commercial	33,412	4.3
Meeting Space	16,127	2.1
Accessory, Circulation, and Back of House*	313,172	40.4

Although Exhibit W includes several other developments, including Marriott Mountainside and the Yarrow, those developments are not fair comparisons to the proposed project. Those projects were developed under different development parameters and during a different era in the City's history.

The Montage and St. Regis should be used for comparison purposes for numerous reasons:

1) The Montage and St. Regis are contemporary projects: since they were recently approved and constructed, they reflect the type of hotel and resort development the City has allowed in recent years. The other projects listed on Exhibit W were approved and developed under now-outdated development codes. Moreover, industry requirements and consumer expectations have changed significantly since the other projects listed on Exhibit W were developed. It is fundamentally unfair to compare the proposed development to projects developed decades ago.

2) The Montage and St. Regis were approved under versions of the LMC that are similar to the 2003 LMC that applies to the CUP Application under submission. The applicant has requested confirmation from the City about the exact versions of the LMC that applied to the Montage and St. Regis but has yet to receive the information. However, from available information, it is evident that these two developments were subject to LMC versions similar, if not identical, to the version that applies to the CUP Application. In particular, the versions of the LMC that applied to the Montage and St. Regis apparently allowed those projects the same approximate level of square footage for commercial, meeting, and accessory and circulation spaces.

3) The Montage and St. Regis are much more similar to the proposed development in terms of overall size and scale than the other projects on Exhibit W, which are significantly smaller than the proposed development. Since relatively larger projects have unique demands and needs that relatively smaller projects do not, any comparison must take these differences into account.

4) The Montage and St. Regis both have comparable total UEs as the proposed development and it is believed that those UEs were allowed the same square footage conversion as the proposed development (2000 s.f. net residential and 1000 s.f. commercial). The other projects listed on Exhibit W have significantly fewer UEs, and it is believed that the square-footage conversion factor for those developments was different.

5) The Montage and St. Regis both have hotel and condominium unit types, like the proposed development. The accessory and back-of-house needs of residential condominium units are different from the requirements for hotel units only, and the 2003 LMC recognizes as much. Like the proposed development, the Montage and St. Regis have both types of residential units, whereas the other developments on Exhibit W do not.

4. The Volume of the Proposed Development Is Reasonable and Appropriate.

Volume is a function of square footage, a building's horizontal and vertical limits, and height. An increase in volume means an increase in construction costs, so developers have no incentive to maximize volume. Site topography and architectural design determine the location of the volume.

4.1 The Planning Commission's Review of the Requested Volume Must Be in the Context of the Conclusions of the SPMP Approval.

In considering the proposed development's volume and size, the Planning Commission is reminded of the conclusions of Park City's special counsel, Jody Burnett, who noted that the City's records for the CUP Application revealed a "common misunderstanding about the nature and degree of discretion afforded to the City under the conditional use process." (Jody Burnett Memorandum, April 22, 2009, p. 3.) As Mr. Burnett explained, although

the Planning Commission must make a finding that the pending application will be compatible with surrounding structures in use, **scale, mass and circulation, that determination must be understood and approached in the context of the findings adopted as part of the original approval of the Sweeney MPD, with particular emphasis on items 1, 2 and 3, which specifically determined that the proposed cluster development concept and associated projects are consistent with the Park City Master Plan, the underlying zoning, is or will be compatible with the character development in the surrounding area, and that the preservation of open space and other site planning attributes resulting from the cluster approach to the development of this hillside area is sufficient justification for the height and other review criteria approved at that time.**

(Id. (emphasis added).)

The City Attorney, Mark Harrington, provided the same guidance to the Planning Commission in a memorandum on April 9, 2004, explaining that

[w]hile the Planning Commission must find that any current application "will be Compatible with surrounding Structures in use, scale, mass and circulation," [LMC § 15-1-10(D)(2) and see LMC § 15-15-1.51 (defining Compatible)] **that finding must be in the context of the density that is already approved as specified in the MPD versus particular CUP criteria.**

(p. 2 (emphasis added).)

In other words, the Planning Commission is not writing on a blank slate when it comes to issues of size, scale, and volume and must evaluate the CUP Application in light of the findings and conclusions of the SPMP Approval. As explained above, the Planning Commission made those findings and conclusions in 1985 after reviewing and considering the Woodruff Drawings, which show a development of about the same square footage and volume as the proposed project.

The Planning Commission Staff addressed the volume of the proposed development in the SPMP Approval by, among other things, establishing building envelopes. Those envelopes included limiting the footprints of buildings by requiring 70% open space within each building site and placing height restrictions on the buildings. As result, all square footage must fit within the boundaries established in the SPMP Approval. As the SPMP Approval explains,

[t]hroughout the review, considerable effort has been directed at minimizing overall building height and related impacts while still accommodating the proposed density in a cluster type of development.

The staff has developed a number of recommended conditions in response to the concerns expressed over building heights. An exhibit defining building “envelopes” has been developed to define areas where increased building heights can be accommodated with the least amount of impact. (p. 11.)

Notably, the Park City Council reduced the building heights for the Hillside Properties, from those originally recommended, when the Council approved the SPMP on October 16, 1986. The fact that the City Council specifically revised those heights demonstrates that the approved building envelopes—which, in turn, establish the allowed volume of the project—were carefully and thoughtfully considered at the time of SPMP Approval.

The proposed development complies with all of the building height restrictions and open-space requirements of the SPMP Approval. In fact, the proposed development is well below the height thresholds approved by the City Council in the SPMP Approval. For instance, the average height above the existing grade at the Mid-Station site is 12 feet as compared to the 25 feet allowed under the MPD. This represents a reduction of 52%. Similar reductions were made at the Creole Site. The average height above natural grade at the Creole Site is 29 feet, compared to the allowable 45 feet, representing a 36% percent reduction. See [HL.2, S.1-S.8](#); Planning Commission Staff Report, September 23, 2009, p. 25 (finding heights comply); Planning Commission Staff Report, July 13, 2016, p.14 (finding open space compliance).

4.2 The Volume Sought in the CUP Applications Is Reasonable.

About half (49%) of the total square footage of the project has floor-to-floor heights of 10.5 feet or less.¹⁰ Floor-to-floor measurements count the space between one floor and next floor, *not from the floor to the ceiling*. Because the space between the ceiling and the next floor can vary from 1 foot to 2.5 feet, the corresponding floor-to-ceiling measurements are between 8 and 9.5 feet, which are customary and typical.

Another 6% of the square footage includes floor-to-floor heights of less than 12 feet, which translate into reasonable floor-to-ceiling heights of just 9.5 to 11 feet. Thus, 55% of the development includes floor-to-floor heights of less than 12 feet.

¹⁰ For floor areas that are at the top of a building, the heights are measured floor-to-roof, unless the building has a pitched roof, in which case the volumes are measured floor-to-ceiling. It should be noted that although the submissions are substantially developed, the plans are not final and will undergo further refinements. Although some floor heights will likely change with these additional refinements, the project will remain in compliance with building height, open space, and other required limits.

To better understand the floor heights of the rest of the proposed development, it is useful to divide the spaces between areas below final grade and areas above grade.

4.2.1 The Few Areas Above Grade That Are Greater Than Standard Floor Height Are Reasonable.

As explained above, the majority of the floor area of the proposed development includes floor-to-floor heights of less than 12 feet.

ABOVE GRADE VOLUME HEIGHTS BY PERCENTAGE

% GROSS SF ABOVE GRADE

SLAB TO SLAB	GROSS SF	%
≤ 10.5'	406,455	60.3%
10.5'+ TO < 12'	61,024	9.1%
12' TO < 14'	99,603	14.8%
14' TO < 16'	83,178	12.3%
16' TO < 18'	9,692	1.4%
18' TO < 21'	0	0.0%
21' TO < 24'	0	0.0%
24+'	13,970	2.1%
TOTAL GROSS SF ABOVE GRADE	673,922	

About 15% of the floor areas above grade have floor-to-floor heights between 12 and 14 feet. Of this area, nearly 70% of that space is at roof levels that require additional thickness for structural, insulation, and drainage requirements for the project. In other words, the additional height in these areas is necessary for the development to function.

Of the floor areas that have floor-to-floor heights greater than 14 feet, 76% are below grade, which are addressed below. The remaining 24% of floor areas with floor-to-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. Because these are larger open areas, they require higher ceilings, deeper structure, and greater space between the ceiling and next floor for HVAC systems.

Because the majority of the proposed development has modest floor-to-floor heights of less than 12 feet and because the floor heights greater than 12 feet are limited to those areas where they are necessary for the specific use, the floor heights and associated volume are reasonable.

4.2.2 Areas Below Grade Require Certain Heights to Accommodate Emergency Vehicles.

The vast majority of the floor areas with floor-to-floor heights greater than 12 feet are below ground in the parking areas of the development. These floor heights are necessary to accommodate service and emergency vehicle access and to comply with the fire protection requirements imposed on the project, which were requirements of the SPMP Approval. In addition, they must accommodate parking and driveway grade change, structure (including drop downs and transfer beams), lighting, fire sprinkling, ventilation, and other mechanical needs. Because these floor heights are effectively required by Park City, they are necessary and reasonable.

4.3 The Floor Heights in the Proposed Development Are Similar to the Floor Heights that Park City Has Allowed in Similar Developments.

The floor heights for the project are reasonable when compared to other contemporary developments of a similar nature, including the Montage and St. Regis. For example, from publicly available information, it appears the Montage is typically 11 feet floor-to-floor in the residential areas and 19 to 21 feet in the public spaces. The St. Regis is 10.5 to 11 feet floor-to-floor in the residential areas and 23 feet in the larger public spaces.

BJM: