

## Public Comment for CPP Kimball LLC CUP Application 6/6/18

### John Stafsholt

December 2016 the PC Planning Commission granted a CUP for a permanent private events center with a permanent outdoor deck. There were many potential limits that could have been placed on this CUP application. But, no restriction of note were requested by the planning commission and the CUP application was approved 6-0. The PC Planning Commission is very diligent, but they just plain missed this one.

Adam Strachan (the Chairman) did not get to vote, but he made a strong comment, *“Chair Strachan stated that he would not be voting in favor of the CUP because the impacts are unknown and, therefore, could not be mitigated. None of the Conditions are clean, which is a good indication that the mitigation will not be clean. Chair Strachan believed the public comments were right on point; and he was unsure how this was ever approved by the Board of Adjustment. Chair Strachan did not believe the associated impacts could be reasonably mitigated”*. PC planning staff report 12/14/18 pg. 69.

Chairman Strachan was correct in not understanding how the Board of Adjustment could approve this project. The Kimball Arts Center is a Landmark Building and the code is clear that historic structures (barrel-vaulted roof forms unique to the Kimball within the state of Utah) can not be removed, period. This first mistake has now created the second situation of the 2,533 square foot party deck. At this time, we are not appealing the structure, just the use. It is the Planning Commission’s responsibility to mitigate the use, to make it compatible for the existing historic neighborhood. The Planning Commission has not done this to date.

The Planning Commission’s 6-0 approval was overturned (remanded) by the PC City Council with a similar unanimous vote 5-0. Some short direct quotes from the PC City Council Remand document 4/14/18 are below. It should be noted that the remand was 14 months ago and the response from the developer has only come 13 months later. Nothing but delay tactics and continued building by the developer. This construction while under a remand was done at their own risk. Their action to develop while under a remand should not give them any leverage over the town of PC. The developers knew the entire time that their use at this site was at risk and they took that financial risk with eyes open.

Direct cut and paste from the City Council remand.

On March 30, 2017, the City Council held a public hearing and considered a Quasi-Judicial Appeal of Planning Commission’s approval of a Conditional Use Permit (CUP) for a Private Events Facility at 638 Park Avenue and hereby REMANDS the CUP and the use as proposed/configured back to the Planning Commission with specific direction as outlined below:

1. The Conditional Use Permit (CUP) for the Private Event Facility requires that the use is subject to the conditions and requirements of the conditional use review of LMC chapter 15-1-10.

15. The City Council found the proposed use and configuration failed to mitigate the impacts in reviewing the criteria listed in LMC § 15-1-10(E)(2), (4), (5), (6), (7), (10) (11), (12), (13) and (16) by failing to mitigate the traffic considerations including capacity of the existing streets in the Area; emergency vehicle Access; location and amount of off-street parking; internal vehicular circulation system; Fencing, Screening, and landscaping to separate the Use from adjoining Uses; signs and lighting; physical design and Compatibility with surrounding Structures in mass, scale, style, design, and architectural detailing, noise vibration, odors, steam, or other mechanical factors that might affect people and Property Off-Site; control of delivery and service vehicles, loading and unloading zones, and pickup areas and within and adjoining the Site, Environmentally Sensitive Lands, Physical Mine Hazards, Historic Mine Waste and Park City Soils Ordinance, Steep Slopes, and appropriateness of the proposed Structure to the existing topography of the Site;.
16. Council remanded the appeal for further review of the Indoor use related to the private event facility and required additional mitigation evaluation by the Planning Commission on loading areas, traffic and parking
17. Council remanded the CUP for further review by the Planning Commission to mitigate the impacts of the Outdoor deck use. As proposed the impacts are not adequately mitigated. Review of the impacts and their mitigation should include at a minimum a strong re-evaluation of the design, and conditions of approval which reflect the requirements of the Board of Adjustment decision including minimum visual impacts on the roof.

PC City Council Remand item #15 highlights a failure to mitigate required CUP requirements 2,4,5,6,7,10,11,12,13, &16. Since requirements 3,9,14, & 15 are not applicable, that shows that the developer's project only meets CUP criteria, 1 & 8. All 16 criteria are required for a CUP approval and they are listed below as a direct cut & paste from the applicable LMC.

1. **REVIEW**. The Planning Department and/or Planning Commission must review each of the following items when considering whether or not the proposed Conditional Use mitigates impacts of and addresses the following items:
  1. size and location of the Site; **PASSED**
  2. **FAILED**: traffic considerations including capacity of the existing Streets in the Area;
  3. utility capacity, including Storm Water run-off; N/A
  4. **FAILED**: emergency vehicle Access;
  5. **FAILED**: location and amount of off-Street parking;
  6. **FAILED**: internal vehicular and pedestrian circulation system;

7. **FAILED**: Fencing, Screening, and landscaping to separate the Use from adjoining Uses;
8. Building mass, bulk, and orientation, and the location of Buildings on the Site; including orientation to Buildings on adjoining Lots; **PASSED**
9. usable Open Space; N/A
10. **FAILED**: signs and lighting;
11. **FAILED**: physical design and Compatibility with surrounding Structures in mass, scale, style, design, and architectural detailing;
12. **FAILED**: noise, vibration, odors, steam, or other mechanical factors that might affect people and Property Off-Site;
13. **FAILED**: control of delivery and service vehicles, loading and unloading zones, and Screening of trash and recycling pickup Areas;
14. expected Ownership and management of the project as primary residences, Condominiums, time interval Ownership, Nightly Rental, or commercial tenancies, how the form of Ownership affects taxing entities; N/A
15. within and adjoining the Site, Environmentally Sensitive Lands, Physical Mine Hazards, Historic Mine Waste and Park City Soils Ordinance, Steep Slopes, and appropriateness of the proposed Structure to the existing topography of the Site; and N/A
16. **FAILED**: reviewed for consistency with the goals and objectives of the Park City General Plan; however such review for consistency shall not alone be binding.

Every one of the 16 items must be mitigated to grant a CUP. According to the highest elected body in this city, this project fails to mitigate 10 of these items. Failure to mitigate any one of these ten is a requirement to deny the CUP. **THIS CUP MUST BE DENIED!**

The 13 month late response from the developers is woefully inadequate on all 10 of these CUP points. My very short responses below.

2. **FAILED**: *traffic considerations including capacity of the existing Streets in the Area;* Without exaggeration, this is the #1 most congested traffic area in the entire city. Buses come through here every 8-10 minutes and can not make the corner now. Additional parking and double parking, loading/ unloading/ catering/ up to 522 people arriving for an event is a completely unmitigated impact. Their response is to change parking for their benefit and detriment to the neighborhood.

The developers have extended the sidewalks to accommodate their patrons outside the building. They have the audacity to call making the streets narrower a mitigation. Narrower streets in the most congested corner in the city is actually a mitigation because it increases the turning radius for buses at Heber and Park Ave. Not Mitigated at all, extremely worsens a bad situation.

4. **FAILED:** *emergency vehicle Access;* There is no emergency vehicle access at all. Double park on Heber Ave and shut down the street for an emergency. Not Mitigated at all, unsafe.
  
5. **FAILED:** *location and amount of off-Street parking;*  
There are literally zero parking spaces for a 522 person private event facility. Most events will have everyone show up at once with the capacity for 4 parking spots (only if the city takes those 4 spots away from the public). To make it worse, the Kimball had 12 spots for parking and the developers built on top of them taking the parking away from the building. No Mitigation at all.
  
6. **FAILED:** *internal vehicular and pedestrian circulation system;* There is one main entrance on Heber Ave. There should be a secondary entrance for pedestrian circulation on Main St. No Mitigation.
  
7. **FAILED:** *Fencing, Screening, and landscaping to separate the Use from adjoining Uses;* There is none. Residences on Woodside will look down onto the deck and into the interior of the private event facility. All tables, chairs, speakers, tent, etc... must be removed from the deck immediately after any event. This is not a condition from the planning commission, even though the BOA required a zero visibility deck. No Mitigation.
  
10. **FAILED:** *signs and lighting;* Residents will be looking down onto the outdoor facility's lighting and into the interior of the private event facility. No Mitigation.
  
11. **FAILED:** *physical design and Compatibility with surrounding Structures in mass, scale, style, design, and architectural detailing;* The design of the building kept much of the Kimball Garage façade. But, the entrance into town from Marsac is now dominated by the mass and orientation of the new, additional structure with a new balcony in the most prominent corner.

The City Council remand #17 requires “a strong re-evaluation of the design, and conditions of approval which reflect the BOA decision including minimum visual impacts on the roof. Not Done. Not Mitigated.

12. **FAILED:** *noise, vibration, odors, steam, or other mechanical factors that might affect people and Property Off-Site;*  
Probably the most audacious and onerous impact on the residents of a 130 year old residential community. There is no way to mitigate the impact of a 2500+ square foot party deck adjacent to a residential community. Council has not found a way to mitigate impacts related to noise on the deck. “Such mitigation may include denial of use of the deck beyond which is already permitted”... “mitigation use beyond permitted use on the deck and consider mitigation including design changes, limitation or or reduction of use by hours per days or number of days, direction of deck/ event space, remove speakers”...  
Amazingly, the previous planning commission did not limit noise, which they must to meet city ordinances. Examples: no amplified music, no live music, no outdoor speakers, change hours of outdoor operations, etc...

The business plan of this *private* event facility allows all types of amplified music, all days and nights of the year. Every other similar outdoor use requires either a Special Event Permit or a Master Festival License. No one has the right to have these events on a 365 day per year basis without special permits. Special Event Permits must be required. The developers refer in their response to: a single *indoor* event that was held at the Kimball Art Center in a previous year. It was one event out of the whole year and it was indoors. No comparison whatsoever.

The developer's noise study took 13 months to get completed. That should show their intent. The study must be rejected, since it only measured ambient noise, then a projected value based on expected voices and 2 acoustic musicians. Amplified music is allowed in their CUP and omitted for obvious reasons. Live amplified music is allowed and also never mentioned. It is easy enough to get real numbers vs. their charts. Their charts have different units from one chart to the next. Surprisingly, their final numbers are 1 bd below the maximum allowed by Park City code.

I can tell you for sure, that when the Sky Lodge bar was open on the deck of the Sky Lodge (twice as far away) we could clearly hear conversations at our home and there was never amplified outdoor music allowed on that deck. We could converse with the patrons to ask them to quiet down.

I can also tell you for sure that the sound problems will be during the evening when the neighbors want to sleep. Most Old Town homes were built prior to air conditioning and most rely on open windows to cool their home in the summer. Any amplified music will make it impossible in some locations to sleep, in some locations unable to hear your TV with windows open. Similar issue with voices.

Park City Code Enforcement is only available 8-5PM Monday- Friday. These problems will be after hours and on weekends. There will not be any City officials to enforce the code. The PC Police to date have not enforced the code. They rely on complaints and then the complainant must go with the officers to the offending location. The officers did not know the code, do not have db meters, do not shut down the offending location.

By the way, what neighbor wants to show up at a wedding with hundreds of guests and shut them down. Avoiding this problem is what the LMC and code is for. Eliminate these issues through code before they start. We are potentially allowing a developer to have a business plan that is against code, unworkable, and unenforceable. It is the Planning Commission's responsibility to put mitigating requirements in place where possible. Where impossible, it is the Planning Commission's duty to deny the CUP outright. PCMC is not in the habit of revoking a CUP even though they can and should.  
Not Mitigated.

13. **FAILED:** *control of delivery and service vehicles, loading and unloading zones, and Screening of trash and recycling pickup Areas;*

Another situation where the developer has forsaken the neighborhood to build a maximum sized project. There was a 12 space parking/ loading/ unloading zone which was allowed to be built upon. There is literally no loading/ unloading area other than Heber Ave. Because of

the nature of the Private Event Facility and the fact that the developers wanted to maximize the occupancy, there is no cooking facilities on site. That means that the developers expect caterers, musicians, etc to show up with food/ instruments right before the event. That violates the delivery restrictions that are in place in their zone. Now the developers want the public to give them our public parking spaces since they know they will have to break the law and/or double park shutting down Heber Ave. No Mitigation at all.

16. **FAILED**: *reviewed for consistency with the goals and objectives of the Park City General Plan; however such review for consistency shall not alone be binding.*

Too many inconsistencies to list. Very short version. General plan goals: Small Town, Natural Setting, Sense of Community, Historic Character. This project adds to the traffic, congestion, noise, pollution, etc... This project does all this for the benefit of a “private” events facility which only detracts from our Sense of Community since it benefits only those who can pay to rent the facility for their events. Certainly, the vast majority of facility renters will not be from the historic neighborhood that bears their impacts.

Planning Commissioners: Thank you for what you are doing. You are the residents only real defense against profiteering at the expense of our quality of life. The Historic District and the residents are under constant attack from out of town developers who create impacts, sell, take their profits and move on. Sure, they will say they are here for the long haul, they care about the community etc, but we have seen this repeatedly, and the residents are left with the impacts. These developers are selling our quality of life. They profit from taking our quality of life.

This is a Conditional Use Permit because the impacts exceed what is allowed. Please help the residents by denying the CUP as it is.

Respectfully Submitted,  
John, Deb, Steve, & Katerina Stafsholt