

PARK CITY MUNICIPAL CORPORATION
PLANNING COMMISSION MEETING MINUTES
COUNCIL CHAMBERS
MARSAC MUNICIPAL BUILDING
MAY 12, 2010

COMMISSIONERS IN ATTENDANCE:

Chair Charlie Wintzer, Brooke Hontz, Dick Peek, Julia Pettit, Richard Luskin, Mick Savage, Adam Strachan

EX OFFICIO:

Planning Director, Thomas Eddington; Kirsten Whetstone, Planner; Francisco Astorga, Planner; Kayla Sintz Planner; Polly Samuels McLean, Assistant City Attorney

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REGULAR MEETING - 6:30 p.m.

I. ROLL CALL

Chair Wintzer called the meeting to order at 5:50 p.m. and noted that all Commissioners were present except Commissioner Hontz, who was expected to arrive late.

Chair Wintzer welcomed Mick Savage, the new Commissioner on the Planning Commission.

II ADOPTION OF MINUTES OF APRIL 28, 2010

MOTION: Commissioner Pettit moved to APPROVE the minutes for the work session and regular agenda for April 28, 2010 as written. Commissioner Strachan seconded the motion.

VOTE: The motion passed unanimously. Commissioner Hontz was not present for the vote.

III. PUBLIC COMMUNICATIONS

There was no comment.

IV. STAFF & COMMISSIONERS' COMMUNICATIONS

Planning Director, Thomas Eddington, asked if the Planning Commission was interested in having a City-issued email account for Staff reports and other Planning Commission related correspondence.

Assistant City Attorney, Polly Samuels McLean, highly recommended that the Commissioners have a separate email aside from their personal or business email. In the event of a lawsuit or a GRAMMA request, someone could obtain a court order to search their home or business computer if it was used for communication between the City and the Planning Commission. Ms. McLean felt it was important for the Commissioners to be on the City system and that all communications between the City and the Planning Commission be done through that email.

Chair Wintzer asked if emails from the public would still go through the City email or if the public would be sending emails to individual Commissioners. Ms. McLean replied that the public should go through the City and not use individual email addresses. The Commissioners should hear public input during the meeting or as part of the packet.

Director Eddington noted that the City holds all communication and information in storage, and it is available if requested.

Chair Wintzer was concerned about having to check two different emails and forgetting to check the City address.

Commissioner Pettit agreed with the legal recommendation for the purpose of insulating themselves and their workplace from subpoenas and discovery requests. However, she shared Chair Wintzer's about checking two emails. If there was a reason to notify the Commissioners on a specific issue that needed an immediate response, she could not guarantee that she would be checking the City email address regularly. Commissioner Pettit favored a City email account with a noticing procedure to alert the Commissioners that they need to check their email.

City Council Member, Liza Simpson, stated that the City Council has a policy that if the Staff requests a response to an email within 24 hours, they are to call each Council member. She recommended the same policy for the Planning Commission.

The Planning Commission concurred to have City-issued email accounts with a policy that the Staff would call each Commissioner if a response is needed within 24 hours. For all other emails, the Staff would send an email to their personal accounts notifying them that an email was sent to their City account.

Julia reported that she, Commissioners Luskin and Commissioner Strachan had attended the Utah Land Use Institute Training Session. She highly recommended the session to her fellow Commissioners in terms of getting an overview on land use law and how the State of Utah Code is broken down and what has been delegated to local communities for purposes of planning. They came away with a great handbook that had checklists and other helpful information.

Commissioner Pettit stated that the training session gave her food for thought as they work through the General Plan process, recognizing that it is the starting point for Land Management Code changes. They often think of themselves as being in a State that does not allow the flexibility to regulate. However, she now understands that there are opportunities that are not prohibited in terms of regulations. Commissioner Pettit encouraged the Planning Commission to keep an open mind in terms achieving community goals.

Commissioner Pettit commented on how often they look at the different zoning areas in the LMC and how they have created the list of uses and conditional uses, assuming that in the list of conditional use they are protected in shaping what those look like. However, they have less flexibility than what they think because uses are deemed to be allowed with conditions. Commissioner Pettit thought the Planning Commission should keep this in mind as they revisit

the different zoning areas and think about uses they may not want in that category. There are other ways to come in with an overlay zone so they can have more control over an application and become more legislative versus administrative. Commissioner Pettit realized from the training session that the Planning Commission has more tools available than what they think.

Director Eddington stated that Patricia would send out an email to all the Commissioners for the next scheduled training. Commissioner Strachan requested that the email include a list of topics for that seminar to make sure the sessions are relevant to the Planning Commission.

Director Eddington announced that a joint meeting with the City Council was scheduled for Thursday, June 17th, from 5:00-6:00 p.m. The discussion would be Bonanza Park and other redevelopment opportunities that the Planning Commission could tie into the General Plan.

Commissioners Wintzer and Luskin stated that they would be out of town on June 17th. Director Eddington offered to speak with the City Council and possibly schedule a different date.

CONTINUATION(S) - Open public hearing and continue to date specified.

1. 1150 Deer Valley Drive - CUP
(Application #PL-09-00858)

Chair Wintzer opened the public hearing. There was no comment. Chair Wintzer closed the public hearing.

MOTION: Commissioner Pettit moved to CONTINUE 1150 Deer Valley Drive - CUP to a date uncertain. Commissioner Strachan seconded the motion.

VOTE: The motion passed unanimously. Commissioner Hontz was not present for the vote.

2. 1150 Deer Valley Drive - Amendment to Record of Survey
(Application #PL-09-00768)

Chair Wintzer opened the public hearing. There was no comment. Chair Wintzer closed the public hearing.

MOTION: Commissioner Pettit moved to CONTINUE 1150 Deer Valley Drive - Amendment to Record of Survey to a date uncertain. Commissioner Strachan seconded the motion.

VOTE: The motion passed unanimously. Commissioner Hontz was not present for the vote.

3. 1440 Empire Avenue - Conditional Use Permit
(Application #PL-09-00725)

MOTION: Commissioner Peek made a motion to MOVE 1440 Empire Avenue CUP to the last item on the regular agenda for discussion and public hearing. Commissioner Strachan seconded the motion.

VOTE: The motion passed unanimously. Commissioner Hontz was not present for the vote.

REGULAR AGENDA/PUBLIC HEARINGS/POSSIBLE ACTION

1. 154 Marsac Avenue, Habitat for Humanity - Steep Slope CUP
(Application #PL-08-00430)

Planner Francisco Astorga reviewed the application for a steep slope conditional use permit from Habitat for Humanity, located at 154 and 156 Marsac Avenue. The request is to build on slopes that are 30% or greater. This application was received by the City in July 2008 and it was deemed complete on October 15th, 2008. Since that time the Staff has been working with the applicant to achieve a design that meets the 1983 Historic District Guidelines and the Land Management Code.

Planner Astorga noted that because the application was deemed complete prior to the Spring 2009 amendments to the LMC regarding construction on steep slopes and building height, the criteria for reviewing this application was under the previous edition of the LMC.

Planner Astorga noted that the application was for two small family dwellings. Both structures are utilizing less than 50% of the allowed footprint in the HR-1 zone and both units are proposed at 600 square feet.

Planner Astorga reported that a height exception was being requested for both structures. He provided a detailed site plan showing the property line, the setback line, and the roof line. He had highlighted the area requiring a height exception. The highest area was 31 feet, which is exactly 4 feet above the 27 foot regulation. Planner Astorga noted that the Planning Commission has the ability to authorize a height exception if it meets the criteria outlined in Criteria 10 for Height Exceptions, as well as the criteria for a standard conditional use permit. Planner Astorga also showed the area around that perimeter that would not need a height exception. He pointed out that the roof over topo was the only area where the height exceeds the 27 foot regulation.

The Staff recommended that the Planning Commission conduct a public hearing and consider approving the steep slope conditional use permit at 154 and 156 Marsac Avenue, based on the findings of fact, conclusions of law, and conditions of approval.

Kathy Lofft, representing the applicant, thanked the Staff, the Planning Commission and the City Council for their efforts in helping Habitat for Humanity reach this point. She looked forward to an approval so they could begin the project.

Chair Wintzer asked about construction timing. Ms. Lofft replied that tentative ground breaking was planned for early June and construction would start immediately afterwards.

Planner Astorga presented slides of cross canyon views. He noted that the site is near the intersection of Marsac Avenue and Ontario.

Commissioner Strachan thought the grade appeared to have been manipulated in the past. Chair Wintzer explained that at one time there was a small house on that site. Commissioner Peek stated that the house was City-owned and eventually demolished, but the footprint of the building remained.

Chair Wintzer opened the public hearing.

There was no comment.

Chair Wintzer closed the public hearing.

Commissioner Peek questioned the rendering. Director Eddington remarked that the rendering pre-dates the actual proposal because it came in prior to the applicant and contractor working with the Staff. The elevations were a more accurate representation of what was being proposed. Director Eddington noted that the project had gone through the Design Review process and any issues were resolved.

Planner Astorga clarified that the rendering was only included to show the massing of the structure as viewed from the front.

MOTION: Commissioner Peek moved to APPROVE the Steep Slope conditional use permit for 154 and 156 Marsac Avenue, according to the Findings of Fact, Conclusions of Law, and Conditions of Approval as found in the Staff report. Commissioner Strachan seconded the motion.

VOTE: The motion passed unanimously. Commissioner Hontz was not present for the vote.

Chair Wintzer was interested in seeing how the current Code would have affected this building. Planner Astorga offered to provide that information and explain the difference after the meeting this evening.

Findings of Fact - 154 Marsac Avenue

1. The property is located at 154 & 156 Marsac Avenue.
2. The property is within the HR-1 (Historic Residential) District.
3. Lot 1 is 3,787 square feet in size and Lot 2 is 3,145 square feet in size.
4. The maximum footprint allowed on Lot 1 is 1,531 square feet, while maximum footprint allowed on Lot 2 is 1,318 square feet.
5. The applicant proposes a footprint of 600 square feet for each lot.
6. The overall square footage of both structures will be 1,640 square feet.

7. The applicant proposes a twelve foot (12') front setback and a 33 feet rear setback on Lot 1 and ten foot (10') front setback and a thirteen foot (13') rear setback on Lot 2.
8. The minimum front and rear yard setbacks are both for both lots. Lot 1 requires a minimum of twelve feet (12') front and rear setbacks with a total of 25 feet. Lot 2 requires a minimum of ten feet (10') front and rear yard setback with a total of twenty feet (20').
9. The applicant proposes two parking areas. One is to be located within the attached one car garage and the other parking area will be placed on the driveway.
10. Both lots require a minimum of two (2) parking spaces.
11. The maximum height for a single-family dwelling in the HR-1 District is 27 feet above existing grade, unless the Planning Commission grants an exception.
12. The applicant is requesting an exception of 31 feet above existing grade.
13. The proposed building pad has been sited so as to place as much of the building bulk away from the rear steeper slopes.
14. The structure on Lot 1 will have approximately 120 square feet of floor area on the steeper slopes towards the rear.
15. The structure on Lot 2 will have approximately 60 square feet of floor area on the steeper slopes towards the rear.
16. The proposed structure is not from any of the LMC mandated vantage points. Due to the size of the proposed structures staff finds that the proposed design is compatible with surrounding Old Town structures.
17. The proposed design consists of each structure having a twelve foot (12') wide by eighteen foot (18') long driveway accessing a one-car garage each on the front facade off Marsac Avenue.
18. The structure where designed to accommodate a legal parking area within the garage and another on the driveway accessing the garage.
19. The proposed driveway and garage grading of the natural topography is minimized and the overall building scale is being reduced.
20. The lot has a relatively gentle slope at the front becoming steeper towards the rear.
21. The only retaining walls being proposed are located towards the rear of the structures.
22. The retaining walls will not exceed four feet (4') in height.

23. The building is proposed on a lot that is steep in the rear with a gradual slope towards the front.
24. Staff find that most of the buildings have been located in the area with the least perceived natural topography has not been altered.
25. Access has been located directly from Marsac Avenue.
26. The utilities are available from the street and will require a limit amount of grading.
27. The primary roofline and mass of both structures run perpendicular to Marsac Avenue which is very typical of historic structures throughout Old Town.
28. Due to the size of the proposed structures staff find the design compatible.
29. The porch element on the front facade breaks up the building form and scale.
30. The footprint of the structure on Lot 1 is 39% of the maximum footprint allowed in a lot this size while the footprint of the structure on Lot 2 is 45% of the maximum.
31. The applicant is requesting a four foot (4') height exception for both structures from the maximum building height of 27.
32. The design of the two (2) structures incorporates a break in the front facade which increase building articulation.
33. The design is compatible with the volume of historic single family dwellings in Old Town.
34. The structures were designed with a roof form perpendicular to the street which creates snow shedding issues between the proposed structures.
35. Staff requests that the snow release issues are resolved to the satisfaction of the Chief Building Official by having the applicant sign a snow-shed easement agreement and having that agreement recorded at the County Recorder's Office.
36. The structure includes different heights throughout the structure indicating height variation. The building height ranges from 21 feet above existing grade to 31 feet.
37. The height exception is for architectural articulation as the applicant could have selected a lesser roof pitch.
38. The proposal currently shows a 9:12 pitch on both main roof forms.
39. The structures have been designed to enhance the building's compatibility with Old Town structures.

40. The proposed design contributes to the unique character and scale of the neighborhood.
41. Marsac Avenue has sufficient capacity for the two new structures.
42. The emergency access will be from Marsac Avenue.
43. The proposed dwelling will comply with all of the development standards as outlined in the LMC pertaining to fencing, screening and landscaping.
44. The design is compatible with the volume of historic structures throughout Old Town. The primary roofline and mass of the building runs perpendicular to Marsac Avenue.
45. The proposed single-family dwellings meet the maximum building footprint. The proposed improvements including the driveway, building pad and patio will cover 29% of both lots, allowing the 71% of the lots to be utilized as open space.
46. There are no proposed signs with this application. Any lighting must comply with the LMC residential lighting standards.
47. Other than what would typically be found in a residential neighborhood there are not any noises, vibration, odors, steam or other mechanical factors that might affect people associated with the proposed dwelling.
48. Control of delivery and service vehicles, loading and unloading zones, and screening of trash pickup area will be typical of single-family dwellings.
49. The expected ownership and management of the project is not expected to change due to the specific deed restrictions placed by Habitat for Humanity and the allowed uses of the HR-1 District.
50. The site does not lie within the Sensitive Lands Overlay District.
51. The applicant is seeking exception of four feet (4') to the required height as measured from existing grade.
52. The height exception area is located towards the front of the main ridges.
53. The proposed design does not require a height exception around the perimeter of the structures.
54. The criteria allowing the height exception is met.
55. The discussion in the Analysis section above is incorporated herein.

1. The application, as conditioned, complies with all requirements of Section 15-2.2(6)B of the Land Management Code 54th Edition, revised October 2007.
2. The proposed use, as conditioned, is compatible with the surrounding residential structures in use, scale, mass and circulation.
3. The use is consistent with the Park City General Plan.
4. The effects of any differences in use and scale have been mitigated through careful planning.

Conditions of Law - 154 Marsac

1. All Standard Project Conditions shall apply.
2. City approval of a construction mitigation plan is a condition precedent to the issuance of any building permits.
3. City Engineer review and approval of all appropriate grading, utility installation, public improvements and drainage plans for compliance with City standards is a condition precedent to building permit issuance.
4. A final landscape plan shall be submitted for review and approval by the City Landscape Architect, prior to building permit issuance.
5. No building permits shall be issued for this project unless and until the design of the structure is reviewed and approved by the Planning Department staff for compliance with the 1983 Historic District Design Guidelines.
6. As part of the building permit review process, the applicant shall submit a certified topographical survey of the property with roof over topographic and U.S.G.S. elevation information relating to existing grade as well as the height of the proposed buildings ridges.
7. Prior to issuance of a building permit the applicant shall submit a detailed shoring plan, as required by the Building Department, with calculations that have been reviewed and approved by a licensed geotechnical/structural engineer. This plan will demonstrate how the proposed excavation will protect Marsac Avenue and Ontario Avenue from being compromised during construction.
8. A snow shed easement agreement for both lots with the each other is a condition precedent to Building Permit issuance.
9. All exterior lights on porches, garage doors, or entryways shall be shielded to prevent glare onto adjacent property or public right-of-way and light trespass in to the night sky.

10. Modified 13-D sprinklers are required for all new structures.
11. This approval will expire on May 12, 2011, if an application for a building permit has not been submitted prior to this date.

2. 1110 Woodside Avenue - Plat Amendment
(Application #PL-10-00924)

Planner Kirsten Whetstone reviewed the application for a plat amendment to combine two Old Town lots located at 1110 Woodside Avenue, in the HR-1 zone. An historic house, listed as a landmark structure on the Historic Sites Inventory, exists on the site. The house was constructed across two lot lines and the requested plat amendment would remove the lot line and create one lot of record for this house.

The Staff recommended that the Planning Commission conduct a public hearing and forward a positive recommendation to the City Council based on the findings of fact, conclusions of law and conditions of approval outlined in the Staff report.

Chair Wintzer assumed the applicants needed the plat amendment to accommodate a remodel. Planner Wintzer replied that the applicants are proposing to put an addition on the rear of the house. An existing non-historic addition would be removed and replaced with a new addition. Planner Wintzer noted that the proposed addition was approved through a Historic Design Review in November 2009.

Commissioner Peek asked for the location of the encroaching wood shed. Planner Whetstone replied that it was located on the southeast corner. It was noted that both Ron and the applicant use the existing shed. Planner Whetstone stated that an easement agreement would be required. Commissioner Peek asked about the larger wood shed. Planner Whetstone replied that it was completely on the property and located to the north. Because that shed does not encroach, there is no need for an encroachment agreement. Planner Whetstone pointed out that a condition of approval addresses the encroachment agreements.

Commissioner Pettit assumed that because the lot is flat, the Planning Commission would not see plans for the remodel. Planner Whetstone replied that this was correct. A steep slope CUP would not be required.

Chair Wintzer opened the public hearing.

There was no comment.

Chair Wintzer closed the public hearing.

MOTION: Commissioner Strachan moved to forward a POSITIVE recommendation to the City Council for the plat amendment at 1110 Woodside Avenue, based on the Findings of Fact,

Conclusions of Law, and Conditions of Approval found in the draft ordinance. Commissioner Luskin seconded the motion.

VOTE: The motion passed unanimously. Commissioner Hontz was not present for the vote.

Findings of Fact - 1110 Woodside Avenue

1. The property is located in the Historic Residential (HR-1) zone and is subject to regulations provided in Section 15-2.2 of the Land Management Code.
2. The HR-1 zone is characterized by medium to smaller sized contemporary and historic residential structures. There are also larger single family homes and condominium buildings in the neighborhood due to the adjacent HRM zoning district and larger lots in that zone.
3. The purpose of the HR-1 zone is to provide an area of lower density residential uses with the Old Town area.
4. The project is located off of Woodside Avenue where there is limited area for construction staging.
5. The property consists of Lots 29 and 30, Block 5 of the Snyder's Addition to the Park City Survey. A plat amendment to combine these lots into one lot of record is required before any building permits for new construction can be issued.
6. A building permit cannot be issued for construction across a lot line.
7. There is a 9.7" by 8.10" accessory shed located in the southeast corner. This shed encroaches onto adjacent Lot 31. An encroachment easement and agreement is required to be executed and recorded prior to recordation of the plat.
8. There are non-historic low (2' high) stone/paver walls in the front yard that encroach approximately 2" into the undeveloped Woodside right-of-way.
9. A complete HDDR application was submitted on June 12, 2008 prior to adoption of the 2009 Park City Historic Design Guidelines. The application was subject to the Park City Historic Design Guidelines. The application was subject to the Park City Historic District Design Guidelines adopted by City Council on June 16, 1983. On November 30, 2009, a Historic District Design Review was approved for a proposed addition to the rear of the house.
10. At the time of the Historic District Design Review application, the house was listed as a significant historic structure on the 2007 Park City Historic Building Inventory.
11. The house is currently listed as a landmark structure on the 2009 Park City Historic Sites Inventory.

12. The minimum number of on-site parking spaces required for an historic structure is 0. The applicant proposes 2 parking spaces on a paved off-street driveway. No garage is proposed as part of the Historic Design Review approval.
13. The minimum lot size in the HR-1 zone is 1,875 sf and the maximum building footprint is 1,511 sf. The property consists of 3,750 square feet and the existing building footprint is 1,203 sf.
14. The topography of the lot does not exceed 30% slope and therefore a Steep Slope CUP approval is not required for new construction.
15. The applicant stipulates to the conditions of approval.
16. The discussion in the Analysis section is incorporated herein.

Conclusions of Law - 1110 Woodside Avenue

1. There is good cause for this plat amendment.
2. The plat amendment is consistent with the Park City Land Management Code and applicable State law regarding plat amendments.
3. Neither the public nor any person will be materially injured by the proposed plat amendment.
4. Approval of the plat amendment, subject to the conditions stated below, does not adversely affect the health, safety and welfare of the citizens of Park City.

Conditions of Approval - 1110 Woodside Avenue

1. The City Attorney and City Engineer will review and approve the final form and content of the plat amendment for compliance with State law; the Land Management Code; requirements for utility, snow storage, and encroachment easements; and any conditions of approval, prior to recordation of the plat.
2. The applicant will record the subdivision at the County within one year from the date of City Council approval. If recordation has not occurred within one year's time, this approval for the subdivision will be void, unless the City Council grants an extension of the approval.
3. Execution and recordation of an encroachment easement for the existing shed at the rear of the property is a condition precedent to recordation of the plat amendment.
4. The existing low stone/paver walls encroaching into the Woodside Avenue right-of-way shall be removed, or an encroachment easement shall be executed and recorded

between the property owner and Park City, as a condition precedent to recordation of the plat amendment.

5. A preservation plan and a preservation guarantee, the amount to be determined by the Planning and Building Departments upon review of the construction plans, shall be provided to the City by the owner, as a condition precedent to issuance of a building permit for the addition.

Commissioner Hontz arrived at 6:15.

3. 1440 Empire Avenue - Conditional Use Permit
(Application #PL-09-00725)

Planner Kayla Sintz stated that this item was remanded from the City Council due to an appeal of the Planning Commission decision. The CUP heard the appeal on February 25, 2010 and the appeal was granted in part and denied in part. The City Council remanded the CUP to the Planning Commission for further review on two matters:

- 1) the height, scale, mass and bulk of the rear of the building shall be further modified and considered under the standard in LMC 15-1-10(E)(8); and
- 2) Further design changes with consideration for ensuring that the proposed development transition to and complements the existing historic structure to the east shall be reviewed and/or further conditioned.

Planner Sintz noted that page 11 of the Staff report outlined the proposed CUP and re-design. Bulleted items described the changes proposed by the applicant.

Because this item was originally scheduled for work session, Planner Sintz requested dialogue between the Planning Commission and the applicant. The Planning Commission should also open a public hearing.

Craig Elliott, representing the applicant, compared the concepts of the originally proposed project and the proposed revisions. He explained that the roof eave was moved down one entire floor. The roof was moved down to spring line from the floor of Level 3. It made the roof pitch steeper and reduced the setbacks at the rear and upper levels of the building to step back and away from the historic structures. Mr. Elliott stated that dormers were added to break down the mass of the rear building. He explained how they had reduced the impression of the building and its relationship to the historic structure by ten feet, or one story, at the rear.

Mr. Elliott presented boards showing the existing conditions, the originally proposed building and the revised building.

Chair Wintzer understood that the building footprint and the length of the facades remained the same, and that the only change was the back roof pitch. Mr. Elliott stated that he had also changed the front roof pitch by bringing down the roof form in the front.

Mr. Elliott reviewed shadow studies of the original proposal and the revised proposal. Based on City Council discussion, one drawing showed the building moved forward on the site. Mr. Elliott noted that the Winter Solstice only went to 4:00 p.m. The other shadow studies went to 5:00 p.m. He noted that changes in the shadows are typically seen between 2:00 and 5:00 p.m.

Commissioner Luskin asked if the applicant was considering moving the structure to the front. Mr. Elliott remarked that it was a question raised at the City Council meeting, but doing so would put parking at the rear of the building and in the backyards of the historic homes, instead of along the busy street. The applicant felt that option created greater impacts to the neighbors.

Mr. Elliott presented the shadow study of the Spring equinox. He noted that the study went to 5:00 p.m. because the shadows change. Mr. Elliott showed the Summer Solstice, which is considered the longest day of the year and the point in which the sun is at the highest angle in the sky. He noted that in the summer shadow study the changes begin between 4:00 and 6:00.

Mr. Elliott pointed out that the Fall Equinox was similar to the Spring Equinox.

Commissioner Savage asked Mr. Elliott for his interpretation of the study results. Mr. Elliott explained that in the winter the lower setting sun is more affected by the building across the street due to the height and scale of those buildings. The summer has extended distances and times. He noted that the trees in the area were not shown on the study. Based on the shadow study, Mr. Elliott believed impacts were relatively minor. He thought the difference between moving the building forward to the street or back from the street was interesting. His analysis was that there was very little difference between the two.

Mr. Elliott noted that based on direction from the City Council they were asked to make changes to the exterior and work towards bringing the building into context with scale and transition. Mr. Elliott presented a board showing how they made the transition from Shadow Ridge to single family residences on Woodside and back to multi-family on the other side of Woodside. They tried to be more in tune to the character and scale by changing the exterior in the rear elevation, reducing the heights in the rear, and working towards a better connection that transitions down to the smaller single family.

Chair Wintzer asked for the distance between the proposed building and the existing house behind it. Mr. Elliott did not have that information available.

Planner Sintz requested direction from the Planning Commission on the discussion points outlined on page 13 of the Staff report. Chair Wintzer stated that the Planning Commission would address those points following the public hearing.

Chair Wintzer opened the public hearing.

Bruce Baird, legal counsel representing David and Rosemary Olsen, Rick Margolis and Dianne and Bill Newland, understood that the issues of the remand were limited; however, he wanted it clear that his clients were not waiving the claims made in previous statements, even if those claims could not be reiterated this evening.

Based on the remand, Mr. Baird felt it was made evident during the City Council meeting that this was not a low-income project. He believed the idea of a low-income project colored some of the decisions of the original approval. It is an apartment building and that fact should be clear. For information purposes only, Mr. Baird reported that his clients had filed a suit on the plat amendment.

Mr. Baird acknowledged that the pictures presented by the applicant this evening were prettier than what was shown in the past. However, using a political metaphor, Mr. Baird believed it was nothing more than putting lipstick on a pig. He noted that height, scale, mass and bulk were the four issues specifically remanded by the City Council.

Mr. Baird stated that the height of the building was lowered three-eighths of an inch. He acknowledged that the building was slid 3'6" forward for that height, but that was all the applicant did in response to the height issue raised by the City Council. Mr. Baird remarked that in looking at the revisions, nothing changes in terms of the impacts to the house below. The building slides backwards three feet but the scale impacts viewed from that property is essentially the same. Mr. Baird stated that by definition, the change was not responsive to the City Council's issue regarding height.

Mr. Baird remarked that the shadow studies was one effect of the height. He referred to the Spring Equinox at 4:00 p.m. as an example, and pointed out that there was only an arc-degree difference on the 4:00 p.m. shadow between the old design and the revised design. Mr. Baird stated that there was no material difference between the old plan and the new plan on the Summer 4:00 p.m. study. He indicated a dramatic and positive difference in impacts when the building was moved forward as suggested by the City Council. Mr. Baird stated that this building still dwarfs the historic structures below it in height, physical size and footprint. The footprint remained the same and it is 3 times the size of the house below. Therefore, the scale has not changed.

In terms of mass, Mr. Baird stated that the floor area ratio had gone down exactly 170 square feet, which is 1.3% reduction in floor area ratio. He did not think that percentage represented the change directed by the City Council.

Mr. Baird was unclear on the difference between bulk and mass, but he strongly believed the building was still too large. He stated that the building was pushed to the back to maximize already insufficient parking, because parking would not work if the building were moved forward.

Mr. Baird stated that moving the building that far back and maintaining its same size, it looms over, darkens and does not transition to or protect the historic houses below, which is the precise mandate the applicant was given.

Mr. Baird remarked that the Staff report indicates that the applicant submitted one application that was unacceptable to Staff, and then came back with a second application that they wanted presented to the Planning Commission. Mr. Baird believed this was why the Staff report was neutral on the matter and why the Staff was requesting direction from the Planning Commission on whether or not the revised design complies with the four-part mandate from the City Council.

Mr. Baird argued that it does not comply and it does not resolve any of the other associated problems. They can no longer use the excuse of affordable housing and there is no reason for the Planning Commission to support this plan.

Dianne Newland stated that she and her husband live at 1455 Woodside Avenue, which is the property directly behind and below the proposed project. Ms. Newland has lived in Old Town for over 30 years and in their present home for over 20 years. She is a geography teacher and her husband was on full-time ski patrol at PCMR for 25 years. They have given a lot to the community and they keep to themselves.

Ms. Newland stated that at the City Council meeting on March 4th, the City Council voted 4-1 in favor of a remand for Planning Commission review. At that time, Council Member Matsumoto stated that she had reviewed the materials and visited the site and she found that the building mass, bulk and orientation to the building, particularly as it relates to historic buildings, are not appropriate and a better structure could be designed for the site. Council Member Matsumoto also stated that the parking issue needed to be resolved. Ms. Newland remarked that Council Members Butwinski, Simpson and Erickson also agreed with Council Member Matsumoto and relayed that it should be remanded to the Planning Commission to review the rear facade and possible consideration for moving the building forward. Ms. Newland read the findings adopted by the City Council on March 4th, as outlined in the Staff report.

Ms. Newland stated that both the applicant's visuals and the supplemental visual that she brought to the appeal hearing confirm that the design has unmitigated impacts on the historic property to the east, including visual impacts, loss of light, and building orientation. She believes the size, scope and scale of this project is not in keeping with the surrounding homes. Ms. Newland stated that she and her husband have a large parcel that could have been a large condo if they had sold their property. Instead, they have chosen to live there and not develop their property, but they already are surrounded by gigantic condo projects. She remarked that because this project is so large, her 1100 square foot home would be engulfed in shadows and darkness for most of the day and she would have to endure adverse, unmitigated impacts. Ms. Newland disagreed with the shadow studies. She actually lives there and has sunlight during the day in summer, winter, spring and fall. The study generated by a computer is not real and does not reflect what she experiences as a real person.

Ms. Newland used a tape measure to demonstrate the short distance of 3'6" that the building was moved away from her home. She noted that the new structure was designed with a very steep roof form, which creates a snow shedding issue between the proposed structure and her backyard. Ms. Newland passed around a picture of her backyard. Her property line is 10 feet from the proposed structure and there is nowhere for the snow to go when it comes off the roof except into her yard. Ms. Newland wanted to know who would be responsible for this project's snow removal and the effect it places on surrounding property owners.

Ms. Newland pointed out that the project does not propose a retaining wall or any type of slope stabilization. She wanted to know what would keep the project from sliding down the hill on to her home. Ms. Newland questioned why the building could not be moved forward or angled in a different direction on the lot. She noted that the other homes built on Woodside and adjacent to this project are single family. The homes were built to the front to create a large area in the back to separate those homes from the historic homes below. Ms. Newland commented on the drop of the slope down into her property. From her backyard it would be like looking up six stories high to the top of the roof of the proposed building. She will have lack of privacy and

lack of natural light. She believed there was no way to mitigate the difference in scale between this proposed project and her existing structure, unless they reduce the overall height. Ms. Newland noted that the Planning Commission could require a reduction in building height to minimize its visual mass and to mitigate difference in scale between the proposed structure and an existing residential structure.

Ms. Newland recognized that the comments should focus on the issues of the remand, however, she wanted to comment on parking. She stated that by forcing tenants to pay \$25 to park in their lot would create a huge problem. With only twelve parking spaces provided, this would force tenants and their visitors and guests to park on Woodside or somewhere else. People who park on Woodside would walk through her yard and hike up to get to their units. Ms. Newland remarked that the project management cannot control who parks where and cannot control the trespassing that would occur on her property due to the lack of parking for this project. Ms. Newland stated that there are unmitigated impacts on her property, including visual impacts, the wall effect, loss of light, building orientation, lack of privacy and snow shedding, and she urged the Planning Commission to take that into consideration.

Dave Olsen, a resident at 1430 Empire Avenue, adjacent to this property, stated that the one thing that has not been changed through this process is the applicant's unwillingness to reduce the size to anything similar to the surrounding structures. He noted that the transitioning argument by the applicant is that they are not transitioning to the historic homes or the density of the historic district, which would allow them a story and a half with 60% open space. Instead, they are trying to transition down and then transition up. Mr. Olsen did not believe that was directed by the City Council, nor was it according to Code requirements or the General Plan. Mr. Olsen remarked that the structure is too massive for the size of the lot and that is reflected in size, parking, views, and shadow studies. He identified turnaround problems with the two parking spots adjacent to his home.

Chair Wintzer requested that Mr. Olsen focus his comments on the issues remanded from the City Council. Mr. Olsen believed his comments related to the mass of the project. Chair Wintzer advised Mr. Olsen to speak to the mass of the project and not the parking.

Mr. Olsen stated that the neighbors had not had the opportunity to look at the shadow studies before this evening. It would have been nice to see them beforehand so someone with more experience could analyze them on their behalf. Mr. Olsen believed Mr. Baird had stated most of their objections. However, he was particularly concerned that the north/south had actually increased in footprint and that the side yard setback next to his property was smaller. He asked if that was a fact or if it just appeared that way when the drawing was printed.

Mr. Elliott replied that there was no difference.

Mr. Olsen remarked that the solution for protecting the neighbors and the smaller historic structures would be to scale down the project. He asked the Planning Commission to require that of the applicant because it was consistent with the City Council directive and the General Plan. Mr. Olsen did not believe transition means something bigger. He believes the intent is to transition to historic. This project as designed would be the tallest and largest building on his

side of the street. He requested that this application be denied and that the Planning Commission consider requiring a reduction in size. Mr. Olsen suggested that the Planning Commission ask the applicant to consider consulting with the neighbors, which they have not done.

Ms. Newland invited the Planning Commission to visit her home and stand in her back yard to understand her concerns.

Rick Margolis stated that he lives two houses away from the proposed apartment building. He echoed all the previous comments. Mr. Margolis thought it was clear from the shadow studies that the impacts on the existing houses does not change at all between the old project and the revised project. In addition, it does not comply with the request to reduce the size and mass of the project. Mr. Margolis stated that parking was an issue discussed during the City Council meeting. The City Council raised the question that reducing the mass of the building would create more land and could possibly resolve the parking issue.

Chair Wintzer clarified that the building footprint and the building location remained the same in the revised plan. Mr. Elliott replied that it was the same as in the previous design.

Commissioner Hontz asked Planner Sintz to clarify the affordable housing component. She noted that page 33 of the Staff report quotes Council Member Simpson as saying that this application was not being processed as an affordable housing project. The fact that it was not affordable housing was also mentioned during the public hearing.

Planner Sintz stated that the project may be used as affordable housing for a future project. However, the City Council and the Planning Commission reviewed this application as a CUP for a multi-unit dwelling. Commissioner Hontz recalled a finding related to affordable housing in their approval. Commissioner Peek pointed out that Condition of Approval #10 states that if it is used as affordable housing, it must meet the housing resolution in effect at the time.

Mark Fischer, the applicant, stated that this is an affordable housing project and he took offense at the attorney telling him what his building is and is not. Mr. Fischer remarked that he would not be building this project if it was not an affordable housing/work force housing project. He found it frustrating that people who chose to purchase homes in a resort commercial (RC) zone are now causing problems for a use that is allowed in the zone. Mr. Fischer stated that at his direction, Mr. Elliott complied with every criteria of the Code in designing this project and they are not requesting any variances or other things not allowed under the Code. He is frustrated by the way this project has ping-ponged back and forth and seemingly has no end. Mr. Fischer emphasized that he has tried to comply with the intent of the zone and the Code for that piece of land.

Mr. Baird was unsure if the public hearing had been closed, but if the Planning Commission intended to hear comment from the applicant, he advised that the public be given the same consideration. If the public hearing was closed, it should be closed to both side. Mr. Baird remarked that the applicant needed to decide whether or not he wants an affordable housing project. As it stands now it is not affordable housing, even though the applicant was trying to sway the Planning Commission to that thinking. Mr. Baird believed the applicant has not

complied with Code. In addition, the neighbors built what they were entitled to build.

Mr. Baird recommended that the Planning Commission close the public hearing and discuss the issues among themselves, otherwise it runs the risk of becoming a due process violation.

Chair Wintzer stated that the typical process is that the applicant presents the project, the Planning Commission takes public input, and the applicant has the opportunity to respond. He asked if that was an appropriate format.

Assistant City Attorney McLean stated that the Planning Commission could make the decision on whether to close the public hearing or leave it open for public response. She explained that it was within their right to close the public hearing and have a dialogue with the applicant.

Assistant City Attorney McLean clarified the issue of affordable housing. Because the application was not submitted as an affordable housing MPD, the City is not treating it as an affordable housing project. Mr. Fischer has indicated his intention for affordable housing, and the Planning Commission can take that into consideration. Ms. McLean noted that Condition #10 states that if it is used as an affordable housing project it would need to be deed restricted. Currently, there is no deed restriction requirement and the applicant is not receiving any City benefits from the City for being an affordable housing project.

Chair Wintzer did not believe the Planning Commission had ever made pro or con comments based on the project being affordable housing. The Planning Commission has looked at mass and scale of the building. Chair Wintzer clarified that the use could be either affordable housing or an apartment.

Chair Wintzer closed the public hearing.

Commissioner Luskin suggested that moving the structure to the front could alleviate some of the concerns expressed by the public. He realized that it may not change the mass and bulk, but it might have an effect on its relationship to the historic homes and snow shedding. He asked Mr. Elliott whether moving the building was a realistic possibility.

Mr. Elliott stated that the unintended consequence of moving the building forward puts the parking lot in the rear of the project. He explained that they tried to mitigate the parking impacts by keeping it in a location consistent with what is on the street. It keeps the parking associated with the visual side on Empire and it addresses safety issues. Mr. Elliott stated that the purpose of moving the building on the shadow study was to see if there was a significant change. The result was a relatively minor change. Mr. Elliott remarked that the site is taller and much higher than the building below. They found that the buildings across the street have a similar impact on the shadows. Mr. Elliott believed it was kinder and more relative to the fabric to put the building to the rear of the site.

Commissioner Luskin asked Mr. Elliott to address the snow shedding concerns. Mr. Elliott remarked that 95% of his work is in Park City and 70% of that is in Old Town. The dilemma is that everyone wants steep roofs to match the historic nature and character. Unfortunately, that

leads to health, safety and welfare issues. Mr. Elliott stated that he has designed a number of steep roofs three feet from property lines and he has worked with the Building Department to provide ways to manage and hold the snow. He was comfortable that snow shedding could be managed. Mr. Elliott stated that this project provided more distance than what is typical in most historic projects. He noted that the Building Department would not issue a permit if snow shedding is not satisfactorily proven in their documentation.

Planner Sintz stated that the Chief Building Official had done a study on snow shedding due to the issue of small side yard setbacks in the Historic District. The study was based on a 9:12 roof pitch and it was determined that snow would shed off of a metal roof a distance of 7 feet. That is an important number because 25' x 75' Old Town lots have 3 foot setbacks. In those cases, the Building Department requires a reciprocal snow shed agreement so if snow sheds off of one property and breaks windows on the adjacent property, an agreement is already in place. If a property owner cannot obtain that agreement from his neighbor, a re-design of the roof is required before pulling a building permit.

Planner Sintz stated that in the scenario for this particular project, where there is a 10 foot rear yard setback that handles the 7 foot distance, the proposed roof re-design minimizes the effect of snow shedding from the previous roof design. The way the building is positioned on the site, the setbacks become greater as it moves to the north.

Chair Wintzer referred to the side elevations and asked if the slope at the back of the building was accurate. Mr. Elliott replied that the survey information was put into the computer and that was as accurate as he could say it was. Chair Wintzer did not think the topo was consistent with the picture Ms. Newman had passed around. Mr. Elliott identified the topo line that runs from the corner and noted that it was steeper on one side than the other and it angles back to a cross slope on the site. Chair Wintzer recalled that the slope was steeper than what was shown on the topos. Mr. Elliott offered to check it again, but he did not think the result would be different.

Commissioner Hontz was pleased that the application was remanded back to the Planning Commission for the reasons specified by the City Council, since they addressed her original concerns at the time the Planning Commission voted to approve the application. Commissioner Hontz favored the design revisions and felt they went a long way in terms of the roof element, the appearance of the mass and scale, and the materials.

Commissioner Hontz liked the shadow study, but she believed there was a huge difference in allowing more light by moving the structure to the front. She recalled her comment at the time of the original review regarding continual erosion of the historic nugget and thought the revised design was more compatible with Old Town and the neighborhood feel. However, she personally wanted to see the building moved forward with the parking lot in the back. She understood there were design pros and cons if the building was moved, but she thought it was a better solution from the standpoint of addressing the remand and her original concerns.

Commissioner Hontz stated that she previously had concerns about snow shedding from the front of the building on to the parking lot. She believed the current solution did more to reduce

the impacts on vehicles and pedestrians. Commissioner Hontz stated that she was thrilled with the majority of the application as revised.

Commissioner Pettit echoed Commissioner Hontz. She agreed that the design had definitely evolved and was more sensitive to the historic properties adjacent to the project. In looking at the aerial view and orientation of the single family homes to the south of the project and the building below, she concurred with Commissioner Hontz that bringing the building forward would provide greater space between the project and the historic home on Woodside. It would be more consistent with the single family homes and mitigate the effects of the shadowing. Commissioner Pettit believed that the design elements included in the re-design, as well as the separation, minimized the wall effect and other impacts that were a concern in the previous review. Commissioner Pettit was interested in seeing what the project would look like with the building moved forward and believed it would do more to meet the intent of the City Council remand.

Chair Wintzer agreed that moving the building forward would help the three houses behind. However, he was concerned about creating a wall effect going down Empire. Chair Wintzer was also concerned about creating an uncomfortable living environment by having the window 12' feet from the street. He thought it would be helpful to see the scenario of moving the building forward, but he was not convinced it was the right solution. Chair Wintzer commended the applicant on a better design and he believed it softened the project significantly.

Commissioner Peek stated that lowering the main eave line a full story and changing the dormers to a massing that relates to the dormer element of the historic structure had improved the east elevation. Snow shed issues are consistently resolved at the plan review stage with the Building Department and he was confident that issue would be addressed. Commissioner Peek stated that he would need to see a drawing of the building moved forward before he could determine if it was a viable option.

Commissioner Strachan agreed with Commissioners Wintzer and Peek. The revised project was better than the design that was initially approved, even though the original design met the CUP criteria and the Code requirements. Commissioner Strachan was concerned that if the allowed uses in that zone were built, it would completely overshadow the historic home. He pointed out that the applicant could simply change the use and build a triplex that would dwarf every structure to the east, and the Planning Commission would have no control because it is an allowed use. In their attempt to tweak and move and micro-manage this project, they may lose it entirely and end up with something much worse. Commissioner Strachan believed that was a real threat. If the intent is to keep the historic fabric of Old Town, they need to weigh the lesser of all the evils. In his opinion, this project meets the criteria of the CUP and transitions as best as possible with the structures to the east. He agreed that the situation was not ideal because of how the zoning map is structured, but it is as good as it can get.

Commissioner Strachan believed the revised plans were moving in the right direction in terms of meeting the Code criteria and reducing the building mass, bulk and scale.

Commissioner Savage asked how much the revised plan changed the volume of the building.

Mr. Elliott replied that he had not done that study, but he believed it would be significantly less because the mass was reduced in the front and the rear. Commissioner Savage wanted to know the height difference in eave height between the original design and revised design. Planner Sintz replied that it was 8'10 to 11'5 as the grade changes across the setback.

With respect to the concept of moving the building forward, Commissioner Savage understood that the rear of the building would be landscaped if the parking remained in front. Mr. Elliott replied that this was correct. Commissioner Savage asked if doors were proposed as access at the rear of the building. Mr. Elliott answered no. Commissioner Savage pointed out that if the building was moved to the front, there would be a parking lot in the back with no landscaping, people coming in and out of the building, and more noise and activity. He felt that fact should also be considered in terms of neighbor impacts.

Commissioner Savage stated that he was new to the Planning Commission, but in his brief assessment, he believed the applicant had complied with the City Council request. Commissioner Luskin complimented the applicant on the revisions and felt the project was much better than originally designed. He was a dissenting vote in the original approval and he believed the remand proves that the system works. Commissioner Luskin agreed with Commissioner Strachan that the changes were beneficial and because of the zoning something far worse could occur. He was still troubled by some elements of the project and he was still concerned about the incremental losses in Old Town.

Commissioner Luskin believed the applicant had done as much as possible to mitigate the impacts and meet the direction of the City Council. He commended them on the design and its compatibility with the historic structures. Commissioner Luskin understood opposing positions for moving the building to the front and he wrestled with whether or not it would be beneficial. Overall, Commissioner Luskin was comfortable that the project fulfilled all the obligations of the LMC and it was a better project than originally presented.

Commissioner Hontz noted that in the RC zone, the height would be the same for any of the allowed uses. However, if the applicant proposed an allowed use larger than 3500 square feet, it would come back to the Planning Commission as a CUP.

The Planning Commission discussed the three points raised by the Staff.

Does the Planning Commission agree that the proposed new design responds to the City Council remand as outlined in this report.

Commissioners Strachan, Peek, Wintzer, Luskin and Savage believed the revised project adequately responded to the remand. Commissioner Pettit did not believe it did. Commissioner Hontz thought it only partially responded to the remand. Her issue was still with the building location on the site.

Does the Planning Commission find that the rear of the building transitions to the historic structure on Woodside Avenue.

Commissioners Strachan, Peek, Luskin and Savage answered yes to the building transition.

Commissioners Peek and Hontz answered no. Chair Wintzer thought the transition had improved, but he still had concerns.

If the Commission agrees the project does not transition appropriately or meet the intent of the remand, what specific design changes the Commission feel is appropriate in order to meet the intent of the remand.

Planner Sintz summarized the Commissioners answers on the first two questions and suggested that the third question would go to Commissioners Hontz, Pettit and Wintzer.

Commissioner Pettit stated that the Planning Commission had seen the shadow study with the building moved forward, but she thought it would be helpful to see the design impacts of moving the project forward and how that might respond to the direction given by City Council. In order to fully evaluate the newly proposed design, Commissioner Pettit needed to see the alternative option. Commissioner Hontz concurred.

Commissioner Savage commented on the measurement used in the shadow study. He believed that the incremental benefit associated with moving the building would be minor because of the obtuse nature of the angle of the sun during the long winter days. Mr. Elliott agreed and pointed out that the setting sun is always lower and the shadow impact on the site comes from the setting sun. He stated that this was another reason for placing the building in its proposed location.

Commissioner Peek remarked that the movement of the shadow would equal the movement of the building. Chair Wintzer stated that the shadow was only one issue. The other issue is what the neighbors would be looking at in their backyard. For that reason he was interested in seeing the benefits and impacts of moving the building to the front.

The Planning Commission discussed the need for a site visit. Chair Wintzer thought a site visit would be helpful. He requested a section that incorporates the back yard of the historic house beyond the property line. Planner Sintz noted that the applicant had provided that section drawing but it was not included in the Staff report. Mr. Elliott presented the requested drawing.

Planner Sintz clarified that there was a majority consensus from the Planning Commission for the applicant to provide an analysis of moving the building from the back of the lot to the front. Commissioner Hontz stated that she could not support the project without seeing that analysis.

Mr. Elliott offered to ask the applicant if he was willing to pay for additional renderings to show both building locations. He pointed out that moving the structure to the front would require a complete re-design of the building because it is a significantly different application.

MOTION: Commissioner Pettit moved to CONTINUE 1440 Empire Avenue Conditional Use Permit to June 9, 2010. Commissioner Hontz seconded the motion.

VOTE: The motion passed unanimously.

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The Park City Planning Commission Meeting adjourned at 7:45 p.m.

Park City Planning Commission