

PARK CITY MUNICIPAL CORPORATION
PLANNING COMMISSION MEETING MINUTES
COUNCIL CHAMBERS
MARSAC MUNICIPAL BUILDING
June 8, 2011

COMMISSIONERS IN ATTENDANCE:

Chair Charlie Wintzer, Brooke Hontz, Julie Pettit, Mick Savage

EX OFFICIO:

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

=====

REGULAR MEETING

ROLL CALL

Chair Wintzer called the meeting to order at 6:45 p.m. and noted that all of the Commissioners were present except Commissioner Strachan who was excused.

ADOPTION OF MINUTES – May 11, 2011

MOTION: Commissioner Pettit moved APPROVE the minutes of May 11, 2011. Commissioner Savage seconded the motion.

VOTE: The motion passed unanimously.

PUBLIC INPUT

There were no comments.

STAFF/COMMISSIONER COMMUNICATIONS AND DISCLOSURES

Director Eddington noted that the Planning Commission was scheduled for legal training at their next meeting on June 22nd. He encouraged all the Commissioners to attend if possible. Two new Commissioners were appointed and June 22nd would be their first meeting on the Planning Commission.

Director Eddington noted that the Staff was in the process of scheduling a joint meeting with the Planning Commission and City Council for the afternoon of Thursday, July 7th to discuss pre-development planning, economic development planning, general planning issues. The Commissioners would be notified when the exact time is confirmed.

Chair Wintzer announced that he would be unable to attend the meeting on June 22nd.

Regarding the joint meeting with the Snyderville Basin Planning Commission, Director Eddington stated that because both Planning Commissions had new members coming on this summer, the joint meeting was postponed until late August or early September. He would notify the Commissioners when that meeting is formalized.

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

1555 Iron Horse Loop – Development Agreement for MPD
Application #PL-10-00899)

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

MOTION: Commissioner Pettit moved to CONTINUE 1555 Iron Horse Loop – Development Agreement to a date uncertain. Commissioner Hontz seconded the motion.

VOTE: The motion passed unanimously.

REGULAR AGENDA - DISCUSSION/PUBLIC HEARINGS/ POSSIBLE ACTION

1. 929 Park Avenue – Plat Amendment (Application #PL-11-01236)

Planner Kirsten Whetstone reviewed the application for a plat amendment to combine two old town lots and two remnant parcels located at 929 Park Avenue within the Snyder's Addition of the Park City Survey. The two remnant parcels resulted from a plat amendment on Woodside that combined two lots wide and 50 feet deep, known as the Helm replat. The rear 25 feet of Lots 25 and 26 were not included in the Helm replat since they were owned by the 929 Park Avenue property owner at the time.

Planner Whetstone presented a slide showing the existing conditions of the property, as well as an existing historic structure that was deemed significant on the Site Inventory. She noted that due to previous additions and alterations, the structure was not eligible for landmark status. The house is currently not eligible for listing on the national Register of Historic Places.

Planner Whetstone stated that in 2007 the Building Official deemed the structure to be unsafe and requested that it be abated. At that time it was owned by a family in Park City who was not able to fix the house. Another order was issued in 2009. The owner worked with the Planning Staff and the Chief Building Official and came to an agreement for the house to be mothballed. A maintenance agreement allowed the owner six years to make the property safe. Planner Whetstone remarked that the property has since been sold to another property owner on Park Avenue.

Planner Whetstone noted that the Staff had done an analysis based on concerns related to similar plat amendments in the past. The analysis was contained in the Staff report. Planner Whetstone

presented slides of other homes on the street to give the Planning Commission an idea of what currently exists.

Planner Whetstone stated that the proposed plat amendment would yield a lot size of 5,000 square feet and a maximum footprint of 1888. Based on the neighborhood compatibility study, the average lot size was approximately 4,277, excluding the condominium lots, with a footprint of approximately 1500 square feet. Planner Whetstone explained that the numbers were based on the maximums possible from the formula in the Code. Planner Whetstone noted that due to the historic nature of the structure, any addition would need to be placed in the rear.

The Staff found good cause for the plat amendment to remove the non-complying lot line, which would allow the owner to pull a building permit for the restoration and a future addition. Since the addition must be located in the rear, it would not impact the streetscape.

The Staff recommended that the Planning Commission forward a positive recommendation to the City Council based on the Findings of Fact, Conclusions of Law and Conditions of Approval outlined in the draft ordinance.

Commissioner Pettit understood that from where the historic home currently sits the setback is 25 feet from the property line. Planner Whetstone replied that the setback is 24 feet. An extra deep lot requires more of a front setback than a standard lot. Commissioner Pettit clarified that the house as currently positioned on the lot would meet the minimum 18 foot setback required by Code.

Jonathan DeGray, representing the applicant, stated that it currently complies with the front yard setback. The only non-complying setback was the north property line. He stated that with the 100 feet of depth and the two remnant lots, there would be enough room in the back. Planner Whetstone noted that a Finding of Fact indicates that the owner does not intend to move the house. It would be lifted for a foundation, but placed back in the same location.

Chair Wintzer opened the public hearing.

There was no comment.

Chair Wintzer closed the public hearing.

Commissioner Pettit stated that it is always difficult to go through a plat amendment process and still comply with the purpose statement in terms of encouraging single family development and combinations of 25' x 75' lots. She understood that in this situation, the house sits across two lots, which mandates some form of a lot combination in order to meet the other parts of the purpose statement, which is to encourage preservation of historic structures. Commissioner Pettit was not uncomfortable with combining the two lots the house sits on, but she struggled with adding the additional structure in the back, which significantly increases the maximum building footprint for the home.

Commissioner Pettit was inclined to move forward with this plat amendment to preserve this historic structure, and she believed an addition could be done to the back in a way that would compliment

this home and not detract from its historic nature. Commissioner Pettit understood that the applicant did not intend to move the home, but she was more comfortable adding a condition of approval prohibiting the home from being moved. That condition would be necessary before she could consider this plat amendment.

Commissioner Pettit appreciated the compatibility analysis. She drives up and down Park Avenue every day and she is continually reminded that this is one of the entry corridors into the heart of Old Town. It is a fabric that is worth preserving and protecting. Commissioner Pettit stated that she would be more favorable to the requested plat amendment if the footprint was limited to a number closer to the average of 1521 square feet, based on the calculations of the analysis.

Commissioner Hontz concurred with Commissioner Pettit and she supported the proposed conditions. Assistant City Attorney McLean stated that the conditions proposed would be appropriate and legally defensible as long as they are tied to the purpose statements and the compatibility of what could be built. Commissioner Pettit recalled that this had been done with other plat amendments, particularly on Daly. In some cases they allowed the plat amendment to combine lots, but created a no-build area that could not be used for the footprint calculation. The result was a reduction in footprint. Chair Wintzer noted that the Planning Commission also increased setbacks in other cases. He believed Commissioner Pettit's suggestion was consistent with what has been done in the past.

Commissioner Hontz referred to the table on page 91 of the Staff report and asked if the setback would be 12 feet. Planner Whetstone replied that if the remnant parcels are included, the depth of the lot would require a 12 foot setback. Commissioner Hontz revised Finding of Fact #22 to eliminate all the language after the first sentence, which relates to the structure itself. Until she sees actual plans for the building, she was not willing to say that the resulting structure would be compatible in mass and scale. Assistant City Attorney McLean stated that the Planning Commission needs to rely on the requirements of the Code. A Historic District Design review would also be required. Commissioner Hontz was not comfortable with the language as written. Ms. McLean suggested that they change "would be compatible" to "shall be compatible" and make it a condition of approval. Commissioner Hontz was satisfied with the language as a condition of approval.

Commissioner Hontz summarized that Condition #5 would state that the house could not be moved; Condition #6 would reduce the footprint; and Condition #7 would be the language from Finding #22 with the change from "would" to "shall".

Mr. DeGray stated that his client currently lives in a condominium on Park Avenue and they have been looking for a single family home or a lot where they could have a larger home to accommodate their family. They worked with the Sullivan's on this property for nearly two years to acquire it because of the size of the property. Moving forward, they asked Mr. DeGray about the possibilities for the property. He used the LMC and the Historic District Guidelines to explain the size of home that would be allowed on the property and the caveats for meeting mass and scale and compatibility with adjacent properties.

Mr. DeGray stated that the existing building is approximately 960 square feet of the available 1800 square feet. That building cannot have an addition on top and per Code the addition must be to the back of the house. The owners already have restraints in dealing with a historic structure and its preservation and reconstruction, as well as the limitation it provides in terms of maintaining a single story structure against the street. Mr. DeGray noted that dealing with 1,000 square feet of existing structure leaves 800 square feet of footprint behind the building. He needs to separate the structures and step back the new addition to create that separation. If they are able to have a garage, that would be an additional 300 square feet. Mr. DeGray stated that there would be approximately 1500 square feet of possible building, plus the 900 to 1,000 square feet of the existing structure. The result would be a 2500 square foot house, which fits in with the lower to mid range of buildings shown on the analysis. Mr. DeGray wanted to utilize the entire footprint as provided in the Code in order to spread the building over the lot. The existing building is 22 feet high and the addition would be held to a 27 foot height. The difference is five feet and he expected to be back at least 20 feet from the ridge of the building. Mr. DeGray remarked that the addition would not been seen at all. The front of the property is well covered by the existing structure.

Mr. DeGray reiterated that his clients sought a larger lot to build a 2500 square foot, four bedroom home for their family. He pointed out that a 1500 square foot home would not meet their objective. Mr. DeGray believed he could meet the aspects of the Historic District Guidelines with the allowed footprint for the lot. He requested that the Planning Commission allow his clients the opportunity to move forward with the design application in an effort to show what he believes is possible. If it is not possible, he would work with the Staff through the design process and reduce the footprint and the mass and scale at that point.

Chair Wintzer clarified that the issue for the Planning Commission was that they would not have the opportunity to see the building plans. Mr. DeGray replied that the Planning Commission needed to have faith in the Staff, the Historic District Guidelines and the requirements of the Code.

Commissioner Savage concurred with Mr. DeGray. He pointed out that applicants made a conscious decision to purchase the property and used diligent and professional interpretation of the Land Management Code as guidelines in making their decision. They put plans together that were consistent with the Land Management Code and they worked through the planning process with the understanding that the design is subject to further review. Commissioner Savage felt the applicants had done what they were told to do under the terms of the Land Management Code. Imposing arbitrary constraints is not the job of the Planning Commission and they should approve the plat amendment as requested.

Commissioner Hontz stated that this could have been an empty lot in Old Town or it could have been a non-historic home where those constraints, which are not arbitrary, would have not been in place. She remarked that this was a significant structure in a significant part of town, and faith has failed them because they are losing the beauty and historic nature of their core. If someone wants a larger home, there are many neighborhoods where that could occur where there are no historic structures. Commissioner Hontz believed the compatibility analysis showed what needs to be done to maintain a compatibility neighborhood. Lack of restrictions has failed them over and over again, and she was not willing to do it here.

Planner Whetstone pointed out that there were new historic district guidelines that have not yet been used on Park Avenue. The purpose of the discussion several years ago was to create new guidelines. The footprint formula was discussed as an overall change to the footprint formula in the LMC so it would be something people could rely on. However, that was taken out when the LMC was changed to address three-story massing. Planner Whetstone clarified that the LMC was changed to address massing issues along with the design guidelines. The new design guidelines are in place and this house would be subject to those new guidelines.

Commissioner Pettit concurred with Commissioner Hontz and echoed her comments. She stated that in this district the purpose statement dictates house sizes by the fact that the purpose is to encourage single family development combinations of 25' x 75' historic lots, which has a footprint limitation. When talking about a plat amendment and combining lots, they are deviating from that pattern of development in the HR-1 District as it relates to historic structures. Commissioner Pettit was not willing to move forward on the plat amendment without the two conditions of approval she mentioned earlier.

Planner Whetstone explained that the Staff's finding based on the compatibility analysis and the footprint that was available with the Code was that this would result in a structure that was compatible with the surrounding neighborhood.

Mr. DeGray stated that he had consulted with Staff and communicated those discussions to the owners prior to them purchasing the property. He would not have disputed the facts if the Staff analysis had shown incompatibility; however, the reality is that the analysis shows that they are within range.

Chair Wintzer stated that the biggest problem is that they have lost the scale of Old Town. Every lot has been built to the maximum and that is not the character of Old Town. With every situation of creating a larger lot, they get a larger house. Chair Wintzer remarked that whether or not a structure is historically or architecturally compatible was not the issue. The issue is scale and mass. He agreed with Commissioners Hontz and Pettit.

Mr. DeGray requested that the Planning Commission continue the item to allow him time to consult with his clients.

MOTION: Commissioner Hontz moved to CONTINUE 929 Park Avenue Plat Amendment to June 22, 2011.

Commissioner Savage wanted it clear on the record that from his perspective this part of the process is broken.

Commissioner Pettit seconded the motion.

VOTE: The motion passed 2-1. Commissioners Pettit and Hontz voted in favor of the motion. Commissioner Savage voted against the motion.

**2. North Silver Lake Subdivision, Lot 2B – Appeal of Extension of CUP
(Application PL-11-01252)**

Planner Katie Cattan reported that the City Staff received an extension request for a conditional use permit. Per the LMC, the Planning Director reviews the extension request for the first year. Director Eddington conducted the review and granted the extension. Planner Cattan read from LMC Section 15-1-10(G), “The Planning Director may grant an extension of a CUP for one additional year when the applicant is able to demonstrate that no changes in circumstances that would result in an unmitigated impact or that would result in a finding of non-compliance with the Park City General Plan or the Land Management Code in effect at the time of the extension request. Change of circumstance includes physical changes to the property or surroundings”.

Planner Cattan clarified that the focus for discussion this evening was solely on the appeal and whether or not the Planning Director erred in his determination to extend the conditional use permit.

Planner Cattan noted that because there was an appeal, the applicant submitted for a building permit for compliance with their conditional use permit, which stated that they must obtain a building permit by July 1st in order to keep the CUP active. However, the building permit and phasing plan currently under review with the Building Department could not be discussed as part of this appeal. Planner Cattan stated that neighborhood meetings were held as a separate process.

The Staff had reviewed the appeal submitted by Lisa Wilson and recommended that the Planning Commission deny the appeal and uphold the Planning Director’s decision. The Staff found no changes in circumstance that would result in unmitigated impacts. The applicant provided the same set of plans that were approved on July 1, 2010. The applicant also had to demonstrate that the CUP extension would not result in a finding of non-compliance with the Park City General Plan and Land Management Code in effect at the time of extension request. Planner Cattan stated that in terms of the conditional use permit criteria, the criteria has not changed within the LMC and the Park City General Plan has not changed since the 2010 review and approval.

Planner Cattan corrected errors that were made in the Staff report. She explained that she had received public comment from Lisa Wilson pointing out the errors. Planner Cattan prepared a Staff report for Director Eddington’s review of the extension request, and the errors were mentioned in that Staff report. The first was that Finding of Fact #9 of the 2010 approval incorrectly identified Lot 2B rather than Lot 2D as the open space utilized by the Bellemont Subdivision. Planner Cattan pointed out that all prior references within the Staff analysis identified Lot 2D as the open space. Therefore, the typographical error did not affect the open space calculation. Planner Cattan clarified that the correct lot was identified in the August 13, 2008 Staff report. The error occurred in the February 5, 2009 Staff report. On July 8, 2009 the error was corrected within the analysis, however, it was not corrected in the finding of fact, which showed Lot 2B as the open space. Planner Cattan noted that from that point on the error was never corrected in Finding of Fact #9. However, in Finding of Fact #8 it was clear that within the Deer Valley MPD Lot 2D was allowed to be utilized towards Lot 2B, with a reference to the plat note. Planner Cattan stated that throughout the appeal process the analysis was correct. The Bellemont utilized a quarter acre of Lot 2D which was the designated open space. Planner Cattan clarified that in the extension approval Finding of Fact #9 was corrected.

Planner Cattan reported that the second typo occurred on May 26, 2009 and the discussion of the commercial area of the project. She noted that the correct maximum allowance under the Deer Valley master Plan is 14, 525 square feet of commercial. The May 26, 2009 Staff report incorrectly stated 14,552 square feet in Finding of Fact #3. Planner Cattan believed she had inverted the numbers when she wrote the Staff report and the error was carried throughout future Staff reports. When Lisa Wilson pointed out the error, it was corrected in the analysis of the Staff report for the extension review and Finding of Fact #3 was amended to state the correct number of 14,515 square feet.

Planner Cattan stated that there were many aspects within the appeal that the Staff believes was not within the purview of the Planning Director's extension review. In reading the appeal, the changes of circumstance were never identified. One comment that could apply was that the trees had grown, and for that reason an updated study could possibly be done. Planner Cattan remarked that she and Director Eddington did not believe the tree growth between 2008 to 2011 would be substantial enough to create or demonstrate a new circumstance that would result in an unmitigated impact.

Planner Cattan reiterated her request that the Planning Commission focus their discussion on the review and determination made by the Planning Director.

Chair Wintzer clarified that the Planning Commission should only discuss the appeal and not the process that previously occurred. He noted that the CUP was appealed twice and those issues should have been addressed at that time.

Matt Muir, an attorney representing the appellant Lisa Wilson, acknowledged that a significant amount of information in the appeal package was outside of the scope of discussion this evening. Mr. Muir stated that before they discuss whether there or not there was a change in circumstance that results in unmitigated impact, he felt it was important to first talk about whether the administrative extension of the permit was done legally in accordance with the requirements of the Land Management Code. On behalf of Ms. Wilson, he submitted that it was not done legally because the administrative extension was a modification of the permit and not just an extension. The Land Management Code itself in 15-1-10 says that, "The City must follow the procedures outlined therein in relation to conditional use permits". Section 15-1-10(C) provides that, "After notice, the Planning Commission shall hold a hearing regarding any approval, denial or modification of a conditional use permit". Mr. Muir stated that the Administrative Extension provision, 15-1-10(G) only allows the Planning Director to extend a permit, not to modify it.

Mr. Muir remarked that several modifications took place in the permit, however he would only focus on the change in the open space allocation relating to 2B and 2D. He noted that Finding of Fact #9 in the original CUP says, "A quarter acre of open space was allocated from 2B to 1A, the Bellemont subdivision. That was changed in the administrative extension to say that the quarter acre comes from 2D instead of from 2B. This modification results in a decrease of the open space for the North Silver Lake 2B of a quarter acre. Mr. Muir remarked that it may not seem like much and it would not make a huge difference in calculating the percentage of open space, however, a quarter acre in Deer Valley is significant. Mr. Muir stated that in the same finding of fact, the quarter acre coming from 2B in order to support 2A was exhaustively reviewed and

considered in the City record at all levels and over the course of three plus years. It had existed in at least six Planning Commission meetings, three City Council meetings, various administrative review meetings, and in an appeal before the State Property Rights Ombudsman. It was always the same and has never been changed.

Mr. Muir suggested that it may not be a typo. He noted that this was a Deer Valley Master Planned Development, which is governed by the Deer Valley Master Plan. He noted that the Deer Valley Master Plan indicates in its own Exhibit 1, that 2D open space may only be used for Lot 2B, not Lot 2A. Therefore it would make sense that the open space to support 2A came from somewhere else, which he believed was 2B, as the City record exhaustively supports.

Mr. Muir stated that if the City modifies the conditional use permit it should be done correctly through a hearing before the Planning Commission and properly noticed to the public. He believed that was enough reason for overturning the administrative extension of the conditional use permit.

Mr. Muir stated that a second aspect is whether there are conditions that would result in unmitigated impacts or non-compliance with the Park City General Plan or LMC. His client was very concerned that the development appeared to lack any specific construction or phasing plan.

Planner Cattan informed the Planning Commission that construction and phasing related to the building permit and was not part of this appeal. Chair Wintzer would not allow Mr. Muir to proceed with his comments regarding construction. Mr. Muir asked if the Planning Commission would allow him to speak to any reasons why the permit does not comply with the requirements of the Land Management Code. Chair Wintzer clarified that any comments pertaining to the building permit were outside of this appeal and would not be heard.

Mr. Muir submitted that the administrative extension was illegally done and not in compliance with the requirements of the Land Management Code because it was modified rather than just extended. On behalf of the appellant, he objected to the Planning Commission's refusal to hear their additional arguments.

Assistant City Attorney McLean clarified that substantive facts cannot be modified but it is allowable to modify typos. If the Planning Commission agreed with the Staff analysis that the errors were typos based on the context and the history of the alteration, it would make sense to ratify the findings based on correcting a typo. Ms. McLean counseled the Planning Commission that correcting the typos as outlined would not result in a substantive modification.

Mr. Muir argued that three solid years of City record suggests that it was not a typo, and the plain language of the LMC does not allow the permit to be administratively modified.

Planner Cattan stated that when she did the calculation, the quarter acre was taken out of Lot 2D, open space. It was never taken out of the overall size of Lot 2B. She reiterated that even with the typo, the open space calculation never changed. It was only referred to incorrectly within Finding of Fact #9. Therefore, the statement that the open space calculation was incorrect was an incorrect statement because the quarter acre was taken out of Lot 2D for the Bellemont Subdivision. It was not taken out of both. If it were taken out of both, the open space would actually increase.

Mr. Muir expressed a request by Ms. Wilson to allow them to speak about the Deer Valley Master Plan as the controlling document and why that makes the permit invalid. Chair Wintzer emphasized that all comments should only relate to the appeal and not the past process.

Chair Wintzer opened the public hearing.

Richard Lichtenstein, representing the developer, believed the administrative review was clear and properly enunciated in the Staff report. Mr. Lichtenstein requested that the Planning Commission reject the appeal and confirm the Planning Director's extension. He stated that as part of the extension the developer is obligated to revegetate the property. The revegetation work was started and it would be completed in a timely manner before the end of June.

Lisa Wilson, the appellant, noted that Planner Cattan had mentioned the possibility of discussing the trees. She had walked the property down the Silver Dollar ski run and taking large steps, she took approximately 100 steps down the ski run of aspens. Mr. Wilson was certain that none of the aspens were included in the tree count. She had contacted the Building Department to ask how aspens were counted and she was told that perhaps the map should have shown a large area of aspens. Ms. Wilson believed the tree count was incorrect.

Chair Wintzer closed the public hearing.

Commissioner Pettit stated that the Planning Commission is very limited in the appeal process and they do not have the opportunity to revisit history. Given the history of the process with both the Planning Commission and the City Council, substantive issues that were raised in the appeal went far beyond the scope of the Planning Commission purview. However, she understood and sympathized with the efforts that Ms. Wilson and the neighbors went through to address their concerns related to the project. Commissioner Pettit advised that the next step to address the substantive issues outlined in the appeal package would be in another forum. For purposes of the discussion this evening, based on the Staff's explanation regarding the typos and excerpts from several Staff reports that support the fact that it was a typo and not a substantive change, Commissioner Pettit was inclined to uphold the Planning Director's determination on the CUP extension. There has been no change in circumstance that would result in unmitigated impacts and there has not been a change either in the General Plan or the Land Management Code that would render granting the extension of the CUP to be in non-compliance.

Commissioner Hontz commended the appellant on her efforts to prepare the appeal package. She regretted the fact that she was not on the Planning Commission when the North Silver Lake Project was discussed numerous times in the process. Commissioner Hontz concurred with Commissioner Pettit regarding the Planning Commission's limited scope of review. Due to that limitation and the strict focus in the appeal process, Commissioner Hontz felt the Planning Commission had no choice but to support the Staff and deny the appeal.

Commissioner Savage stated that his typical inclination is to support Staff recommendations whenever possible. He was not on the Planning Commission when this project was approved and he would not pretend to understand the details. However, he was counseled that his vote was

necessary and abstaining was not an option. Without that option, Commissioner Savage concurred with his fellow Commissioners.

Chair Wintzer stated that he has lived in Park City 40 years and neighborhoods are the most important thing in Park City. He completely understood Ms. Wilson's point because he has seen his own neighborhood change. However, based on the scope of the appeal process, he concurred with upholding the Staff decision to extend the CUP.

MOTION: Commissioner Pettit moved to DENY the Appeal and support the Planning Director's decision to approve the extension of the conditional use permit in compliance with the Findings of Fact, Conclusions of Law and Conditions of Approval attached to the Staff report. Commissioner Hontz seconded the motion.

VOTE: The motion passed unanimously.

Findings of Fact – North Silver Lake Subdivision – Lot 2B Appeal

1. The subject property is at 1701 North Silver Lake Drive. This property is also known as lot 2B of the North Silver Lake Subdivision.
2. The proposed development is located within the Deer Valley Master Plan Development.
3. Within the Deer Valley Master Plan, the North Silver Lake Subdivision Lot 2B is permitted a density of 54 residential units and 14,525 square feet of commercial and support space.
4. The applicant has applied for a conditional use permit for the development of 54 units located on Lot 2B of the North Silver Lake Subdivision. The applicant has included 5102 square feet of support commercial space within this application. The project consists of 16 detached condominium homes and four condominium buildings containing 38 condominium units. The remaining commercial units are not transferable.
5. The north Silver Lake Subdivision Lot 2B is 5.96 acres in area.
6. The Deer Valley master Planned Development (MPD) requires that all developments are subject to the conditions and requirements of the Park City Design Guidelines, the Deer Valley Design Guidelines, and the conditional use review of LMC Chapter 15-1-10.
7. The Deer Valley MPD determines densities on parcels as an apartment unit containing one bedroom or more shall constitute a dwelling unit and a hotel room or lodge room shall constitute one-half a dwelling unit. The Deer Valley MPD does not limit the size of units constructed provided that following construction the parcel proposed to be developed contains a minimum of 60% open space and otherwise complies with MPD and all applicable zoning regulations.

8. Within the Deer Valley MPD development parcels exhibit there is a note for the NSL Subdivision Lot 2D Open Space stating, "This parcel has been platted as open space, with the open space applying to the open space requirement of Lot 2B." Lot 2D is 4.03 acres in size.
9. Within the original North Silver Lake Subdivision, the Bellemont Subdivision was allowed to also utilize Lot 2D towards the 60% open space requirement. The Bellemont Subdivision utilized $\frac{1}{4}$ acre of the Lot 2D parcel to comply with the open space requirement.
10. The current application site plan contains 70.6% of open space on the site including the remainder 3.78 acres of open space on Lot 2D.
11. The property is located in the Residential Development Zoning District (RD) and complies with the Residential Development ordinance.
12. The property is within the Sensitive Lands Overlay Zone and complies with the Sensitive Lands Ordinance.
13. The height limit for Lot 2B was established at 45 feet within the Deer Valley Master Plan. The development complies with the established height limit, with the one allowance of five feet for a pitched roof.
14. The onsite parking requirements for the four stacked flat condominiums have decreased 25% in compliance with Section 15-3-7 of the Land Management Code. The Planning Commission supports a 25% reduction in the parking for the stacked flats within the development.
15. The Planning Commission held public hearings on August 13, 2008, October 22, 2008, February 25, 2009, May 27, 2009 and July 8, 2009.
16. The Planning Commission approved the CUP on July 8, 2009.
17. An appeal of the CUP approval was received July 17, 2009 within ten days per LMC 15-1-18.
18. The City Council reviewed the appeal of North Silver Lake Lot 2B on October 15, 2009 and on November 12, 2009.
19. On November 12, 2009, the City Council remanded the Conditional Use Permit back to the Planning Commission with three specific items to be addressed within the order.
20. The Planning Commission reviewed the North Silver Lake Conditional Use Permit remand on November 11, 2009 and January 13, 2010 and two Planning Commission

regular agenda meetings on March 10, 2010 and April 28, 2010. The Planning Commission approved the revised Conditional Use Permit on April 28, 2010.

21. The Conditional Use Permit was appealed by two separate parties within ten days of the Planning Commission approval.
22. The design for Building 3 decreased the overall square footage of the Building 3 twenty-five percent (24%), reoriented the building on the site, and divided the original single building into two interconnected buildings of smaller scale and size than the original single building.
23. The landscape plan was modified to comply with the Wild Land Interface regulations.
24. Construction phasing and additional bonding beyond a public improvement guarantee has been required.
25. On July 1, 2010, the City Council approved the North Silver Lake Lot 2B Conditional Use Permit. The approval is scheduled to expire on July 1, 2011 if no building permits are issued within the development.
26. On March 17, 2011, the Planning Department received a complete application for an extension of the Conditional Use Permit. No permits for development have been issued or applied for at time of application. The extension request was submitted prior to the expiration of Conditional Use Permit.
27. The Conditional Use Permit Criteria within LMC Section 15-1-10 has not changed since the 2010 City Council Approval.
28. The Conditional Use Permit application for North Silver Lake Lot 2B has not changed since the July 1, 2010 City Council Approval. There are no changes in circumstance that would result in an unmitigated impact or that would result in a finding of non-compliance with the Park City General Plan or Land Management Code.
29. Within the July 1, 2010 approval, Condition of Approval #18 states, "A bond shall be collected at the time of Conditional Use Permit Approval to ensure that the existing impacts of the site will be repaired at the time of CUP expiration or extension. At such time, the existing rock area of the site shall be capped with soil and re-vegetated and new landscaping along the perimeter entrance shall screen the view into the project. If a building permit is issued within one year, this bond shall be released." This requirement has not been completed at the time of extension submittal. The approved extension will be void if this condition is not met prior to July 1, 2011.
30. The building department collected a bond to ensure that the existing impacts of the site will be repaired at the time of CUP extension. The landscape plan includes re-vegetating the disturbed area including top soil and native grasses, planting eighteen (18') new trees that vary in height from 10 to 12 feet and installing an irrigation system for the establishment of

the grass and ongoing watering of the new trees. This work must be completed by July 1, 2011 to comply with the July 1, 2010 City Council conditions of approval.

31. The Planning Director granted a one year extension to the Conditional Use Permit on April 28, 2011 to July 1, 2012.
32. An appeal of the Planning Director's approval was submitted on May 9, 2011.

Conclusions of Law – North Silver Lake Subdivision – Lot 2B Appeal

1. The application is consistent with the Deer Valley Master Planned Development and the Park City Land Management Code, particularly section 15-1-10, Conditional Use Permits.
2. The use is compatible with surrounding 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 or scale have been mitigated through careful planning.
5. No change in circumstance is proposed within the extension that would result in an unmitigated impact or that would result in a finding of non-compliance with the Park City General Plan or the Land Management Code.

Conditions of Approval – North Silver Lake Subdivision – Lot 2B Appeal

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. This plan must address mitigation for construction impacts of noise, vibration and other mechanical factors affecting adjacent property owners. The Arborcare Temporary Tree and Plant Protection Plan dated April 2, 2009 must be included within the construction mitigation plan.
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. The Arborcare Temporary Tree and Plant Protection Plan dated April 2, 2009 must be adhered to. A member of the Planning Staff and Planning Commission will be invited to attend the pre-installation conference. Prior to operating any excavation machinery, all operators of any excavation machinery must sign off that they have read, understand, and will adhere to the Temporary Tree and Plant Protection plan.
5. A landscape plan is required with the building permit. The landscape plan must reflect the site plan and existing vegetation plan as reviewed and approved by the Planning Commission on April 28, 2010.

6. The developer shall mitigate impacts of drainage. The post-development run-off must not exceed the pre-development run-off.
7. Fire Marshall review and approval of the final site layout for compliance with City standards is a condition precedent to building permit issuance. The proposed development shall comply with the regulations of the Urban Wild Land Interface Code. A thirty foot defensible space will be mandatory around the project, limiting vegetation and mandating specific sprinklers by rating and location. The Fire Marshal must make findings of compliance with the urban wild land interface regulations prior to issuance of a building permit.
8. Approval of a sign plan is required prior to installation of any signs on the property.
9. Staff review and findings of compliance with the lighting regulations of LMC Section 15-5-5(l) are required prior to the issuance of an electrical permit.
10. This approval will expire July 2, 2012, 12 months from July 1, 2011, if no building permits are issued within the development. Continuing construction and validity of building permits is at the discretion of the Chief Building Official and Planning Director.
11. Approval is based on plans reviewed by the City Council on June 24, 2010. Building Permit plans must substantially comply with the reviewed and approved plans. Any substantial deviation from this plan must be reviewed by the Planning Commission.
12. The SWCA wildlife mitigation plan dated April 15, 2009 must be included within the construction mitigation plan and followed.
13. The two ADA units are to be platted as common space and cannot be separately rented without renting another unit.
14. The Sustainable Design Strategies created by Living Architecture as reviewed by the Planning Commission on April 28, 2010 must be adhered to within the building permit process. Any substantial deviation from this plan must be reviewed by the Planning Commission.
15. The final condominium plat for North Silver Lake Lot 2B may not exceed the square footage for common space, private space, and commercial space as shown in the plans reviewed by the City Council on June 24, 2010.
16. A bond shall be collected prior to issuance of a grading or building permit to cover the cost of the landscape plan as approved.
17. A phasing and bonding plan to ensure site restoration in conjunction with building phasing beyond a public improvement guarantee must be approved by the Building Department. The plan shall include re-vegetation for perimeter enhancement and screening into the project, soil capping for any new disturbance and previous disturbance of the site, and clean-

up of all staging areas. Prior to building department action on approving each phase of the phasing plan, the developer and building department shall conduct a neighborhood meeting, with minimum courtesy mailed notice to both appellants, each appellant's distribution list as provided to planning staff, and the HOAs registered with the City within the 300 foot notice area.

18. The approved extension will be void if Condition of Approval #18 from the July 2, 2010 City Council approval is not completed by July 2, 2011. The condition states "A bond shall be collected at the time of Conditional Use Permit Approval to ensure that the exiting impacts of the site will be repaired at the time of CUP expiration or extension. At such time, the existing rock area of the site shall be capped with soil and re-vegetated and new landscaping along the perimeter entrance shall screen the view into the project. If a building permit is issued within one year, this bond shall be released."
19. No lockout units are permitted within this approval.
20. The conditions of approval of the original July 1, 2010 Conditional Use Permit approval continue to apply.

Order

1. The appeal is denied in whole. The Conditional Use Permit extension is approved with the amended Finding of Fact, Conclusions of Law and Conditions of Approval as stated above.

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

Approved by Planning Commission: _____