

**PARK CITY PLANNING COMMISSION  
WORK SESSION  
June 9, 2010**

PRESENT: Dick Peek, Brooke Hontz, Richard Luskin, Adam Strachan, Thomas Eddington, Ron Ivie, Jeff Schoenbacher, Mark Harrington, Polly Samuels McLean

Commissioner Savage was excused.

Commissioner Pettit was recused due to a conflict of interest with the work session item

**WORK SESSION ITEMS**

**Mine Soil Hazard Mitigation Plan for Empire Pass**

Chief Building Official, Ron Ivie, updated the Planning Commission on an issue that was brought to his attention earlier in the day regarding the capacity issue at Richardson Flats relative to Talisker and United Park City Mines. The Planning Commission was being asked to ratify the amended Mine Soils Mitigation Plan and Mr. Ivie wanted to provide additional information so the Planning Commission could decide whether to move forward with the ratification this evening or wait for further details.

Mr. Ivie reported that earlier in the day he had received a letter from David Smith relative to Empire Pass and soil issues related to the repository. Copies of that letter were provided to the Planning Commission. Mr. Ivie noted that in 2005 a Memorandum of Understanding (MOU) between the City and Talisker, the City agreed to codify the use of Richardson Flat for projects that generate soils within City limits. An amendment was made to the MOU in 2008 granting the USEPA oversight over the site. That was the reason for drafting language that allowed flexibility to the Mine Company because USEPA would be making the decisions.

Mr. Ivie stated that the Richardson Flat repository is only open during seasonal times because of mud and other conditions. Just prior to Richardson Flat opening a few weeks ago, the City was notified by the USEPA that they were being restricted from taking any other soils out to Richardson Flat. Mr. Ivie believed this was a breach of agreement relative to the MOU and he has been trying to find out from both the Mine Company and the EPA the underlying circumstances for the closure and who set the limits on Park City's capacity at Richardson Flats. He recalled from previous discussions that the intent was to reserve 1.5 million cubic yards of capacity for Park City and others in the community.

Mr. Ivie pointed out that until today, he never understood that the Mine Company had proposed a limit for Park City of 101,000 cubic yards, as stated in Mr. Smith's letter. He finds this disingenuous because the City believed they were working with the Mine Company in a collaborative way to achieve a workable solution to mine waste in the community. Mr. Ivie noted that the City sent a delegation to Denver yesterday to speak with the EPA about this very issue. Because this new information was not known until Mr. Smith's letter was received this afternoon, the delegation met with the EPA with the understanding that they were still talking about the terms allowed in the MOU that was sanctioned in 2008. He was very surprised to learn today that there have been negotiations on the City's behalf contrary to the MOU.

Mr. Ivie remarked that the City has not had enough time to fully analyze the full content of Mr.

Smith's letter; however, he was not pleased with that part of it and believed the community deserved a better response. He hoped they could forge ahead and cooperatively come to a solution on mine waste in the community. This is mine waste and it is important to remember that if they do not have cooperation from the EPA in terms of disposing it in a location that is consistent with the site, the City could bear astronomical costs. Mr. Ivie emphasized that this was a large issue and it would economically affect every citizen in Park City that has mine waste on their property. He wanted it clear that the issue was not isolated to Empire Pass. Mr. Ivie clarified that the MOU was primarily a document that was generated as part of the conditions of approval for that development. He supported the language that was approved in the 2008 document based primarily on the fact that the Mine Company does not have total control over the EPA. He was disappointed to find out now that they are limited to 101,000 cubic yards instead of 1.5 million cubic yards.

Mr. Ivie stated that the City never intended to use the 2007 letter referenced in the document as the capacity. In 2007, the letter was simply an estimate of what might be generated within the community based on known projects at that time, both private and public. Mr. Ivie clarified that the letter was never intended to be a cap of use in any regard.

Mr. Ivie requested time to further evaluate Mr. Smith's letter and the issue. He would report back to the Planning Commission so they could make an informed decision on what should be done to move forward with amending the Hazardous Soils Mitigation Plan for Empire Pass. Mr. Ivie pointed out that the Plan would need to be amended because the conditions as they currently stand are not the same. However, based on the new information, he did not have a plan to layout this evening. Mr. Ivie stated that the City had made application through public information requests to the EPA and the Mine Company and today was the first time they received a response relative to the capacity number. He was offended by the answer and unsure what it would mean for the City.

Mr. Ivie reiterated that in 2008 the Planning Commission approved language in the MOU stating that the Mine Company could not be totally held accountable for Richardson Flat because they were under EPA scrutiny. He asked if the Planning Commission had intended to look at the capacity issue as a real target number agreed to in the 2008 MOU. If so, they need to strive towards that capacity. Mr. Ivie clarified that the City does not know whether or not that number is accurate because it came out of a consultant report for capacity at Richardson Flat. He was unprepared to say whether or not that capacity is adequate for the full clean-up of the community because the total need has not been fully assessed.

Vice-Chair Peek clarified that based on the Mine Soil Hazard Mitigation Plan, the MOU was a critical part of that plan. Mr. Ivie answered yes. Vice-Chair Peek asked if it was reasonable to assume that if the Mine Company was not in compliance with the MOU agreement, then they were not in compliance with the Mine Soil Hazard Mitigation Plan.

Mr. Ivie replied that this would be an issue for discussion at a future meeting once they understand all the facts. Mr. Ivie pointed out that the delegation went to Denver yesterday assuming that the number was simply a number in a letter that was an estimated capacity in 2007. It was disheartening to find out that it was used to cap Park City's entry into Richardson Flat, which is clearly contrary to the MOU.

Vice-Chair Peek asked if the hazardous soil and the non-hazardous soil was accounted for in Richardson Flat. He wanted to know if the hazardous soil was added to the cubic yards. Mr. Ivie

stated that in terms of calculations at Richardson Flat, the hazardous material would be regulated. Other material that goes out there would be used for capping, but in his opinion, that material is not counted. Based on capping requirements, the site will be capped and the amount of material used would be significant in cubic yard capacity. Mr. Ivie explained that they are only looking at regulated waste and not capping material in the capacity number.

Jeff Schoenbacher, with the Building Department, stated that Park City's Soils Ordinance represents 660 acres of Park City. By ordinance, soils that are generated within that boundary are required to go to a permitted facility. There are over 277 parcels within that area that have yet to be remediated, and additional mining impact property needs to be mitigated as well. Mr. Schoenbacher remarked that the middle reach of the water shed has not been completed yet. Therefore residential, commercial, and the City will need a resource to accommodate the generation of that soil.

Vice-Chair Peek asked if the City was responsible for accounting for the non-regulated soils at Richardson Flat. Mr. Ivie stated that the site operator is obligated to manage the site. In this case, that would be the Mine Company, and they would address the capacity issues. He noted that the Mine Company is under the dictates of the USEPA and they are required to comply with certain conditions. Mr. Ivie explained that the operator is accountable to the EPA for their approvals. In this case, there is a record of decision and a settlement agreement on the site that sets forth most of the issues being discussed for Richardson Flat.

Mr. Ivie complimented the Mine Company because they asked the USEPA to allow the City, in the settlement agreement, the ability to take material to Richardson Flat, which saved the citizens millions of dollars. He hoped they would be able to forge another agreement to address this issue, because he personally felt that it is Mine Company waste and the Mine Company should provide a place for it. That has been his position from the beginning and it will remain his position because it is consistent with other sites. It is a sensible way to clean up areas without adding a cost burden that makes these projects unattainable in terms of clean up.

Mr. Ivie recognized that this was not a simple problem. The EPA has the control, but at the same time the Mine Company has to respect the City. He wanted the City's position to be clear to the EPA in terms of what the City believes is appropriate; however, he was unable to give that position this evening.

Vice-Chair Peek asked if the surplus site involved in this application included the entire drainage. Mr. Ivie answered no. In Mr. Smith's letter, the Mine Company argues that the upper reach is complete, but that is not true. They are only complete in the development area. Three sites are already in the data base and they agreed to put data in on two more, but that has not occurred. That was in the upper reach and they still have the middle reach, which is the Silver Maple claim site, and the lower reach. Mr. Ivie acknowledged that the pod of the upper reach that was agreed on under the EPA has been done, but the south side back development pod is not completed in the upper reach, which is contrary to what Mr. Smith's indicates in his letter. Mr. Ivie recalled from the discussion in 2008 that there was the original approval, the annexation that came in as part of the Montage development, and the original part that was parceled to develop the non-developed part of the original application plus the expansion area. In his opinion, the non-developed portion is not

done. Mr. Ivie clarified that the facts in Mr. Smith's letter were accurate, but they were not complete.

Commissioner Strachan wanted to know why Park City relied on the Mine Company to negotiate with the EPA regarding the ceiling of limitations. Mr. Ivie replied that the City was unaware until today that it had occurred. They thought everyone understood the MOU and the process. The City has been trying to obtain the data through Freedom of Information on how this happened. The City's intent was to do what was outlined in the MOU to the extent practical. He hopes to negotiate together rather than be in opposite camps.

Commissioner Strachan did not understand why both parties had not negotiated with the EPA from the beginning.

Mr Schoenbacher explained that the original strategy discussed with the Mine Company included the repository location at Richardson Flat. Language within the record of decision recognizes the Richardson Flat repository for a consolidation point of all mine waste within the water shed. Mr. Schoenbacher stated that the original strategy of the water shed was for the upper and middle to be priorities. Those are still the priorities based on the City's approach. In 2008 the City learned that the strategy had shifted to lower Silver Creek. This was changed without City input because the City thought that would also be a stakeholders group process. Mr. Schoenbacher echoed Mr. Ivie's opinion that the upper and middle reaches are not complete and that has always been the strategy. Until everything is remediated, that will continue to be the City's priority in the future.

Commissioner Strachan wanted to know why Park City, independent of the Mine Company, did not go to the USEPA and request a certain capacity to be set aside for Park City Municipal. Mr. Ivie replied that the City has numerous documents to show how many times they asked that question and never received a response from USEPA.

Vice-Chair Peek asked if the City was an official co-applicant or if it is entirely UPCM and the City is giving public input as a Municipal government. Mr. Schoenbacher explained that the City is a stakeholder within the Silver Creek water shed and the remedial actions within the water shed have been based on that process. Mr. Schoenbacher commented on the work that has been done and the areas that have been cleaned up under the process of the agreement.

Mr. Ivie clarified that considerable progress has been made on environmental waste and he would like to see that continue to completion. However, they need to find a constructive way to move forward.

Mr. Ivie noted that he had not had the opportunity to speak with David Smith regarding his letter and he reiterated that he was not prepared to provide the Planning Commission with a recommendation this evening. Mr. Ivie asked the Planning Commission whether they wanted to move forward this evening in an attempt to codify the MOU, or if they preferred to wait until he could provide further information. This was a serious public interest issue and he thought the City should make an appropriate effort. He pointed out that the only issue was mine waste and nothing else.

Commissioner Strachan asked if the EPA thinks the repository is full. Mr. Ivie was unsure what the

EPA thinks because they have never done a capacity analysis.

City Attorney, Mark Harrington, stated that based on meetings with the EPA yesterday, the problem is that the City is being run around in circles. The EPA says it is a Talisker/UPCM issue and the mine says it is an EPA issue. No one will say who made the decision or what the decision was and the City has been unsuccessful in getting a direct response from the project manager at the EPA for the last two years. The City has been forced to use more formal Freedom of Information request processes through Denver. Those requests have been strung out and not fully responded to. Mr. Harrington stated that when directly asked, neither the EPA or the Mine Company has given a basis for the starting point of that negotiation. In addition to being frustrating, it is also contrary to the spirit of the Chief Building Official's amendment to the plan. If that submittal was meant as an end-all, it is contrary to the agreement that was met in 2008. Mr. Harrington remarked that if the EPA had indicated that the letter submitted last year was the subject of the approval, he believes the discussion would have been different. He was in the processing of trying to obtain additional information on the capacity matter. Mr. Harrington stated that the City is entitled to know the context for the overall transition from the water shed to a regulatory approach.

City Attorney Harrington remarked that no one wins if more lawyers are hired and he hopes to avoid that. However, this process had a win/win solution and it was an economically viable opportunity for the community. If they go the legal route, both sides will waste resources. Mr. Harrington stated that the intent this evening was to make the Planning Commission and the public aware of the situation because it could upend 10 years of progress to an unknown and it could affect other projects. At a minimum, the City is entitled to have a debate and try to work together to avoid it. Instead, they are all reactive and he was unsure who was to blame. He intended to sort that out in hopes that it would not be forced to become more legal than it needs to be.

City Attorney Harrington remarked that Ron Ivie took a leap of faith when he took a verbal agreement. Mr. Ivie personally feels responsible for his decision and he is holding himself accountable. Mr. Harrington intends to do everything possible to make sure the spirit of that agreement is mentioned in the report. City Attorney Harrington clarified that the update this evening was an attempt to inform the Planning Commission as a status measure. He believes the mitigation plan will need to be amended, but until they know who took what action, they have no way of knowing what is in non-compliance. The EPA has their own management goals and concerns about the longevity of the site and probably see a need for an additional site in the community for the future. The City does not know who is requesting what limitation and who is either approving it or not. Those are the details the City is looking to obtain because no one is claiming responsibility for limiting the capacity.

Commissioner Strachan understood that at some point there would be another MOU. Mr. Harrington stated that the City has made overtures to the EPA to re-institute an aggressive work plan to move forward and to continue the success they experienced in the past. That would be a non-traditional recovery, non-legal fight. It should be a volunteer participation where the current property owner bears the costs associated with nominal additional costs that the taxpayers and government facilitates. United Park has owned that responsibility as well, and that is the framework the City wishes to continue under.

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Commissioner Luskin asked if alternative sites have been identified. Mr. Harrington replied that the City is willing to go through the process but at this point there has not been any dialogue. He believes that should be prioritized based on future resources. They need to deal with the current demand with current availability.

The Planning Commission concurred to wait for Ron Ivie to report back with additional information before acting on the amended Hazardous Soils Mitigation Plan.

The work session was adjourned.