



DATE: September 8, 2017

SUBJECT: Treasure Hill Properties' Compliance with Traffic and Parking Factors

1. Background.

The Planning Commission Staff Report dated July 13, 2016, recites the applicable background of the Sweeney Properties Master Plan ("SPMP") and current Conditional Use Permit ("CUP") Application. (*See* p. 1–2.)

This submission addresses several criteria under the Conditional Use Review Process set forth in the applicable 2003 LMC:

2. traffic considerations including capacity of the existing Streets in the Area;
4. emergency vehicle Access;
5. location and amount of off-street parking;
6. internal vehicular and pedestrian circulation system; and
13. control of delivery and service vehicles, loading and unloading zones and screening of trash pickup Areas. (2003 LMC § 15-1-10(E).)

The Applicant has proposed or adopted numerous conditions that will reasonably mitigate any detrimental effects from the project with respect to these criteria. The Applicant has already set forth and described these proposed mitigating conditions in prior submissions to the Planning Commission.

This submission summarizes the most important studies conducted on these issues, highlights a number of these proposed mitigating conditions proposed by the Applicant (but is not an effort to catalog all of them), addresses additional issues that have been raised during the Planning Commission's consideration of these factors and sets forth what the Applicant expects will be its final position related to the above conditions, although the Applicant remains open to considering any reasonable mitigating condition that is not referenced herein.

2. Summary.

Following numerous studies, reports, reviews, and updates regarding traffic-related issues, there is no doubt that while the project will generate traffic—just like every other

residence and enterprise in the City—reasonable mitigation conditions exist to offset any detrimental effects of that traffic.

The City understood when it negotiated the SPMP Approval—and later accepted substantial concessions from the Applicant—that the project would generate traffic. Vehicle trips are not a detrimental effect when the transportation system can absorb the incremental increase. Numerous studies applying generally accepted traffic engineering methods have established again and again that the project’s traffic shed can accommodate future traffic in the area, including traffic generated by the project.

Nonetheless, the Applicant has worked in good faith for years, proposing a number of further mitigations, including constructing a sidewalk on the uphill side of Lowell Avenue, giving up the right to park on nearby City streets, providing an emergency turnaround on its property for the public in the event of either Empire Avenue or Lowell Avenue being temporarily blocked, providing a cabriolet/gondola connection to Main Street, improving lift and run access to the Park City Mountain, including the construction of beginner runs, keeping its excess excavation material onsite (or above the site) as opposed to transporting it over City streets, and providing onsite amenities, just to name a few.

While there may be some disagreement about the particular mitigating conditions necessary, the essential and ultimate conclusion—that any effects can be reasonably mitigated—has not been seriously questioned by any traffic professional that has conducted an actual study. Despite objections to certain methodologies and quibbling about particular assumptions, no traffic professional has suggested that the project’s traffic-related effects, including during construction, cannot be mitigated through standard, reasonable conditions. Because a conditional use “shall be approved if reasonable conditions” exist to “mitigate the reasonably anticipated detrimental effects,” the Application satisfies the CUP criteria identified above and should be approved with reasonable conditions. Utah Code Ann. § 10-9a-507.

Although recently, questions have been raised about “road capacity” and operations, particularly during snowstorms, the City has chosen to narrow Lowell Avenue—the primary route to the project—by three (3) feet during the upcoming planned reconstruction. Although the road width will be less than generally accepted traffic engineering standards, the City decided to narrow Lowell Avenue based on its consultant’s conclusion that Lowell Avenue—even three feet narrower—had ample capacity to handle existing and future traffic, including and specifically future traffic from the Treasure project. The City recently accepted \$183,000 from the Applicant to satisfy part of the Applicant’s obligation to help reconstruct Lowell Avenue to handle future construction traffic. The City’s deliberate decision to narrow Lowell Avenue obviously has operational and capacity implications for the City. Any detrimental operational or capacity effects from the City’s decision to narrow Lowell Avenue are the City’s responsibility. The City and the Applicant will have to work cooperatively to solve any operational and capacity issues that arise from the City’s decision to narrow Lowell Avenue and future traffic related to the project, including during snowstorms.

The Application also complies with the SPMP Approval regarding parking and seeks less parking than provided under the applicable 2003 LMC. All parking for the project will be contained in structures onsite as required by the SPMP Approval. Because the Applicant’s

proposed parking complies with the applicable standards, there are no detrimental effects to mitigate.

3. Pertinent History.

3.1 1984 Streets Master Plan.

Park City adopted a Streets Master Plan in 1984, just prior to the original SPMP Approval. That report recognized that as a result of the expected “significant residential development” approved in the “area adjacent to the Park City Ski Resort,” the “anticipated development will *necessitate considerable improvement to the existing street system.*” (1984 Streets Master Plan, p. 2–3.) Thus, even before the SPMP Approval was finalized, the City understood that future development in that area would require a substantial amount of improvement to the existing streets.

Related to street capacity, the 1984 Streets Master Plan’s “Inventory of Existing Streets” contained a survey of proposed improvements to existing streets. Pertinent to the issues currently before the Commission, the 1984 Streets Master Plan recommended that Lowell and Empire Avenues be constructed to a 25-foot asphalt width south of Manor Way. (1984 Streets Master Plan, Exhibit A-4.)

3.2 1986 SPMP Approval.

The SPMP Approval addressed a number of issues relating to traffic and parking, particularly issues relating to construction traffic and parking. First, the SPMP Approval recognized that there would be significant construction traffic, specifically, that “during construction these roads will need to carry heavy traffic, probably in the vicinity of up to 300 heavy trucks per day.” (SPMP Approval, p. 5.) The SPMP Approval also authorized the Applicant to haul any excess excavation material that could not be placed onsite over City streets. (*Id.* at 6.)

The SPMP Approval also addressed the eventual reconstruction of Lowell Avenue to handle the construction traffic, permitting the Applicant to pay the incremental cost of the additional pavement thickness if the City was reconstructing Lowell Avenue as part of a normal maintenance project. (SPMP Approval, p. 5.)

Notably, the description of the reconstructed Lowell Avenue included a “25-foot asphalt width.” (*Id.*) Likewise, the SPMP Approval noted elsewhere that the City expected to improve both Lowell and Empire Avenues “in order to facilitate traffic movement in general.” (SPMP Approval, p. 13.)

The SPMP Approval also recognized that it would be necessary for at least some construction employees to drive to the worksite. “To minimize additional construction traffic impacts,” the SPMP Approval specifically provided for “on-site material stockpiling/staging and parking. . . during the course of construction.” (SPMP Approval, p. 6.)

3.3 Prior phases of Planning Commission review of CUP Application (2004 to 2010).

In the course of Planning Commission hearings since 2004, the Applicant has provided numerous options for the City to consider regarding improvements to Lowell and Empire Avenues to address existing problems like parking, snow removal, pedestrian safety, and emergency and service vehicle access. For the most part, these options were either dismissed, ignored, or rejected, even when the Applicant offered to share in the cost.

As described below, during this period, the City commissioned its own traffic study by Fehr & Peers in July 2005. That study generally corroborated the conclusions of the Applicant's own traffic study. The Fehr & Peers study also placed responsibility for operational conditions on Lowell Avenue, including conditions related to snowstorms, directly at the feet of the City. Indeed, during a Planning Commission meeting on February 28, 2006, the Chair of the Commission, Commissioner Barth, pointedly asked Staff whether the "City could make the commitment suggested in the [Fehr & Peers] traffic study for stepping up snow removal and parking enforcement."

During a hearing before the Planning Commission on December 14, 2005, the Commission discussed the future design of Lowell Avenue with Ryan Hales from Fehr & Peers. Mr. Hales explained the need for a 25-foot road width to accommodate all of the required design elements. The Commission had similar discussions with the Applicant's traffic engineer, Mr. Horton, during a hearing on March 8, 2006.

3.4 2011 Traffic and Transportation Master Plan.

In October 2011, Park City adopted a new Transportation and Traffic Master Plan prepared by InterPlan. The plan included new "Standard Street Cross-Sections," replacing the previous street sections of the 1984 Streets Master Plan. Among the new cross-sections were designs for streets classified "Local Street - Old Town" and "Local Street - non-Old Town." The new designs called for a reduced asphalt width of 22 feet (3 feet narrower than previous residential street standard) and then designated 4.5 feet of the asphalt surface for "flex space/parking," effectively narrowing the travel lanes to a total of only 17.5 feet, which is less than the minimum outlined in AASHTO Standards for residential streets. The expected daily traffic volumes for these new sections were 2,000 cars, with a threshold of 2,500 cars per day.

The 2011 Traffic and Transportation Master Plan also noted the City's continued preference for "clustered" development, the same approach taken in the SPMP Approval. (2011 Traffic and Transportation Master Plan, p 4-1.)

3.5 2014 Park City General Plan.

The City's General Plan adopted in 2014 acknowledges that

[f]uture development will place demand on Lowell and Empire Avenue. Consistent with the Sweeney/Treasure Hill MPD, additional improvements to manage increased traffic demand will be necessary. Transportation design should direct traffic toward

Lowell Avenue and lower Empire Avenue (north of Manor Avenue) to access future development of Treasure Hill and the Bamberger Lots. (Park City General Plan, 2014, p. 197.)

3.6 Lowell Avenue Traffic Modeling.

In a report dated April 2, 2015, which is discussed further below, InterPlan provided the City with a traffic modeling analysis to assist the City in redesigning Lowell Avenue for future reconstruction.

The 2015 InterPlan report explained that “forecasted traffic volumes are an important consideration in determining the design cross section of the roadway.” (InterPlan Report, April 2, 2015, p. 1.) The report explains that future functional classification is influenced by “traffic volumes anticipated from potential future development and forecasted growth” and that the City “may consider reconstructing Lowell at the next higher functional classification: Minor residential Collector.” (*Id.*) Presumably the City could have chosen standards somewhere between the two standards as well.

The 2015 InterPlan report identified both the Treasure Hill Properties project and the Bamberger property as two major potential areas of development. The report considered expected traffic contributions from both projects as part of its analysis.

Three travel demand model runs were considered, with Treasure Hill project traffic as the variable condition: 1) only permitted access via Lowell Avenue, 2) only permitted access via Empire Avenue, 3) permitted access via either road. The calculated PM peak hourly traffic volumes from the demand model results were then converted to Annual Average Traffic volumes using UDOT Traffic Recorder outputs. The conclusion of the City’s modeling analysis was that none of the Treasure Hill scenarios produce “average annual daily traffic volumes that exceed the threshold” of “2,500 vehicles per day” on either Lowell Avenue or Empire Avenue.” (*Id.* at 4.) Based on that conclusion, InterPlan advised the City that “Lowell Avenue can be reconstructed to Local Road functional class specifications.” (*Id.* at 5.) As stated above, under the City’s current Transportation Master Plan, roads so classified can be less than 25-foot asphalt width.

3.7 Lowell Avenue Reconstruction Open House.

Notably, nothing in the materials prepared by the City for the Open House on February 16, 2016 for the Lowell Avenue reconstruction drew attention to the fact that the City intended to narrow the existing roadway by 3 feet. The decision to narrow Lowell Avenue is the City’s decision, not the Applicant’s.

4. Numerous Studies Confirm that Any Detrimental Effects of the Project Can Be Adequately Mitigated with Standard Conditions.

4.1 The Applicant has invested heavily to provide Park City with a number of traffic studies requested by the City.

In support of its CUP Application, the Applicant has submitted numerous traffic and other related studies over the course of thirteen years, including the following:

1. Traffic Impact Analysis, PEC (July 2004)
2. 1st Addendum to Traffic Impact Analysis, PEC (March 2005)
3. 2nd Addendum to Traffic Impact Analysis, PEC (April 6, 2005)
4. 3rd Addendum to Traffic Impact Analysis, PEC (January 7, 2008)
5. Walkability Study/Recommended Improvements, PEC (March 31, 2009)
6. Lowell Ave. Improvements Opinion Summary, Alta Engineering (April 2, 2009)
7. 4th Addendum, PEC (April 2, 2009)
8. Parking Counts, Alta Engineering (April 15, 2009)
9. Revised Letter, Walkability Study/Recommended Improvements and Effects on Traffic of Proposed Roadway Section on Empire, PEC (June 18, 2009)
10. 5th Addendum, PEC (June 18, 2009) (parking generation study)
11. 6th Addendum, PEC (June 25, 2009)
12. Streetscape Sketches, Perkins Associates (June 25, 2009)
13. Proposed Parking and Traffic Operations (July 16, 2009)
14. Treasure Hill Traffic Study Summary, Triton Engineering (January 2017)
15. 7th Addendum, Triton Engineering (July 27, 2017)

4.2 All of the Applicant's studies, as well as numerous studies commissioned by Park City, have concluded that the traffic generated by the proposed project can be adequately addressed through standard mitigation measures.

The foregoing studies all conclude that the proposed project will not adversely tax the capacity of the roads that will be used to access the project and that reasonable conditions exist to mitigate any detrimental effects of traffic generated by the project. These conclusions are corroborated by other studies, including the Fehr & Peers July 2005 Treasure Hill Traffic

Review, commissioned by the City, and the City's Lowell Avenue Traffic Modeling Memorandum prepared by InterPlan (April 2, 2015).

In fact, the City's Fehr & Peers study found the project and its proposed mitigating conditions comply with the City's LMC and address all CUP requirements.

The latest study by Triton Engineering (the 7th Addenda to the original study) concludes, based on generally accepted traffic engineering principles and methods, that "the roadway network can facilitate the traffic needs for existing and future traffic, including the traffic anticipated from the Treasure Hill project" and that simple and ordinary improvements will permit the intersections to "operate at an acceptable level of service in the future." (p. 4.) Although the City's latest consultant has quibbled with certain aspects of the 7th Addenda, it did not dispute the ultimate conclusion of the 7th Addenda or the City's earlier Fehr & Peers report.

It is also worth noting that over the past thirteen years, the Applicant has invested an extraordinary amount of time and money to identify solutions to improve walkability and traffic flow as compared to existing conditions. For example, the Applicant has paid for numerous studies to assess pedestrian issues on Lowell and Empire Avenues. The Applicant's studies have also identified existing and future improvements the City could make to its street system to improve traffic conditions for everyone. All of these studies and recommendations have been provided to the City at no cost. Regrettably, many of those suggestions, particularly those to improve the pedestrian experience on Lowell Avenue, have been ignored. Nevertheless, the Applicant has done its best to provide the City with all of the potential options for addressing traffic and related issues in the vicinity of the project, whether those issues were generated by the project or not.

After careful review of the potential impacts on both traffic and parking in the project area, the Applicant has undertaken and proposed numerous mitigation measures to address the substantive concerns raised by the Planning Commission, Staff, and the public.

4.3 The Applicant's Mitigation.

Because access to the project will be by Lowell and Empire Avenues,¹ the majority of the proposed traffic mitigation measures address these streets in the vicinity of the project. Nonetheless, many of the proposed mitigation measures are also projected to have a positive traffic reduction effect elsewhere, including the downstream traffic corridors. As discussed in greater detail below, the Applicant's mitigation, current and proposed, exceeds the required mitigation requirements by addressing and accommodating concerns outside the scope of the project.

4.3.1 Accomplished Mitigation.

¹ The Applicant and Park City have always anticipated that Lowell Ave. would be a primary access point for the Project, which is why the Applicant's predecessor in interest was required to participate in the special improvement district to pay for improvements on Lowell Avenue in 1974. (SPMP Approval, p. 5 ("Empire Avenue and Lowell Avenue will be the main access routes to the Creole Gulch site."))

Some traffic and parking mitigation conditions the Applicant has already performed or accomplished through the original Master Planned Development process and subsequent performance under the SPMP Approval in connection with other phases of the development. These include the following:

- Significant reduction in density—a reduction of about 173 unit equivalents out of an original 450—resulting in the project having approximately 1/8th the density per acre compared with adjacent neighbors.
- Clustered development in single location instead of building hundreds single family homes on approximately 4 miles of new City streets connecting to Upper Old Town and possibly beyond, which would generate more vehicle trips.
- The conveyance by Sweeney Land Company at no cost to the City, the land that enabled the “loop” connection for the Lowell and Empire Avenues.
- The provision by MPE of funds for the study, design, and construction of Lowell Avenue to create a roadway that will accommodate the existing and future traffic volumes.
- The creation of 4 miles of bike trails and foot paths providing pedestrian/bike alternatives.
- Conveyed to the City its title to Crescent Walkway.
- Construction of Town Lift System.
- Construction of Town Run.
- Construction of Town Lift Base.
- Construction of Town Bridge.
- Facilitated the partial completion by others of 8th street stairs

4.3.2 Planned Mitigation.

The Applicant has proposed a bevy of additional mitigating conditions related to traffic and parking. These include the following:

- Construction of the cabriolet/gondola, which removes vehicles on the roadway, moving up to 2,500 people per hour. The cabriolet will also facilitate employee travel by public transportation.

- Construction of new ski runs for beginner and intermediate skiers to provide an all-ability-levels connection to the Park City Mountain Resort. These ski runs will provide additional trail connections during the summer months of the year.
- Construction of commercial space and amenities oriented toward project users.
- On-site housing for some employees.
- On-site commercial elements, which recent studies have found significantly reduce trips between various land uses located within the same development (hotel, employee housing, residential, and commercial).
- Designation of an on-site transportation demand coordinator.
- During the winter ski season, other special events like Sundance Film Festival, and at other appropriate times, the Treasure Hill development will direct and incentivize employees to use public transportation.
- During the winter ski season, other special events like Sundance Film Festival, and at other appropriate times, provide for a shuttle from the airport to the project, which can either be exclusive to the project, operated jointly with others, or contracted out with existing operators.
- Signage, social media, and other project information will identify the desired traffic routes to the project and encourage the use of alternative modes of transportation.
- Service traffic will be directed to follow specified routes to and from the project.
- To the extent feasible, employee work shifts that begin and end outside the AM and PM peak hour of travel.
- All project parking will be on-site as opposed to City streets.
- Support the City's policies regarding on-street parking on Lowell and Empire Avenues and assist the City's parking enforcement efforts on the streets.
- Level the berm on the inside of the Lowell and Empire switchback and revegetate with low lying plants to improve driver visibility and safety at that section of roadway.

- Provide an emergency turnaround on its property for the public in the event of either Empire Avenue or Lowell Avenue is temporarily blocked.
- Willingness to construct a sidewalk on the uphill side of Lowell Avenue.
- Remove snow from the south side of the Lowell/Empire connection adjacent to the project.
- Remove snow from the Crescent Walkway (other than where it crosses the Town Run).

4.3.3 Construction Mitigation.

Because construction activities have their own unique traffic impacts, the Applicant has specifically proposed mitigating conditions to address such impacts, including the following:

- Most construction workers will either park offsite and be shuttled to the site or use public transportation.
- Construction-related traffic will be directed to follow specified routes.
- Construction staging will be accommodated on-site.
- The enhanced road section on Lowell Avenue will be used for heavy loads.
- Material deliveries will be coordinated, adhere to a traffic control plan approved by the City, and will be limited to favorable weather conditions on specified delivery routes.
- Excavated waste material will, to the greatest extent possible, be placed onsite and on the adjacent Park City Mountain (with which the Applicant has agreements), resulting in reduced construction haul traffic.
- Traffic control meetings will be held regularly with construction personnel and will address employee parking, safety, noise, and any other traffic-related concerns that arise.
- A project website will be maintained to communicate delivery and construction traffic schedules to neighbors, as well as receive input from neighbors regarding such issues.

- The project’s construction superintendent will be available to communicate directly with neighbors regarding any traffic or parking issues.

The foregoing list represents the standard and typical mitigating conditions used on large construction projects. Again, the Applicant remains open to discussing other reasonable mitigating conditions.

5. Although the City’s Outside Traffic Engineer Generally Corroborated the Findings of the Applicant’s Study, the City’s Approach to Traffic Issues Has Failed to Comply with the Applicable Conditional Use Permit Standard.

5.1 Although the City’s Review of the 7th Addendum Suggests Certain Improvements to the Analysis, the Report Generally Agrees with the Key Findings of the 7th Addendum and Ultimately Concedes that Any Detrimental Effects Can Be Mitigated.

The City’s review of the 7th Addendum, prepared by LSC Transportation Consultants on June 27, 2017, is not an independent traffic study, but merely a critique of the methods employed in the 7th Addendum.

Generally speaking, the LSC review endorses much of the approach taken in the 7th Addendum:

- “The 10 percent reduction applied to the hotel and residential trip generation that is a result of the direct ski area access is appropriate given the site’s location, expected distribution of trips by trip purpose, and the assumption that guests and residents of the market rate units with an interest in skiing at PCMR will tend to choose this development” (p. 3-4);
- “On balance . . . this data indicates that the 30 percent reduction assumed in the Treasure Hill study [for the cabriolet trip reduction] is not unreasonable” (p. 5);
- “Overall, . . . the 30 percent factor assumed for Treasure Hill is in line with the analysis results of” other studies (p. 6); and
- “The proposed cabriolet is a key strategy to reduce trips and parking impacts in the Old Town area” (p. 7).

Although the last section of the LSC review report speculates that capacity on Lowell and Empire Avenues could be reduced by the combination of snow, roadway grades, and numerous residential driveways, the consultant performed no studies of any of these issues. Furthermore, the City’s consultant conceded that the “concept of ‘capacity’ on a local residential street” is a vague and ambiguous principle since the term “can have different meanings to different people.” (LSC Transportation Consultants Memorandum, June 27, 2017, p. 6.) Indeed, the City’s

consultant explained that concept of “capacity for residents along a local street is more a matter of the *appropriate* maximum level of traffic noise and safety concerns,” a completely amorphous and subjective standard that is incapable of objective assessment. (*Id.* at 7 (emphasis added).)

Instead, the City’s consultant recognized that from an engineering perspective, “capacity is a measure of vehicles to be accommodated during a specified period,” precisely the type of analysis undertaken by the Applicant’s study and report. (*Id.* at 7.)

Finally, the review opines that the daily traffic threshold of 2,500 cars per day is *already exceeded* on Lowell Avenue based on its analysis of peak-hour volumes. This opinion directly conflicts with the City’s own study prepared by InterPlan in 2015, which, as discussed above, concluded that (1) existing daily traffic volumes on Lowell Avenue did not exceed the threshold, and (2) even with future development, both at Treasure Hill and elsewhere in the vicinity, the daily traffic volume threshold would not be exceeded. The recent review commissioned by the City seems completely ignorant of the fact that the City’s own expert, InterPlan, reached opposite conclusions just two years ago. Indeed, the review does not even reference the 2015 InterPlan report, suggesting that the City failed to provide this critical information to its own consultant.

While the LSC review report suggests some additional study and modifications to the existing analysis, the review report suggests a number of mitigating conditions that LSC believes can mitigate the expected traffic-related impacts of the project. Although the Applicant does not necessarily agree with LSC’s proposed mitigating conditions, the fact remains that it is LSC’s apparent professional opinion that any negative effects can in fact be mitigated.

5.2 While the Applicant Is Willing to Discuss Additional Mitigation Conditions, Some of the City’s Proposed Conditions Are Unreasonable and Violate the Conditional Use Permit.

Although the Applicant is willing to consider any reasonable mitigating condition that addresses a demonstrated detrimental effect from the project, including any mitigating conditions related to traffic and parking, proposed mitigating conditions must be reasonable in scope and effect.

Without addressing each one individually, the Applicant notes that the number of supposed mitigating conditions proposed by the City during the pendency of the CUP Application are neither reasonable nor comply with applicable law governing Conditional Use Permits.

For example, the City has suggested that the project must require all employees not living on-site to travel to the site using public transportation, even when there are no traffic concerns whatsoever associated with employee trips. (Aug. 9, 2017 Staff Report, p. 60.) Because the Conditional Use Permit standard only requires mitigation of “reasonably anticipated detrimental effects,” Utah Code Ann. § 10-91-507, the City cannot insist upon a mitigating “condition” that does not actually mitigate any harm. The Applicant’s proposed mitigating condition is tied directly to the reasonably anticipated detrimental effect—that is, the Applicant will undertake mitigation when there is likely to be an actual traffic problem. When there are no expected

problems from employee trips to the project, such as during low tourist seasons, there is no rationale or legal basis for requiring “mitigation.”

Similarly, the City’s proposal to use so-called “Potential Qualifying Standards” (or PQSs) for assessing traffic mitigation (and, apparently, other aspects) is not only inconsistent with the way the City has approached other CUP applications but also contradicts the applicable Conditional Use Permit standard. Again, just for example, the City’s suggestion that the project must generate “[n]o net increase in trips” from employees does not conform to the Conditional Use Permit standard. (Aug. 9, 2017 Staff Report, p. 60.) First, the applicable standard requires mitigation of anticipated effects, not their elimination. Yet, the standard by which the City proposes to judge the Applicant’s mitigation efforts is complete elimination. Simply stated, that is not the correct standard. Second, the City has not identified any detrimental effects from at least some employee trips to the project. Although employee trips obviously contribute to the overall traffic generated by the project, the City has failed to establish that every single trip to the project has a negative effect. Clearly, some employee trips to the project are possible without negatively affecting traffic issues. Even the City’s own traffic consultant acknowledges that some employees should be allowed to drive to the project. (LSC Transportation Consultants, June 27, 2017, p. 7.)

The City’s August 9, 2017, Staff Report contains a number of other supposed PQSs that violate the Conditional Use Permit standard in various ways. Again, to reiterate, the Applicant remains open to discussing any reasonable mitigating condition that addresses an anticipated detrimental effect. However, many of the City’s proposed PQSs either do not address reasonably anticipated detrimental effects of the project or are not reasonable in scope, size, method of implementation, or cost.

Likewise, in the past the City has essentially suggested that the project’s commercial amenities be of such poor or low quality that they are unlikely to attract guests, whether those guests are staying at the project or elsewhere. The notion that *any* offsite patronage will significantly contribute to traffic or parking problems is disingenuous. Stated differently, the Applicant should not be expected to only seek out sub-par tenants or tenants not typically associated with a high-end hotel in order to assure that no one from outside the project will ever visit the project’s retail tenants. Triton Engineering’s studies already take into account the impact upon Empire and Lowell Avenues that arises from the anticipated uses associated with the project, including the commercial uses, and that study clearly shows that project-related traffic and parking has been anticipated and mitigated.

5.3 The City Has Refused to Provide the Applicant with Basic Information about Its Analyses So that the Applicant Can Provide a Response.

Not only does the August 2017 Staff Report contain a number of supposed mitigating “conditions” that are both unreasonable and contrary to the applicable Conditional Use Permit standard, it also contains statements about projected traffic from the project that appear, on their face, to be erroneous.

Specifically, the City’s August 9, 2017, Staff Report states that based on the Applicant’s traffic study, the City Engineer calculated that the “the Treasure project would be responsible for

approximately 36% of the difference in delay” at the intersection of Empire Avenue and Silver King Drive, and “approximately 52% of the delay” at the intersection of Lowell Avenue and Silver King Drive.

The Applicant’s representative from Triton Engineering, Mr. Horton, has expressly requested the information the City used to make the specified calculations, but to date, the City has failed and refused to provide that information. As the fundamental principles of due process require adequate notice and an opportunity to respond, the City’s refusal to provide basic information to support the accusations it has leveled against the project raises significant due process concerns.

6. Any Capacity-Related Concerns Due to Operational Issues Must Be Addressed by the City, which Has Chosen to Narrow Lowell Avenue by 3 Feet.

Apparently recognizing that standard and sound traffic engineering principles demonstrate that any traffic-related detrimental effects of the project can be adequately mitigated through standard techniques, the City has vaguely requested that the Applicant address how road capacity may be affected by particular operational issues, such as large snowstorms.

As set forth above, throughout the history of the City’s consideration of expected development in the area of the project, the City has recognized that such development, including the development of Treasure Hill, would require the City to substantially improve its roadway system in the vicinity. Moreover, for decades, the City believed and reported that Lowell Avenue should be no less than 25-feet wide.

In 2015, the City hired a third-party traffic engineer (InterPlan) to specifically study the traffic patterns on Lowell Avenue and to recommend design standards for the reconstruction of Lowell Avenue. InterPlan concluded that not only would future daily traffic averages not exceed Lowell Avenue’s existing capacity (a conclusion LSC’s review report contradicted a few weeks ago), but also that the City could actually narrow the street by 3 feet. The City in fact accepted a substantial amount of money from the Applicant to carry out its reconstruction plans for Lowell Avenue, including narrowing the street.

Yet now, the City suggests it is the Applicant’ duty to assess the operational effects of narrowing the street by 3 feet, including how that will potentially affect Street capacity during snowstorms, garbage pickup, lackadaisical parking, and other relatively unique events that may affect traffic on the street. While the Applicant remains committed to considering any reasonable mitigating conditions related to *the project’s* adverse effects, the project is not responsible for the City’s decision to substantially narrow Lowell Avenue, and the City should be asked to explain its decision to Applicant and the public. While the Applicant generally believes that the InterPlan report was accurate in its overall assessment, it is not the Applicant’ role to question the wisdom of the City’s street design. To the contrary, it is the City’s obligation under the SPMP Approval to construct and maintain roadways that are adequate to carry anticipated traffic to the project.

As the Applicant and its representatives have repeatedly discussed with Staff, road capacity issues related to the operation and maintenance of Lowell Avenue is ultimately the City’s responsibility. It is the City, after all, that will conduct snow removal activities on Lowell

Avenue, decide what parking restrictions will be implemented, choose how to enforce parking restrictions, and otherwise conduct routine and typical municipal services that affect traffic. While the Applicant reiterates that it remains open to discussing road and operational issues with the City, these issues appear to ultimately be the City's responsibility, especially since the City has decided to narrow Lowell Avenue, which will obviously exacerbate any existing and future road capacity issues.

7. The CUP Application Complies with the MPD's parking requirements and Park City's parking ordinance.

The SPMP approval recognized that “[t]he required parking can readily be provided on-site and in enclosed structures.” (SPMP Revised Staff Report, December 18, 1985, p. 2.) In other words, the City determined that there would be no effects from parking because it would all be contained on-site and largely underground.

The SPMP Approval implemented that solution, providing that “[p]arking shall be provided on-site in enclosed structures and reviewed in accordance with either the table on the approved Restrictions and Requirement Exhibits or the adopted ordinances at the time of project approval.” (SPMP Revised Staff Report, December 18, 1985, p. 3.)

According to the 2003 LMC, if the project incorporates two uses, the use requiring more parking spaces shall govern. *See* 2003 LMC § 15-3-6(C). Clearly, the intent of this ordinance is to ensure there is sufficient parking for a project.

Following these parameters, the initial parking requirements are calculated to be 631 parking stalls. This number reflects the unit sizes for all condominiums, hotel rooms, employee housing, and only the support commercial space located within the hotel, as provided for in the 2003 LMC parking ratio.

The Applicant, however, believes that 631 parking spaces may be excessive and that a reduction is appropriate for this Project. (*See* 5th Addendum to Traffic Impact Analysis, June 18, 2009; 7th Addendum, July 26, 2017.) Consistent with these studies and the principles explained in those studies, the Project more appropriately requires approximately 433 parking spaces, which is obviously well below what the applicable ordinance permits.

All proposed parking will be in enclosed structures and will be located substantially below existing natural grade, as agreed to in the SPMP Approval. The Applicant agrees that no parking for the project will be allowed on residential streets and that the project will support the City's efforts to enforce such restriction. Likewise, residents of the project will not be eligible for any on-street residential parking permits.

The Applicant has carefully studied the question of how many parking spaces it needs to serve the project, and the Applicant seeks no more parking space than is absolutely necessary. The Applicant's request for approximately 433 parking spaces is therefore reasonable, complies with applicable municipal ordinances, and complies with the SPMP Approval.

8. Additional Traffic and Parking-Related Issues.

8.1 THINC's Posture.

THINC has repeatedly taken the position in recent hearings before the Planning Commission that Lowell and Empire cannot accommodate any more traffic, but wants to have its cake and eat it too. In a March 8, 2006 Planning Commission meeting, Brian Van Hecke, one of the leaders of THINC, in referring to a suggestion of MPE's traffic engineer, Gary Horton, that the street could be widened to 29 feet, noted that "the width is reduced considerably during the winter period in terms of widening the roads." The minutes also reflect Mr. Van Hecke's statement that ". . . he calculated that 30,000 trucks per year go down that road, and he did not want those trucks any closer to his living room than they already are." In other words, THINC, which complains of the alleged narrowness of Lowell and Empire, also does not want Lowell and Empire to be widened. In short, THINC does not want *any* solution because it opposes the project.

Additionally, much of the public comments relating to traffic issues have related to problems with the *current* conditions.

8.2 Responsibility for Improvements.

Also in the March 8, 2006 Planning Commission meeting, the City's Engineer, Eric DeHaan, "clarified that in the development of Treasure Hill, the Sweeney family is obligated to replace the existing roads with a thicker pavement so it is structurally capable of handling heavy traffic. The City is obligated to make the other improvements as necessary. . . ." As noted above, MPE paid the City \$183,000 to thicken road pavement. If there are other incremental effects attributable to the project, MPE is prepared to pay for measures meant to mitigate them, so long as such effects are not speculative.

8.3 Purported Lack of Compatibility.

The Applicant notes that at least one commissioner has previously stated that the widening of the roads should be regarded as an additional impact and not as mitigation, leaving the Applicant in a "damned if it does, damned if it doesn't" position. The City has designed Lowell and Empire, not the Applicant, and the City has decided against road widening and in fact, is presently narrowing Lowell. The Applicant, however, is cognizant of an exchange that took place in the April 22, 2009 Planning Commission meeting between one of the planning commissioners and outside counsel to Park City, Jody Burnett, regarding what would happen to vested rights if impacts could not be mitigated: "Burnett stated that in theory, [vested rights] could be denied . . . [but that] Mr. Burnett believed the law suggests that the burden would shift to the Planning Commission to articulate the facts and circumstances of why conditions could not be crafted to mitigate reasonably anticipated detrimental impacts." The minutes continue: "Mr. Burnett was concerned about using that as an attempt to question the wisdom of the original decision made in 1986. He did not think that would stand as a reason."

Regardless of the City's decision with respect to road width, any decision by the City to find lack of compatibility due to traffic concerns, which concerns were clearly recognized by the City at the time of SPMP Approval, would be an extraordinary act of bad faith.

9. Conclusion.

The Applicant has equal rights under the law to use a public right-of-way in the same manner as the general public. Both Empire Avenue, dating back to the Snyder addition town site plat amendment, and Lowell Avenue, upon its creation in the 1970s, abut the project. The law requires the provision of access to adjacent properties. *See Oak Lane Homeowners Ass'n. v. Griffin*, 2009 UT App 248, ¶ 10, 219 P.3d 64; *see also* Utah Real Property Law § 12.02(b)(2)(III). The fact that the Project was required to contribute to the Lowell Avenue Special Improvement District, and later conveyed, without monetary consideration, the right-of-way for its connection to Empire Avenue, fortify this claim.

The numerous traffic studies discussed above demonstrate that the existing streets have ample capacity to handle traffic from the project and other nearby future developments, irrespective of mitigation, provided the City enforces reasonable parking regulations and plows the streets. While inherently there are and will be intermittent traffic issues in the immediate neighborhood and downstream, such as accidents, the Sundance Film Festival, snowstorms, and the end of the day exodus from the ski areas in town, because of the nature of the project and the identified mitigators, the project will not significantly contribute to these traffic issues and may, in fact, have a net positive effect on the overall traffic issues as a result of its role in providing cabriolet/gondola access to Main Street and pedestrian access to support commercial.

In sum, the foregoing analysis demonstrates the Applicant has successfully addressed CUP criteria 2, 4, 5, 6 and 13.