

PARK CITY MUNICIPAL CORPORATION
PLANNING COMMISSION MEETING MINUTES
COUNCIL CHAMBERS
MARSAC MUNICIPAL BUILDING
JULY 27, 2011

COMMISSIONERS IN ATTENDANCE:

Chair Charlie Wintzer, Brooke Hontz, Julie Pettit, Mick Savage, Adam Strachan, Jack Thomas, Nann Worel

EX OFFICIO:

Planning Director, Thomas Eddington; Katie Cattan, Planner, Kirsten Whetstone Planner; Polly Samuels McLean, Assistant City Attorney

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REGULAR MEETING

ROLL CALL

Chair Wintzer called the meeting to order at 7:00 p.m. and noted that all of the Commissioners were present.

ADOPTION OF MINUTES

June 22, 2011

Commissioner Hontz referred to page 25 of Staff report, page 5 of the minutes, second paragraph from bottom, and changed Planner Kirsten to Planner Whetstone

Commissioner Pettit referred to page 35 of the Staff report, page 15 of the minutes, the motion at the bottom of the page regarding Park City Heights. The language stated that Commissioner Pettit made the motion; however, she had chaired that meeting and was certain that another Commissioner had made the motion. Commissioner Pettit requested that someone re-listen to the recording to verify the correct person making the motion.

MOTION: Commissioner Pettit moved to APPROVE the minutes of June 22, 201 subject to the corrections stated and the requested verification. Commissioner Thomas seconded the motion.

VOTE: The motion passed unanimously.

July 13, 2011

Commissioner Worel referred to Page 46 of the Staff report, page 6 of the minutes – second paragraph, first line – and corrected “sits over there legal lots of record to, “ sits over **three** legal lots of record.”

Commissioner Worel referred to Page 49 of the Staff report, page 8 of the minutes – Modified Finding of Fact #21, fourth line, and corrected the satisfie4d to **satisfied**.

MOTION: Commissioner Hontz moved to APPROVE the minutes of July 13, 2011 as corrected. Commissioner Worel seconded the motion.

VOTE: The motion passed unanimously by the Commissioners who had attended the July 13th meeting. Commissioner Pettit abstained since she was absent from that meeting.

PUBLIC INPUT

There were no comments.

STAFF/COMMISSIONER COMMUNICATIONS AND DISCLOSURES

Director Eddington announced that the next joint meeting with the City Council was scheduled for July 25th, following the City Council meeting.

Chair Wintzer requested that the City devise a microphone system that allows the applicants to present their project without causing someone to trip over the cord. He pointed out that during the last two meetings, someone tripped and the microphone was knocked to the floor.

Commissioner Pettit disclosed that she would be on vacation and unable to attend the meeting on August 10th. Commissioner Hontz disclosed that she was also unable to attend the August 10th meeting. Chair Wintzer disclosed that he would not attend the meeting on August 25th. It was established that the Planning Commission would have a quorum for both August meetings.

CONTINUATION(S) – Public Hearing and Continue to Date Specified

633 Woodside Avenue - CUP
Application #PL-11-01270)

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

MOTION: Commissioner Pettit moved to CONTINUE 633 Woodside Avenue - CUP to August 10, 2011. Commissioner Strachan seconded the motion.

VOTE: The motion passed unanimously.

CONSENT AGENDA

1159 Empire Avenue – Record of Survey

MOTION: Commissioner Pettit moved to REMOVE 1159 Empire Avenue from the Consent Agenda to allow for questions and discussion. Commissioner Strachan seconded the motion.

VOTE: The motion passed unanimously.

REGULAR AGENDA - DISCUSSION/PUBLIC HEARINGS/ POSSIBLE ACTION

1. 1159 Empire Avenue – Record of Survey (Application #PL-11-01228)

Commissioner Pettit noted that she was not present at the last meeting, but in reading the minutes, she understood the discussion that led to the determination for a positive recommendation to the City Council to approve the record of survey plat for 1159 Empire Avenue. However, the structure is a 1979 condominium and the request would create a fairly large lot by removing the lot lines to accommodate the condominium record of survey. She was concerned that if the condominium complex was to be torn down for re-development, what could be built would not be consistent with what the City is doing to address house sizes with lot combinations. Commissioner Pettit suggested adding a condition of approval that would be tied to the removal of the existing condominium complex for future development.

Assistant City Attorney McLean believed the application for 1159 Empire Avenue came in prior to the TZO that was placed by the City Council. She understood the concerns related to the TZO that could be relevant, but in terms of the timing, the applicant is only required to comply with the Code in effect at the time the application was submitted.

Commissioner Strachan recalled that the discussion dealt with use and whether the intensity would increase or decrease. If the record of survey is a lot combination in disguise and would allow a single family home to be built to replace the four condominium units, he believed the intensity of use would decrease.

Commissioner Pettit pointed out that the zoning was HR-1 and the plat would create a lot three times larger than the standard HR-1 minimum lot size. Planner Cattan remarked that the condominium structure is located on the border of the HRC zone and there are a number of larger developments across 12th Street. It is more difficult in the HR-1 zone to find a condominium building that sits on three lots.

Planner Cattan stated that if the building were to burn down, the four owners would need a conditional use permit to build a duplex. A triplex or greater would not be allowed. If the four owners wanted to build a single-family home, they would be restricted to the footprint allowed by Code.

Assistant City Attorney McLean remarked that if the structure was to burn down, the owners would have the right to rebuild the exact structure within one year.

Commissioner Strachan referred to Conditions of Approval #1 and corrected typographical errors. The condition should read, "The City Attorney and City Engineer must review and approve the final

form and content of the plat for compliance with the Land Management Code and conditions of approval as a condition precedent to recording the plat”.

Condition of Approval #3 states that a 10-foot wide public snow storage easement is required along the front of the property.” He was not opposed to the requirement, but the Planning Commission did not have that discussion. He was told that the 10-foot snow storage was a standard requirement.

MOTION: Commissioner Strachan moved to forward a POSITIVE recommendation for 1159 Empire Avenue Condominiums record of survey plat according to the Findings of Fact, Conclusions of Law, and Conditions of Approval attached to the draft ordinance. Commissioner Thomas seconded the motion.

VOTE: The motion passed unanimously.

Findings of Fact – 1159 Empire Avenue

1. The property is located at 1159 Empire Avenue.
2. The owners of the property located at 1159 Empire Avenue have petitioned the City Council for approval of the 1159 Empire Avenue Condominiums Record of Survey Plat.
3. The property is located in the Historic Residential (HF-1) District.
4. The structure is a built-multi-unit dwelling which contains four units.
5. A building permit was given to build the multi-unit dwelling in 1979.
6. A multi-unit dwelling is currently a prohibited use in the HR-1 district.
7. The multi-unit dwelling is a legal non-conforming use.
8. There is not a minimum lot size for a multi-unit dwelling in the HR-1 because a multi-unit dwelling is a prohibited use.
9. Based on Title 15 LMC, Chapter 2.2, Table 15-2.2, the maximum footprint allowed for this lot is 2,050 square feet, and the footprint of the existing structure is 2,058.5 square feet, making the structure a legal, non-complying structure.
10. The area of the lot is 5625 square feet.
- 11; The setback requirements for a seventy-five (75) feet deep by seventy-five feet (75') wide lot are ten feet (10') front yard, ten feet (10') rear yard, and five feet (5') with a combined minimum of eighteen feet (18') side yards. The existing four-plex does not comply with the side yard setback requirements. The structure is located five feet (5') from the property line on each side. The combined minimum of eighteen feet (18') has not been met. Therefore, the structure is a legal, non-complying structure.

12. Parking requirements for the four-plex have been met within the site. The parking ratio requirement for a multi-unit dwelling with units between 650-1000 sf (LMC 15-3-6) is 1.5 parking spaces per dwelling unit, requiring a total of six (6) parking spaces. There are six interior parking spaces in the garage and two in front of the building.
13. The total size of the habitable living space is 3,146 square feet, with unit 1 being 769 square feet, unit 2 being 771 square feet, unit 3 being 780 square feet, and unit 4 being 826 square feet.
14. The four-plexes is both a legal, non-conforming use and a legal, non-conforming structure. Currently, the four units cannot be sold individually.
15. The Condominium Conversion will allow the four units to be sold individually.
16. Per LMC 15-9-1, the purpose of the chapter is to limit enlargement, alteration, restoration, or replacement which would increase the discrepancy between existing conditions and the development standards prescribed by the code. In addition, applications are reviewed to ensure that they are reducing the degree of non-conformity and improving the physical appearance of the structure and site through such measures as landscaping, building design, or the improved function of the use in relation to other uses.
17. LMC Section 15-9-5, regulates that "n non-conforming use may be moved, enlarged, altered, or occupy additional land, except as provided within Section 15-9-5. The change in ownership interest is not altering the non-conforming use in a manner which would increase the degree of non-conformity.
18. During the July 13, 2011 Planning Commission meeting, the Commission found good cause for the condominium plat because: the degree of the legal, non-conforming use and the legal, non-complying structure was not being moved, enlarged, expanded, or altered in a manner to increase the non-conformity; the sale of smaller units within Old Town could result in more attainable housing within the Historic District; and the structure is in essence being adaptively reused. Adaptive reuse of buildings is a green building technique that results in minimal waste, recycling, and minimal new consumption of goods.
19. The findings within the Analysis section are incorporated within.

Conclusions of Law – 1159 Empire Avenue

1. There is good cause for this condominium Record of Survey.
2. The Record of Survey Plat is consistent with the Park City Land Management Code and applicable State law regarding Condominium Record of Survey Plats.
3. Neither the public nor any person will be materially injured by the proposed condominium record of survey.

4. As conditioned, the condominium record of survey is consistent with the Park City General Plan.

Conditions of Approval – 1159 Empire Avenue

1. The City Attorney and City Engineer review and approval of the final form and content of the plat for compliance with the Land Management Code and conditions of approval as a condition precedent to 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 and the plat will be void.
3. A ten foot wide public snow storage easement is required along the front of the property.
4. No remnant parcels are created.

**2. 333 Main Street – Condominium Conversion
(Application #PL-11-01293)**

Planner Kirsten Whetstone reviewed the request for a condominium of the Main Street Mall, the entire existing building, creating two condominium units. Unit A would be the bottom three floors and Unit B would be the top two floors. The Condominium Conversion creates separate ownership opportunities, as well as financing mechanisms for the renovation and remodel of the Main Street Mall, which was approved with the revised Historic District Design Review for the proposed changes. The primary changes occur to the exterior on Main Street and some interior changes.

Planner Whetstone pointed out that this application did not include the proposals previously discussed by the applicant, such as the extension of new commercial into the HR-2 Zone or the residential units in the HR-2 zone that would require a master planned development. This condominium conversion would only allow convertible space for two residential units in the HCB where residential units in the penthouse would be allowed uses, as well as the typical uses allowed in the HCB zone.

Planner Whetstone noted that the application was consistent with the one-lot subdivision plat that was recorded with the County. The conditions memorialize the same easements under the road to access this from Swede Alley. There is also a 99 year lease for a parking garage off of Park Avenue, which is reflected on the plat.

Planner Whetstone presented slides showing the Main Street Mall and the surrounding area. She showed the one lot subdivision and various walking easement to Swede Alley.

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

Chair Wintzer asked Planner Whetstone to explain the rear setbacks off of Park Avenue. Planner Whetstone replied that there is not a rear setback. The setback in the HCB zone is zero. In the HR-2 zone the required setback is 10 feet for a typical HR-2 lot. Without the middle line, there are only front setbacks; one in the HCB and the other off of Park Avenue.

Chair Wintzer asked if it could be expanded to the street without a setback. Planner Whetstone clarified that there would be a front setback to the street. Director Eddington stated that Planner Whetstone had described the area between the HCB and the HR-2 line, where the building obviously crosses over.

Chair Wintzer referred to the walking easements underneath the street, and noted that a previous owner sold off the air rights above those easements. There was also a transfer of parking easements. He asked if that had been incorporated into the study. Planner Whetstone identified the parking easement. She believed they were identified as ten private parking spaces. There are 56 parking spaces with the existing parking agreement, and then the additional ten. Planner Whetstone noted that the air was not part of this ownership.

Chair Wintzer opened the public hearing.

There was no comment.

Chair Wintzer closed the public hearing.

MOTION: Commissioner Thomas moved to forward a POSITIVE Recommendation to the City Council for the 333 Main Street Condominium Plat, based on the Finding of Fact, Conclusions of Law, and Conditions of Approval found in the draft ordinance. Commissioner Strachan seconded the motion.

VOTE: The motion passed unanimously.

Findings of Fact – 333 Main Street

1. The property is located at 333 Main Street between Main Street and Park Avenue and consists of Lots 7-15 and 18-26, Block 11, of the Amended Park City Survey. There is an existing four story commercial building on the property.
2. The existing building, known as the Main Street Mall, was constructed in 1984 across property lines and zone lines.
3. On March 26, 2009, the City Council approved a plat amendment to create a single lot of record from the multiple underlying lots for the existing Main Street Mall building. On March 8, 2010, the Council extended the approval for one year to allow the applicants additional

time to finalize the plat in preparation for signatures and recordation at Summit County. The 333 Main Street one lot subdivision plat was recorded at Summit County on April 12, 2011.

4. The Main Street portion of the building is located in the Historic Commercial Business District (HCB) with access to Main Street and the Park Avenue portion of the building is located in the Historic Residential 2 (HR-2) zoning district with limited access to Park Avenue. The building has legal non-complying side yard setbacks within the HR-2 zone.
5. Main Street is important to the economic well being of the Historic Commercial business district and is the location of many activities important to the vitality and character of Park City. The Main Street Mall architecture is out dated and not in compliance with the 2009 Design Guidelines for Historic Sites and Districts and the owners are proposing a renovation and improvement to the building.
6. On May 2, 2011, a revised Historic District Design Review application was approved for modifications to the exterior in compliance with the 2009 Design Guidelines for Historic Districts and Sites.
7. The property is encumbered with a recorded 99 year lease agreement to provide parking for the property at 364 Park Avenue. This lease agreement is identified on the plat because of the duration of the lease. The parking subject to the lease is currently provided within a garage in the Main Street Mall building with access to Park Avenue.
8. Five (5) easements for existing emergency and pedestrian access, utility, and parking easements as described in the title report and the land title of survey for 333 Main Street was memorialized with the recorded subdivision plat. These easements are also include on the proposed condominium plat.
9. On June 27, 2011, the City received a complete application for a condominium plat to create 2 two non-residential condominium units (Unit A and Unit B) within the existing space of the Main Street Mall building and consistent with the May 2011, approved Historic District Design Review plans. Unit A is all of the space on the basement level combined with all of the space on the two floors above it. Unit B is all of the space above Unit A. This plat provides two separate ownership units that allow the proposed Main Street Mall renovation and financing to occur in separate phase. No residential uses or condominiums are proposed.
10. No changes to the existing parking are proposed with this condominium plat and all parking agreements and easements continue to apply unless and until they are amended by both parties. A review of parking requirements and parking agreements associated with additions to the building or changes of use of this building shall be reviewed at the time of building permit application.
11. A condominium plat amendment would be required when any convertible space is converted for use and ownership is changed. Some of that space may be used to create residential condominium units. As shown, these residential units are within the HCB zoned

portion and are allowed uses by the zone. Any residential units requested for the HR-2 zone portions require a conditional use permit and/or a Master Planned Development.

Conclusions of Law – 333 Main Street

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

Conditions of Approval – 333 Main Street

1. The City Attorney and City Engineer will review and approve the final form and content of the condominium plat for compliance with State law, the Land Management Code, the recorded subdivision plat, and any conditions of approval, prior to recordation of the plat.
2. The applicant will record the condominium plat 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 plat will be void, unless an extension request application has been filed with the City prior to expiration.
3. All conditions of approval of the 333 Main Street subdivision plat and approved Historic District Design Review shall continue to apply.
4. All new construction at this property shall comply with all applicable building codes and any current non-compliance issues for tenant spaces, such as ADA access and bathrooms, restaurant grease traps, etc. within the building shall be addressed with tenant improvement building permits for those spaces.
5. Prior to issuance of any building permits for reconfiguration of interior spaces that result in additional floor area or residential uses, a detailed parking analysis shall be presented to the Planning Department, identifying compliance with requirements of the 1986 Parking Agreement and the LMC. The parking analysis shall identify and discuss all existing parking agreements associated with the property.

**3. Upper Ridge Subdivision – Plat Amendment
(Application #PL-11-01238)**

The Planning Commission held a site visit prior to the meeting.

Planner Whetstone noted that a public hearing was noticed for this meeting. She stated that the applicant was still providing requested information and the Staff needed to complete their analysis. She was working with the City Engineer in an effort to understand the issues with the easements in the area and construction in the right-of-way as a driveway or street.

Planner Whetstone had provided a summary of the neighborhood meeting in the Staff report. To better clarify the density, she distributed copies of the density calculations that she had received from the applicant this evening.

Planner Whetstone requested that the Planning Commission conduct a public hearing this evening and continue the public hearing and the item to August 10th. Depending on how timely additional information is submitted, she may need beyond August 10th to analyze the information.

In response to density questions, Planner Whetstone presented the 1887 Plat #1 of the Millsite Subdivision, which included the lots on Daly. She pointed out that the area shown in red were full platted lots, even though they did not meet the lot size of 3750 square feet that is currently required. Planner Whetstone clarified that the 1187 plat shows that the smaller lots are full platted lots and not portions of lots.

Chair Wintzer wanted to know how many houses could be built in this location under the current Code. Planner Whetstone replied that none of the lots are 3750 square feet, therefore, nothing could be built without a lot combination.

Planner Whetstone stated that at the last meeting Director Eddington calculated the number of TDRs based on the total square footage of the property. Director Eddington believed the number was 17.65 units. Planner Whetstone had done her own calculation by dividing the total square footage of the property by 3750 square feet, and she also came up with 17 units. She then went to the next tier, which was to look at the density of the property that did not include the area being dedicated for existing roads or the open space parcel. Planner Whetstone stated that when she divided 34,527 square feet as the total property by 3750 square feet, the result was 9.21 lots. She noted that other issues such as steeper slopes and geo-technical issues would need to be considered.

Planner Whetstone stated that another calculation formula was to look at the linear feet along platted Ridge Avenue, which is about 300 feet. That number could be divided into 6 50 foot wide standard lots. A standard 3750 square feet is typically two Old Town lots, 25' and 25', or 50 feet wide. Planner Whetstone pointed out that the minimum lot width in the HRL is 35 feet, but the lots would have to be deeper to meet the 3750 square foot requirement.

Planner Whetstone noted that the applicant was proposing 6 lots varying in size from 3759 square feet to 8105 square feet, with lot widths varying from 35 feet to 50 feet.

Jeremy Pack, representing the applicant, stated that just taking the contiguous area and not the separated parcels, under the current HRL zone they would be allowed 8.6 lots. He noted that they were only proposing six lots because that was the number that would fit within in the topography. Mr. Pack pointed out that all six lots are larger than the minimum required. He believed Planner

Whetstone had accurately summarized the density breakdown they had prepared. Mr. Pack reiterated that the density was being reduced based on the total square footage of the contiguous property. He remarked that the area they were proposing to disturb under the 3750 square foot requirement equates to 7.7, which was more than the six lots they were requesting.

Planner Whetstone reviewed the full plat amendment process as outlined in the Staff report. She also presented an aerial photo showing the proposed lots and existing Ridge Avenue. Planner Whetstone noted that the applicants have ownership of Parcel B, which is being dedicated for existing Ridge Avenue. However, they do not own the land that is approximately a hundred feet from the intersection of Daly and Ridge. Planner Whetstone pointed out that there is an easement in Ridge Avenue, but she needed to talk with the City Engineer to better understand it before doing the analysis.

Chair Wintzer opened the public hearing.

Tom Bennett, an attorney, represented Sherry Levitan, the owner of the home at 135 Ridge Avenue. Mr. Bennett stated that the major concern was the current means of access being suggested on the proposed plat. Mr. Bennett indicated the Levitan home and another home on the other side of the proposed right-of-way. He felt the proposal had problematic legal issues, as well as significant problematic site design and impact issues. From a legal standpoint, he understood that the applicant was taking a platted right-of-way on the 1887 plat, and concluding that it constitutes a public right-of-way. In looking at the plat, Mr. Bennett felt there were questions as to what the designation of the road as a right-of-way really means, because there was no dedication language on the plat. It was only labeled as a right-of-way for the road. Mr. Bennett understood that the proposal would take the roadway that has never physically existed, and convert it into a private roadway for the use of the lots. Mr. Bennett asked whether the current status of the property is a public right-of-way. If they conclude that it is a public right-of-way, he wanted to know how it would get converted into a private driveway. He thought that process should be examined. Mr. Bennett stated that a more serious problem is where the proposed right-of-way exists with respect to Ms. Levitan's house and the one across the street. He believed the entry way was being shoehorned in between those two houses. Mr. Bennett pointed out that it is a ridge, which is why it was named Ridge Avenue. He understood that the plan would basically chop off the ridge in order to get the road to the needed elevation to access the homes. The result would be a significant amount of cutting into the ridgeline, which would create a significant impact to the neighborhood. It also creates a direct negative impact on Ms. Levitan's house because the road would be located at the same level as her patio several feet away. There would be a similar situation with the home across the road. It would also entail the removal of at least three extremely large Douglas Fir trees. Mr. Bennett remarked that the road does not belong in that location and it is not the proper way to access the lots. He believed there were alternative ways to access these lots and he urged the Planning Commission to require the applicant to come back with a plan that shows alternative means to access the lots.

Mr. Bennett noted that the Staff report indicated that additional information still needed to be submitted. He retained the right to make additional comments when those materials are presented.

Don Simon, a resident at 234 Ridge at the intersection of Ridge and Daly. He noted that his home is far enough away from the proposed plat and he would not be immediately affected. Mr. Simon stated that he was speaking from the standpoint of a community member and the impacts on the community. He could see no reason for bringing the ridge line down to the grade that would meet the 10% limit, and moving the houses higher than they would need to be with a different access. If the applicant had no other access alternative they might be able to make the case that this is their only legal access, but there are alternatives. Mr. Simon was concerned about snow on the road and where it would go. He suggested that if they used the money spent on this infrastructure development and put it into improvements for Ridge, it would benefit the entire neighborhood.

Chair Wintzer stated that before the Planning Commission discussed the issues or requested details that would cost the applicant additional time and money, it was important to determine whether or not this proposal meets the Land Management Code and the General Plan.

Chair Wintzer explained his reasons as to why he believed it did not meet the LMC or the General Plan. It did not meet the objectives on page 6 and 24 of the General Plan that addresses ridge line encroachments; page 34 and 57, which talks about steep slope and ridge line encroachments; and page 148, which talks about historic compatibility and clustering development to stay off ridge lines within the Historic District.

Regarding the Land Management Code, Chair Wintzer did not believe the proposal meets A, C, E, F, or G of the purpose statement of the HRL zone. It does not meet the criteria of developing on steep slopes as identified in Section 15-2.1-6; the criteria of location of development in Section 15-2.1-6(1). If it comes back for a CUP, based on the criteria in 15.2.1(9) he believed they would have to reduce the heights of the homes to something that would not encroach on the ridge line. Chair Wintzer did not think the proposal met the purpose statement of the General Subdivision Requirements, Section 15-7-2(B), (D), (E), (G) and (K). It does not meet the General Subdivision requirements in Section 15-7.3-2 (D) and (F). Chair Wintzer noted that if the plat amendment was approved it would come back for a CUP. He did not believe it would meet the review criteria 1, 2, 8, and 15 as described in Section 15-1-10(E). Based Section 15-7.3-1(D) Chair Wintzer believed the Planning Commission had the right to deny this project as proposed.

Commissioner Pettit noted that 15-7.3-1(D) was also referenced in a letter from Mr. Gaylord's on behalf of Sherry Levitan. Commissioner Pettit read the language in 15-7.3-1(D), Restrictions Due to Character of the Land, "Land which the Planning Commission finds to be unsuitable for subdivision or development due to flooding, improper drainage, steep slopes, rock formations, mine hazards, potential toxic waste, adverse earth formations or topography, wetlands, geologic hazards, utility easements or other features including ridge lines, which will reasonably be harmful to the safety, health and general welfare of the present or future inhabitants of the Subdivision and/or its surrounding areas, shall not be subdivided or developed unless adequate methods are formulated by the Developer and approved by the Planning Commission, upon recommendation of the qualified engineer to solve the problems created by the unsuitable land conditions. The burden of the proof shall lie with the Developer, and such land shall be set aside or reserved for uses as shall not involve such a danger." Commissioner Pettit clarified for the record the definition of a ridge line area as defined in the Code. "A ridge line area is the top ridge or crest of hill or slope, plus the land located within 150 feet on both sides of the top crest or ridge". The Code defines crest of hill as,

“The highest point on a hill or slope that as measured continuously throughout the property. Any given property may have more than one crest of hill”.

Chair Wintzer stated that unless the applicant was willing to enter the property from the lower side, he was not comfortable moving forward with the plat amendment as proposed.

Commissioner Pettit again cross referenced the definition she read with Mr. Gaylord's letter and the points made by Mr. Bennett during the public hearing. She pointed out that access was the primary issue in terms of the impacts on the neighbors on both sides of the proposed road, and the fact that the road follows along a ridge line. Commissioner Pettit supported Chair Wintzer for all the reasons he stated. She could not find good cause for this particular lot combination with the access as currently proposed.

Commissioner Strachan concurred. Destroying a ridge and inserting a road in order to build homes does not meet the intent or the terms of the LMC and the General Plan.

Commissioner Hontz concurred with her fellow Commissioners. In her opinion the crux is more than just the ridge itself and the platted Ridge Avenue. It is also the Ridge access. Commissioner Hontz did not believe the Planning Commission would be able to find good cause for any development unless they talk about what would happen to Ridge Avenue. During the site visit it was evident that the road could only accommodate one vehicle at a time. The road has been deemed substandard and dangerous by the Streets Master Plan and by previous Planning Commissions. Commissioner Hontz stated for all the reasons mentioned and the Code language cited, she would not be able to make findings that would support any development on the ridge or platted Ridge Avenue.

Commissioner Hontz stressed the need to address existing Ridge before any development could occur off that access. She anticipated negative impacts from improving that road as well. There would be more cuts and fills and it would further impact the residents lower down on Daly Avenue in terms of where the road would end. Addressing that road would take time and thoughtful consideration. Commissioner Hontz remarked that vegetation, wild fire, additional viewpoints, fire standards, and the trail were related discussions that should also occur as they move forward, as well as other issues identified in the public meeting.

Commissioner Hontz referred to the horseshoe area where King Road comes up, and noted that there were three lots, one of which was completely encumbered by the existing roads. She pointed out a sizeable area within the horseshoe area that was not encumbered by either King Road or Ridge Avenue. By her calculations, she thought it would be possible to build two similar sized homes or one larger home on those existing lots. In her opinion, development made more sense in an area that would complete the neighborhood, and at the same time preserve the vegetation of trees, bushes and wildflowers that they saw on the proposed lots 1-6.

Commissioner Worel concurred with her fellow Commissioners.

Commissioner Thomas also concurred with the previous comments. He would not suggest that he had a solution and he would not venture into how to solve the problem. However, putting homes and a road on the ridge and creating an unsafe intersection was not a workable plan.

Commissioner Savage recognized that there was a property rights issue because someone owns the property and they are entitled to develop their property. However, what the owner can do is subject to deep debate and it starts with the question of the right-of-way to access those lots. Commissioner Savage felt it was important to address Mr. Bennett's question about whether there is a right-of-way, and if there is and it is public, could it be converted to private. That was a fundamental foundation problem that needed to be addressed before they moved forward. In addressing that question, they should also look at the question of viable access alternatives to take advantage of some of the rights that may exist with that property. Commissioner Savage stated that another question within the context of the proposed development was the definition of a ridge. When he was on the site it felt like a ridge to him. He was not sure if removing the ridge as a way of not building on a ridge was a viable plan. Commissioner Savage stated that if he were the applicant, he would want to address those issues in a fairly specific fashion within the context of the General Plan and the LMC. At that point, the applicant may have a more receptive approach for the Planning Commission to consider for the use of his property rights.

Commissioner Hontz noted that a certain number of TDRs were associated with this property. Hypothetically, if the Planning Commission was to approve a lesser number in a different location, it would extinguish the TDR rights forever. As they continue down the path those doors would close in terms of getting a certain value and number. Commissioner Hontz encouraged the applicant to do the TDR exercise to fully understand what those might be.

Planner Whetstone asked if the TDRs would go away if the applicant received approval for three or four lots, but the plat was never recorded due an issue with the CUP and the project expired. Director Eddington replied that the plat would not dictate it, but any construction or improvements would eliminate the TDR opportunity because it is all or nothing.

Mr. Pack noted that all the lots are individual lots. He asked if it was all or none because the applicant decided to group them into one parcel. Director Eddington replied that it was an all or nothing situation because it was an overall submission. Assistant City Attorney McLean stated that when the TDR ordinance was passed, the intent was to protect the whole area. Once any development is allowed, it lessens the benefits to the City and the community. Ms. McLean recalled from the Code that TDRs were affected by building rather than platting. However, she would need to review the Code closely to see if once it is platted, it would change the number of TDRs that would be granted.

Planner Whetstone stated that an earlier discussion with the applicant was to see if there were ways to provide a benefit to the neighborhood. One obvious benefit would be the improvement of Ridge Avenue. Where Ridge Avenue crosses private property is problematic. She suggested that they bring in other property owners and have a larger planning discussion of the Daly/Ridge/King/Sampson neighborhood to see if there are alternatives to utilizing existing Ridge. Planner Whetstone thought it was important to get an opinion from the City Engineer on the possibilities of actually improving Ridge and what those improvements would look like.

Mr. Pack asked if the Planning Commission had additional suggestions they could consider. Commissioner Thomas stated that it was not the role of the Planning Commission to solve the problem. Their role is to respond to the design presented, which makes it difficult for the Planning Commission to offer design solutions. As direction to the applicant, Commissioner Thomas believed there was some agreement among the Planning Commissioners with regard to pulling the units off the ridge and down the hill, and for alternative access.

Commissioner Hontz suggested that if the applicants return with another plan, it would be better to review it in a work session format. Commissioner Thomas agreed with the work session format. He also felt it was important to allow the applicants to work out an alternative plan without spending a significant amount of time and money.

Gus Sherry, representing the applicant, asked if the public hearing was still open. Chair Wintzer stated that it would be closed with a motion; however, it could be re-opened at another meeting.

MOTION: Commissioner Strachan made a motion to close the public hearing. Commissioner Hontz seconded the motion.

VOTE: The motion passed unanimously.

Chair Wintzer asked if the applicant wanted the Planning Commission to continue the item to a date uncertain and allow them time to explore an alternative plan, or if they preferred to have the application denied this evening. Mr. Pack preferred a continuance.

MOTION: Commissioner Strachan moved to CONTINUE the plat amendment for Upper Ridge Avenue, Block 75, Lots 1-18 and 88-109, Block 76, Lots 15-17 to a date uncertain. Commissioner Thomas seconded the motion.

VOTE: The motion passed unanimously.

Legal Training

The Planning Commission moved into work session for annual legal training on the Open and Public Meetings Act. The discussion can be found in the Work Session Notes.

The Park City Planning Commission meeting adjourned at 8:15 p.m.

Approved by Planning Commission: _____