

PARK CITY MUNICIPAL CORPORATION  
PLANNING COMMISSION MEETING MINUTES  
COUNCIL CHAMBERS  
MARSAC MUNICIPAL BUILDING  
MAY 11, 2011

COMMISSIONERS IN ATTENDANCE:

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

EX OFFICIO:

Planning Director, Thomas Eddington; Kirsten Whetstone Planner; Francisco Astorga, Planner;  
Mark Harrington, City Attorney

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REGULAR MEETING

**ROLL CALL**

Chair Wintzer called the meeting to order at 6:00 p.m. and noted that all of the Commissioners were present.

**PUBLIC COMMUNICATIONS**

There was no comment.

**ADOPTION OF MINUTES – April 27, 2009**

Commissioner Strachan referred to page 10 of the minutes on page 36 of the Staff report, and corrected the motion for 817 Norfolk Avenue to reflect that he had abstained from the vote.

MOTION: Commissioner Strachan moved APPROVE the minutes of April 27, 2011 as corrected. Commissioner Pettit seconded the motion.

VOTE: The motion passed unanimously.

**PUBLIC INPUT**

There were no comments.

**STAFF/COMMISSIONER COMMUNICATIONS AND DISCLOSURES**

Director Eddington noted that the regular meeting on May 25<sup>th</sup> would be cancelled, since several Commissioners were unable to attend and they would lack a quorum. The next meeting was scheduled for June 8, 2011.

Director Eddington introduced Chad Root, the new Chief Building Official. He also introduced Shauna Stokes, a new planner, who recently moved from the Building Department to the Planning

Department. Ms. Stokes replaces Jacque Mauer, who left the Planning Department to pursue architectural school.

Director Eddington noted that the Planning Commission was short two Commissioners due to the departure of Dick Peek and Richard Luskin. The deadline for submitting applications was Friday, May 13<sup>th</sup>. The City Council would review the applications and begin interviewing for two additional members.

Commissioner Savage asked if the process allowed the Planning Commission the ability to provide input to the City Council on which backgrounds they believe would be strong additions to the Planning Commission. Director Eddington stated that Alex Butwinski is the Council liaison to the Planning Commission. It would be appropriate to provide their comments to Mr. Butwinski and he could relay them to the City Council.

City Attorney, Mark Harrington, concurred that the most direct process would be to communicate with Alex Butwinski. He pointed out that selection is a legislative appointment process and the Commissioners were free to contact the City Council directly with individual recommendations.

Commissioner Savage thought the Planning Commission as a group should discuss skill sets they would like to see on the Planning Commission and pass that on to the City Council. Since the Planning Commissioner would not meet again until June 8<sup>th</sup>, he was concerned that the process would be completed without Planning Commission input.

Chair Wintzer agreed with Commissioner Savage. He personally felt the Planning Commission needed a member with design background. Since they have two positions to fill, Commissioner Savage suggested one with a background in house design and the second with community design experience. He believed those skill sets would augment the skills of the current Planning Commission.

Commissioner Hontz suggested that having someone from the developer/builder side would also be beneficial.

Chair Wintzer thought Commissioner Savage made a good point in terms of working the Planning Commission into the process. City Attorney Harrington remarked that the HPB has codified their preference for representation through guidelines in the Code. The process for the Planning Commission is broad based, but they could entertain an ordinance amendment to provide input on what they see as perpetual problems.

Director Eddington reported that the Planning Department was hiring a one-year contract planner and the application process for that position was closed. The applications would be reviewed for interviews. He asked Mr. Harrington if it would be appropriate, for some of the Commissioners to review the resumes with Staff and/or sit in on the interviews. City Attorney Harrington recommended that the Planning Department go through the HR process first and then determine if it would be appropriate to include some of the Commissioners. He explained that there is a provision that talks about separation of power between elected and appointed officials in

employment decisions. It would not be prohibited in the process, but appropriate steps need to be followed.

#### Election of Vice-Chair

MOTION: Commissioner Strachan moved to nominate Julia Pettit as the vice-chair. Commissioner Hontz seconded the motion.

VOTE: The motion passed unanimously.

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

##### 573 Main Street – Claim Jumper – Plat Amendment (Application #PL-10-01105)

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

MOTION: Commissioner Pettit moved to CONTINUE the 573 Main Street Claim Jumper plat amendment to a date uncertain. Commissioner Hontz seconded the motion.

VOTE: The motion passed unanimously.

#### **REGULAR AGENDA - DISCUSSION/PUBLIC HEARINGS/ POSSIBLE ACTION**

The applicants for Park City Heights had not yet arrived and Director Eddington requested a change in the order of the agenda.

##### **1. 1310 Lowell Avenue – Wind Turbine – Conditional Use Permit** **(Application #PL-11-01197)**

Commissioner Strachan disclosed that his firm represents PCMR, however, the representation is unrelated to the application and would not affect his vote.

Planner Astorga reviewed the application for a conditional use permit for a small wind energy system at Park City Mountain Resort. The request is for wind turbines near the top of the Silverlode lift. The system is approximately 38 feet tall and less than 20 feet in diameter. The Staff report contained the conditional use criteria, as well as additional criteria in the Land Management Code specific to a small wind energy system.

The Staff recommended that the Planning Commission conduct a public hearing and consider approving the conditional use permit for the PCMR small wind energy system, according to the findings of fact, conclusions of law, and conditions of approval.

Chair Wintzer opened the public hearing.

There was no comment.

Chair Wintzer closed the public hearing.

Commissioner Pettit was excited about this energy system and complimented the Resort on being a great leader for renewable energy and reducing the carbon footprint. She would like the City to keep moving forward to raise awareness and create opportunities to reduce the carbon footprint in Park City.

Chair Wintzer suggested adding a condition of approval requiring that the applicant provide an update to the Planning Commission in one year or another determined time frame. He felt it was important for the City to receive feedback on whether the wind turbines were working and hopefully encourage others to do the same.

Director Eddington added Condition #10 – The applicant shall come back to the Planning Commission after one year of operation to provide a general update on how the small wind energy system is working.

MOTION: Commissioner Pettit moved to APPROVE the conditional use permit for a small wind energy system at Park City Mountain Resort, in accordance with Findings of Fact, Conclusions of Law, and Conditions of Approval as amended. Commissioner Hontz seconded the motion.

VOTE: The motion passed unanimously.

#### Findings of Fact – 1310 Lowell Avenue – Wind Turbine

1. The property is located at Park City Mountain Resort, 1310 Lowell Avenue.
2. The zoning is Recreation Open Space (ROS) within the Sensitive Lands Overlay (SLO).
3. The proposed Conditional Use Permit is for a Small Wind Energy System. The solar panel tracking system does not require a Conditional Use Permit.
4. The Small Wind Energy System is a vertical axis wind turbine of approximately 38 feet in height and 19.7 feet in diameter.
5. The Small Wind Energy System will be constructed near the Silverlode Lift.
6. Replacement of an already permitted turbine with a similar size and height will not require a Conditional Use Permit modification.
7. The analysis Section above is incorporated herein.

#### Conclusions of Law – 1310 Lowell Avenue – Wind Turbine

1. The application complies with all requirements of the LMC.

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, as amended.
4. The effects of any differences in use or scale have been mitigated through careful planning.

Conditions of Approval – 1310 Lowell Avenue – Wind Turbine

1. The applicant will apply for a building permit from the City within one year from the date of Planning Commission approval. If a building permit has not been granted within one year's time, this Conditional Use Permit will be void.
2. The Small Wind Energy Systems shall be lighted only if required by the FAA and shall comply with all applicable FAA regulations.
3. Any Small Wind Energy System, that has reached the end of its useful life or has been abandoned, shall be removed. A system shall be considered abandoned when it fails to operate for a period of one (1) year or more. Upon a notice of abandonment from the Building Department, the system Owner shall have sixty (60) days to provide sufficient evidence that the system has not been abandoned and request an extension, or the City shall have the authority to enter the Property and remove the system at the Owner's expense. The Owner is responsible for reclaiming the land using natural vegetation and to the greatest extent possible the land shall be fully returned to its natural state within five (5) years of the removal and decommissioning of the System.
4. The Applicant/system Owner shall maintain the system in good condition. Maintenance shall include, but not limited to, painting, mechanical and electrical repairs, structural repairs, and security measures.
5. Prior to issuance of a Building Permit, the system shall comply with all applicable sections of the International Building Code, including electrical codes and all requirements and criteria of the section.
6. Signs shall be restricted to reasonable identification of the manufacturer, operator of the system, utility, and safety signs. Educational identifier signage will also be permitted. All signs comply with the Park City Sign Code.
7. The Small Wind Energy System and associated solar panel tracking system must meet the City's Noise Ordinance per 15-6-8 and 15-6-9 of the Park City Municipal Code.
8. The Small Wind Energy System shall be a neutral color that blends with the environment. Gray, beige/brown, green or white are recommended and all paint and finished shall be non-reflective.

9. Prior to building permit issuance the City Engineer will review and approve a re-vegetation plan of disturbed areas, and temporary and permanent erosion control measures.
- 10: The applicant shall come back to the Planning Commission after one year of operation to provide a general update on how the Small Wind Energy System is working.

**2. Modification to Emergency Plan for Empire Pass – Amendment to Technical Report (Application #PL-10-01208)**

Director Eddington reported that the Planning Commission had reviewed the new Emergency Response Plan for the Empire Pass/Flagstaff Development. He presented a map showing the new proposal, which was reviewed by the Planning, Engineering and Building Departments, the Chief Building Official and the Fire Department. Director Eddington noted that revisions and updates were also made to the technical report as requested by the Planning Commission on March 23<sup>rd</sup>.

Chair Wintzer opened the public hearing.

There was no comment.

Chair Wintzer closed the public hearing.

Commissioner Hontz thanked the Staff for making the requested revisions.

MOTION: Commissioner Hontz moved to APPROVE the adoption of the revised Technical and Updated Technical Report #7 - Emergency Response Plan, according to the Findings of Fact, Conclusions of Law, and the Conditions of Approval found in the Staff report. Commissioner Savage seconded the motion.

VOTE: The motion passed unanimously.

**Findings of Fact – Modification to Emergency Plan for Empire Pass**

1. Council adopted Ordinance 99-30 on June 24, 1999 that annexed the Flagstaff Mountain project, also known as the Flagstaff Mountain Resort, into Park City.
2. Ordinance 99-30, Section II, 2.1: Large Scale MPD – Flagstaff Mountain specified that the developer is granted an equivalent of a Large Master Planned Development.
3. Ordinance 99-30, Section II, 2.1: Large Scale MPD – Flagstaff Mountain requires the developer to submit the following studies, prior to our concurrent with Small-Scale MPD process for City approval:
  1. Mine/Soil Hazard Mitigation Plan
  2. Detailed Design Guidelines
  3. Specific Transit Plan
  4. Parking Management Plan

5. Detailed Open Space Plan
  6. Historic Preservation Plan
  7. Emergency Response Plan
  8. Trails Master Plan
  9. Private Road Access Limitation Procedures
  10. Construction Phasing
  11. General Infrastructure and Public Improvements Design
  12. Utilities Master Plan
  13. Wildlife Management Plan
  14. Affordable Housing Plan
  15. Construction Mitigation Plan
4. The Planning Commission held a public hearing on February 25, 2004 to review and update three (3) REPORTS: #1, THE Mine/Soil Hazard Mitigation Plan, #7, the Emergency Response Plan , and #15 the Construction Mitigation Plan.
  5. The previously identified emergency route map included a route (between the Montage Hotel site and Daly Avenue) that had slopes too steep for emergency response vehicles. The newly identified routes have been analyzed for vehicle access and Alliance Engineering has mapped the routes on a contour map.
  6. The proposed revisions to the Technical Report and emergency access route map reflect existing conditions as well as the two most recently amended Empire Pass/Flagstaff Development Agreement (March 2, 2007).

#### Conclusions of Law – Modification to Emergency Plan for Empire Pass

1. The Planning Commission finds that the revised and updated Technical Report #7 is required pursuant to Ordinance 99-30, Section II, 2.1: Large Scale MPD – Flagstaff Mountain to be complete.
2. The Planning Commission finds that the revised and updated Technical Report #7 is required pursuant to Ordinance 99-30, Section 2.1: Large Scale MPD – Flagstaff Mountain to be consistent with the provisions and intent of the Annexation Resolution adopted by Council on June 24, 1999.
3. The revised and updated Technical Report #7 is required pursuant to Ordinance 99-30, Section II, 2.1: Large Scale MPD – Flagstaff Mountain does not change or adversely affect the density, development locations, or project design as set forth in the Annexation Resolution adopted by Council on June 24, 1999.

#### Conditions of Approval – Modification to Emergency Plan for Empire Pass

1. Any revisions to this Technical Report and/or emergency access route map proposed in the future must be presented to the Planning Commission for approval.

**3. Park City Heights – Master Planned Development  
(Application #PL-10-01028)**

Planner Whetstone reviewed the master planned development application for 239 units on 239 acres in the CT zone, located in the Quinn's Junction area west of US40 and south of SR248. The Planning Commission last reviewed this application on April 27<sup>th</sup>.

Planner Whetstone handed out redlined copies of the Findings of Fact, Conclusions of Law and Conditions of Approval, which reflected changes requested by the Planning Commissioner per their discussion at the last meeting, as well as follow up comments submitted in writing from the applicant and the Commissioners prior to this meeting. Based on those comments and concerns, the Staff had drafted Findings of Fact, Conclusions of Law and Conditions of Approval.

Planner Whetstone commented on changes to specific conditions of approval and requested that the Planning Commission provide input or make revisions.

Condition of Approval #32, which addressed the affordable housing plan and that final review and approval would be granted by the Park City Housing Authority per the requirements of the Housing Resolution, was revised to reflect the requirements of the Housing Resolution.

Conditions of Approval #43 and #44, which addressed the wildlife study and a review by the Planning Commission, was revised to also include a review by the Planning Department, per a request from the applicant.

Condition of Approval #46 addressed conditional use permits for houses on the west ridge. Planner Whetstone clarified that while the Staff supports administrative conditional uses, they could not support the applicant's request that these homes be administrative CUPs reviewed by the Planning Staff. Therefore, the condition reflects the original intent for conditional use permits reviewed by the Planning Commission.

Condition of Approval #54 addressed timing of construction of bus shelters. Based on the last discussion, the Staff requested a specific time frame within 6 months of the 40<sup>th</sup> certificate of occupancy.

Condition of Approval #56, which addressed house sizes, was revised to incorporate specific language about a tiered approach as discussed at the last meeting. Language was also added to further place limitations on the house sizes during the subdivision plat process and to reflect that in the design guidelines.

The guidelines should also reflect a preference for small homes consistent with Best Practices in Sustainable Design and Development to address the materials and energy impacts of larger homes, as well as the historic pattern of the residential development in Old Town.

Condition of Approval #57 requires that the Park City Heights Design Guidelines shall be approved by the Planning Commission.

Commissioner Pettit referred to the redlined document and suggested that the last paragraph of Condition #56 be moved to Condition #57 as its own condition of approval. In addition, she requested that the language Planner Whetstone had deleted from Condition #57 be reinstated.

Condition of Approval #61 regarding transportation mitigation elements required by the Park City Heights Annexation Agreement, was drafted by Staff as redlined in the handout.

Chair Wintzer had asked Director Eddington to compile a list of items that would come back to the Planning Commission. He requested that the Commissioners focus their comments on items that would not be coming back. Director Eddington stated that the items that would come back to the Planning Commission include the design guidelines, the development agreement, the final subdivision plats and phasing, utility grading, drainage plan, limits of disturbance, street design cut and fills, the landscape plan for the entry area, conditional use permits for multi-family units greater than 4 units. It also includes accessory uses building, parcels I and J, the single family units on the west ridge, the wildlife study final review, the transportation numbers, and the affordable housing plan for review and recommendation.

Spencer White, representing the applicant, wanted the Planning Commission to clearly understand that the applicant was requesting a vote this evening. Mr. White had also received the redlined findings, conclusions and conditions, and he was confident that the applicant could accept with all the conditions.

The Planning Commission reviewed the Findings, Conclusions and Conditions and made the following revisions:

Finding of Fact #1 (a) – Commissioner Hontz suggested adding the words, of types of product” to the last sentence. The sentence would read, “The approximate distribution of types of product is identified in the Design Guidelines.

Finding of Fact #1(h) – Commissioner Hontz wanted the design to allow for field space that is 130 yards x 100 yards, and not 100 x 60 as currently written. The field would not have to be programmed, but the design should allow a field that size to occur without having to bring in equipment to move trees or berming, etc. Commissioner Hontz was concerned about neighborhood complaints and politics in the future that would prohibit a field. For that reason, it was important to have the field designed to occur in the future. Commissioner Hontz felt strongly that a field 100 yards x 60 yards was too small to be effective.

Mr. White pointed out that a 130 x 60 field would not physically fit on the site. He believed the largest possible field would be 100 x 60 yards. Commissioner Hontz was comfortable with the 100 yard length, and asked whether the width could be increased to 80 yards. After further discussion, Commissioner Hontz was comfortable with referencing a field size of 100 yards x 60 yards.

To address Commissioner Hontz’s concern about opposition to a field in the future, City Attorney, Mark Harrington, suggested adding a condition of approval to indicate that

preliminary site work will reserve an area of 100 yards by 80 yards until such time as a field is constructed.

After further discussion, Mr. Harrington suggested that they strike the language in (h) that referenced a specific field size and talked about requirements for regulation soccer fields. The Commissioners concurred. The red lined sentence regarding bathrooms would remain.

Finding of Fact #1 (o) – Commissioner Hontz asked if the 3,000 square feet referenced for the community/center clubhouse included the bathrooms. Mr. White answered yes.

Commissioner Pettit asked if the community center would be available for use by Park City residents outside of the Park City Heights community. Chair Wintzer felt that was an issue for the Homeowners Association and not the developer. He did not believe the City could force the HOA to pay the utilities and maintenance and allow those outside of the development to use it. Mr. White pointed out that the HOA could decide to make it available to others and charge a fee. Commissioner Pettit clarified that she was trying to find ways to tie this project to the community in a meaningful way.

Findings of Fact #12 – The second sentence referencing a FIFA sized field was struck from the language.

Commissioner Savage asked if the bathrooms included in the 3,000 sf. for the community center and accessed from the outside, would be accessible to everyone at any time. Mr. White replied that the exterior bathrooms would be maintained by the park operators and they would be accessible to everyone. The bathroom is an extension of the park itself.

Findings of Fact #32 – the language in the last sentence, "...and will be required to include mitigation for these issues" was revised to read, "...and shall include mitigation for these issues".

Finding of Fact #39 – Commissioner Pettit revised the third sentence to read, "However, other sound mitigation measures may be accomplished with landscaping, berming, smart housing, design and insulation, and sound barriers constructed as part of the dwelling units". She felt it was important to clarify that even though sound barrier walls were prohibited, but there are other means to mitigate sound.

Commissioner Pettit believed several of the Conclusions of Law were addressed in the Findings of Fact. Commissioner Strachan noted that Conclusion of Law #10 was changed since the April 27 meeting, but the changes were not redlined. Planner Whetstone replied that none of the changes resulting from the April 27<sup>th</sup> meeting were redlined. The redlines received from the Planning Commission and applicants were shown as redlines in the Staff report. The Staff re-drafted the conditions of approval based on those changes.

City Attorney Mark Harrington agreed that many of the conclusions of law were repetitive, and he thought they should be simplified with minimum wording in Section 15-6-6 of the Land Management

Code. Commissioner Strachan remarked that the April 27<sup>th</sup> Staff report had verbatim language from the LMC. Director Eddington asked if Planner Whetstone could paste in those conclusions of law.

Commissioner Pettit acknowledged that she had made comments at the last meeting in terms of having a difficult time making certain conclusions of law. However, she was comfortable with having some of the language included in the findings of fact. Commissioner Pettit thought the conclusions of law should be simple and straightforward and not a mix of factual statements versus conclusions of law.

Conclusions of Law #2 - Commissioner Pettit recommended removing the last sentence, "Surrounding uses including open space..." and make it Finding of Fact #47.

Conclusion of Law #3 was revised to read, "The MPD, as conditioned, is consistent with the Park City General Plan". The remainder of the language written was deleted.

Commissioner Savage noted that during a previous meeting, Assistant City Attorney Polly Samuels McLean stated that she was legal counsel to the Planning Commission, and she represented them in matters where they committed to something as a conclusion of law. He pointed out that Ms. McLean was not in attendance this evening. City Attorney Harrington stated that he was present and serving in the role as legal counsel. Commissioner Savage understood that Mr. Harrington represented the City as it relates to the MPD. Considering the situation this evening, he felt there could be a conflict of interest related to legal representation in terms of any liability or problems the Planning Commission may encounter in the future.

City Attorney Harrington explained that some city attorneys wear many hats, and with any City project they represent a variety of interests. He remarked that the Legal Department tries to maintain separate levels so the City can be represented in all levels of appeal. Mr. Harrington stated that Phyllis Robinson's department could hire separate legal counsel if they wished, however they have not retained outside counsel. He also could not cross represent both parties and move into his other role this evening. His role this evening was to represent the Planning Commission.

City Attorney Harrington felt Commissioner Savage had raised a valid concern, but he did not believe his representation presented an inappropriate conflict at this point. He acknowledged that his role as legal counsel to the Planning Commission would limit what his office could do in an adversarial proceeding if conflicts occur in the future.

Commissioner Savage clarified that his question was based on confusion regarding the indemnification process that would exist for each Commissioner as it relates to approval of the MPD. Mr. Harrington remarked that the Commissioners would not have individual liability as long as approvals were made within the scope of their purview and due diligence. If a Commissioner was named personally in a lawsuit, there is a statutory process by which they can request overlapping service from the City. The Commissioner would have the option of hiring their own legal counsel or requesting representation from the City Legal Department.

Commissioner Savage understood that this was not a situation where the Planning Commission, as a body or as individuals, would ever be adverse to the City Legal Department as it relates to any issue that may come about as a consequence of the approval of this MPD. Mr. Harrington replied that this was correct.

Conclusion of Law #5 was deleted entirely. Commissioner Pettit was not comfortable defining resort character, and she believed the remaining elements were covered in other findings of fact. Commissioner Strachan concurred.

Conclusion of Law #7 was revised to read "The MPD provides amenities to the community so that there is no net loss of community amenities". The remaining language was deleted.

Conclusion of Law #8 was revised to read, "The MPD is consistent with the employee Affordable Housing requirements as adopted by the City Council at the time the Application was filed". The remaining language was deleted.

Conclusion of Law #9 was revised to read, "The MPD has been designed to place development on the most developable land and preserves significant features and vegetation to the extent possible". The remaining language was deleted.

Conclusion of Law #10 was removed from the conclusions of law. A portion of the language, "Direct connection and critical improvements of the Rail Trail provide alternative transportation opportunities for recreation and commuting, such as biking, walking, in-line skating, and cross country skiing", became finding of fact #48. The remainder of the language was deleted.

Commissioner Savage was amazed that there had not been more public participation and input on this project. He remarked that even though there had been appropriate legal noticing, many people are unaware of this project. Commissioner Savage stated that because the applicant has been so willing to work with the specifications of this project, he was concerned that the community at large had no idea of what to expect and there may be significant reaction once the project manifests itself. Commissioner Savage had no intention of changing anything, but he wanted his concern on the record.

Mr. White remarked that this project is in its 7<sup>th</sup> year of moving through the process. In his opinion, the public has had ample opportunity to make comment and express their concerns. Commissioner Savage agreed. He raised the issue to make everyone aware that there may be public outcry once the project physically begins.

Condition of Approval #5 - Commissioner Pettit indicated the reference to LEED for Homes Silver rating, and asked if she was correct in assuming that the standard by which this project and all the homes built in this project are to be LEEDS homes. Mr. White replied that this was correct. He explained that the Green Build Standard no longer exists

Condition of Approval #6 – Commissioner Pettit revised the second sentence to read, “Entry and perimeter landscaping shall be completed within six (6) months of issuance of the first building permit, weather and ground conditions permitting”.

Condition of Approval #14 – Commissioner Hontz asked if snow removal was only tied to sidewalks or if it was also tied to other areas where snow removal may need to occur. Commissioner Pettit clarified that she had added the language, “including, without limitation, snow removal.” Her intent was that it was specifically tied to this condition for maintenance of sidewalks. Commissioner Pettit wanted to make sure this community would be walkable during the winter. Commissioner Hontz was comfortable with the language based on the intent.

Condition of Approval #31 – The last sentence as written was replaced with a new sentence, “A minimum area of 100 x 80 shall be free from fixed improvements until final field design is approved as part of the subdivision”. Commissioner Hontz clarified that beyond a design issue, she wanted it clear to potential buyers that there could be a field and that it goes further than the CC&Rs.

City Attorney Harrington remarked that Commissioner Hontz’s concern should be addressed in a separate meeting as a separate agenda item. At that time the Planning Commission could make a policy recommendation to the Recreation Board or another appropriate entity, for a coordinated effort in following up with programming and policy decision regarding that space, that may not be subject to the MPD. He explained that the space would be programmed as part of the initial platting, but the dimensions of the field and uses would be determined by a different body at a later time.

Commissioner Hontz reiterated that her primary concern was 1) making sure the field is not precluded in the design; and 2) after it is built and people begin to move in, she did not want some residents to have the ability to prohibit others in the community from using that facility. Mr. Harrington felt they were double covered on her concerns because the City has an owner role, which could add additional influence into policy decisions.

Planner Whetstone was concerned that a larger field would preclude the tot area. Mr. White remarked that it may be impossible to fit a 100 x 80 rectangle field. He asked if Commissioner Hontz wanted hard lines or if this could be a play field with meandering edges but the same square footage. Commissioner Hontz explained why she felt it was important to have a hard line rectangular space, but she also understood the issues for not being able to have that capability. City Attorney Harrington recommended that the Planning Commission discuss or modify the dimensions at the subdivision stage.

Condition of Approval #35 – Commissioner Pettit revised the second sentence to read, “To the extent that sound mitigation measures are utilized within the MPD, such measures shall be limited to landscaping and berms, energy efficient housing design and insulation, and sound mitigation constructed as part of the design of the dwelling units and shall be reviewed by the Planning Department for compliance with the Design Guidelines.

Condition of Approval #41 – The third sentence was revised to read, “If this area is used as a construction staging, construction recycling area, and excavated materials storage area, a new construction staging area will need to be approved by the Planning Department for the remainder of Phase I and for subsequent phases and shall be re-vegetated in a like manner with the issuance of certificates of occupancy for the final units in the respective phase”.

Condition of Approval #44 – Planning Department was changed to Planning Director.

Condition of Approval #56 – Mr. White asked for clarification of the language in parenthesis, “subject to further appropriate limitations identified during the final subdivision plat process.” Commissioner Pettit explained that the language was included to give the Planning Commission the ability at the final plat to further limit the house size on some lots, if appropriate, to address other concerns. Commissioner Pettit did not want the design guidelines to be the final determinant of house size limitations.

Mr. White was concerned with putting language on a plat that may or may not be conducive to selling lots and homes. He preferred more definitive language. Commissioner Pettit clarified that consideration would be on a lot by lot basis.

Commissioner Savage understood and supported the objective of the language. However, the applicant wants the project to be a commercial success and he was concerned about placing a condition that would create a constant unknown for the applicant in terms of house size. Mr. White shared the same concern, particularly if the Planning Commission has the ability to approve or deny every plat based on house size limitations.

City Attorney Mark Harrington did not believe the Planning Commission could place a condition that modifies their subsequent approval in the next regulatory criteria, unless they were specifically reserving something within this section of the Code to apply again at that section. The Planning Commission has the ability for case by case tweaking in the platting, and it must be done within the subdivision criteria. Mr. Harrington did not think the Planning Commission was requesting anything beyond the ability they already have.

Commissioner Savage clarified that the houses would not be any larger than allowed by the MPD, and that final approval of the subdivision is based on the fact that the adequacy of a lot to support that size of a house must be validated at the time of that application.

City Attorney Harrington read from LMC Section 15-7.3-3, Square Footage, in the Subdivision Section. He felt it was unnecessary to be redundant in terms of the ability the Planning Commission already has under the LMC. However, the language needs to be clear that house sizes would not be looked at in their totality, but rather in terms of narrowing the specifics that they would anticipate looking at with any final subdivision plat.

Commissioner Pettit pointed out that the LMC does not address sustainable green building element, which is tied to the MPD. As an example, there may be a situation where the house size may need to be reduced to allow for solar access for adjacent properties. She wanted it very clear that those types of details and situations would generate an appropriate limitation. She thought it was important for potential buyers to be aware that Park City Heights is a sustainable green community and the preference is for smaller homes.

City Attorney Harrington revised Condition of Approval #56 to read, "House size limitations for all lots within the MPD shall be identified in the Design Guidelines subject to further appropriate limitations, if found necessary during the final subdivision plat process, taking into consideration the size of the lots, visibility of lots from the LMC Vantage Points, solar access of adjacent lots, onsite snow storage and ability to achieve LEED for Homes Silver ratings, to meet the applicable standards of 15-7.3-2."

The questionable language in parenthesis was removed in the revised condition. After further discussion, the phrase "for all lots" was removed from the revised language.

The last paragraph of Condition of Approval #56 became Condition of Approval #57, changing the numbers of the remaining conditions.

The new Condition of Approval #58 was revised to read, "The Park City Heights Design Guidelines are an integral component of the Park City Heights MPD and substantive amendments to the Design Guidelines require Planning Commission approval.

Condition of Approval #61 – Commissioner Hontz revised the condition to read, "The Park City Heights Design Guidelines and CC&Rs shall include information related to the history of the site and Quinn's Junction region.

Condition of Approval #62 – Commissioner Hontz wanted the language revised to require real data this winter so they can know the actual traffic counts and not metered counts. That also takes into account and accurately understands what the problem will be with the current baseline conditions created at the lights in the region and in the entire corridor, based on the real traffic impacts analysis or TIS that was completed. This will provide real data for UDOT to propose a traffic corridor analysis.

Commissioner Hontz was not comfortable with the language as written because it did not accomplish the goals she was trying to achieve. She wanted a winter traffic count at peak periods and peak hours. She also wanted to see, as part of the actual traffic winter counts, a full analysis of the traffic signals in the corridor so the Park City Heights project works better at the baseline current conditions and in the future, in order to get ahead of the UDOT problem.

Chair Wintzer asked Kent Cashel, with the Park City Transportation Division, if the City could do a traffic count or if they needed to submit a request to UDOT. Mr. Cashel replied that the City can do counts on the highway. He pointed out that they already have that data. A full-time counter that counts every minute of every day is located just east of Richardson Flat Road. That is the basis of the data on the website. Mr. Cashel stated that more robust data is also available, but the City would need to request it from UDOT. Mr. Cashel believed the City's counts reflect the same data that UDOT shows.

Commissioner Hontz stated that she had obtained the data from UDOT and she was able to get the peak winter counts. They already know when traffic problems occur, so this is not new

information. Commissioner Hontz felt it was in the project's best interest to better understand the problems that currently exist at the signals and will be further exacerbated by this project. She remarked that real counts are slightly different and more accurate than meter counts. She believed the corridor study is necessary to show what problems they currently experience and what needs to occur to rectify it.

Mr. Cashel stated that he has concerns about SR248 on a daily basis. The Transportation Department has spent a tremendous amount of time working with UDOT on short and long range planning. Mr. Cashel noted that a strategic plan was created and Park City was one of the first communities to pro-actively work with UDOT to develop a strategic plan for that road. It includes ongoing monitoring similar to what Commissioner Hontz was requesting. Mr. Cashel explained that a model was developed around that corridor and it was calibrated to current conditions, as well as future conditions. He pointed out that the model looked at integrating this project, which has been anticipated for at least four years. Mr. Cashel remarked that they have consistently looked at peak hours during the winter. He stated that UDOT is in the process of synchronizing all the signals together with fiber optic cable. This would allow them to monitor the efficiency of each signal and the corridor as a whole and make adjustments.

Commissioner Hontz asked if the synchronization through the fiber optic was already programmed and when it would occur. Mr. Cashel was unsure of the exact date, but stated that several of the signals are already tied in. When the City does the intersection improvements, which is in the process of being designed, they are required to tie into the signal at the fields. Mr. Cashel assumed there would be a gap in the system that would need to be addressed, but, it is already part of the plan. Mr. Cashel reiterated that they have a model and they would constantly be gathering the data and running it through the model. He was less concerned with the Park City Heights project and more concerned about matters that are out of their control and unrelated to this project.

Chair Wintzer asked Mr. Cashel how many years it would take to complete the fiber optics. Mr. Cashel replied that it would be installed by UDOT and he did not know the specific date. Mr. Cashel pointed out that UDOT would decide when to install the signal, and that is determined through a warrant study. The City will prepare the intersection and make it ready to install the signal.

Mr. White remarked that the applicant was not opposed to doing another study. However, he believed the existing study already indicates that improvements need to be made. He was willing to work with the City to conduct another study.

Commissioner Pettit understood that Commissioner Hontz was making the point that the study should come back to the Planning Commission to determine whether additional mitigation would be required.

Commissioner Strachan suggested a condition of approval that requires a peak traffic count study every year for five years and to bring those results to the Planning Commission. If conditions need to be further mitigated, they would do it.

City Attorney Harrington remarked that the Planning Commission would only be able to address projected impacts from this project. He stated that impact fees are not an exact science and never will be. They try to have a reasonable forecast based on best available data at the time of approval to identify concerns which they believe need to be mitigated. Unless their concerns are driven at something that is fundamentally different from the range of estimates in the original studies, which Mr. Cashel identified as the range of percentage of impact on the totality of the corridor, the Planning Commission was trying to solve something beyond the scope. Mr. Harrington pointed out that a traffic count on the road is not a count of this project. He commented on things that could manipulate the counts as much as this project.

Commissioner Hontz believed that one of the assumptions made in the TIS was that approximately 60% of the people would make a right hand turn out of the project in the morning and a left hand turn in the evening. That assumes the number of people who would be going to work in Salt Lake or elsewhere, rather than taking a left into Park City. She pointed out that if the numbers were different and 20% made a right and 80% turned left, a very different condition would occur based on this project.

City Attorney Harrington asked Commissioner Hontz what she would do with a condition at a Planning Commission level to remedy a failing UDOT intersection. Commissioner Hontz was unsure what they could do. She could not pre-think a solution without having a real problem. Commissioner Hontz felt it was reasonable to try to address problems created by this project only, on their site, based on what occurs on that site.

City Attorney Harrington remarked that the problem was to put it back into the regular framework of what they are permitted to do. If this project was approached as a subdivision that started within the City, one of the few limitations would be an impact fee to address the level of service. With an impact fee, it is hard to add additional off-site requirements, because that is what the impact fee is supposed to address.

Commissioner Hontz clarified that her comment specified everything on-site. Mr. Harrington pointed out that the intersection is off-site. He explained that since this was an annexation, they were able to condition and contract much greater improvements in addition to the impact fees.

City Attorney Harrington felt the concerns were valid, but he was cautious about setting up the Planning Commission for a failed expectation.

Chair Wintzer believed that a guideline for any traffic study would be to make the Park and Ride lot work efficiently. He believed the Park and Ride would have a greater impact on the intersection than this project.

Commissioner Hontz handed Mr. Harrington a copy of the language that she felt accomplished what needed to be done, and asked him to review it and provide his opinion. She noted that the language was on page 100 of the Staff report.

City Attorney Harrington proposed revised language to Condition of Approval #62 in the redlined handout. Commissioner Hontz felt the original condition accomplished what they were trying to achieve in a better way than the language proposed by Mr. Harrington. She reiterated that there

is already a problem with that corridor at peak hours in the winter. It has nothing to do with this project, but she did not want this project to make it worse.

Mr. Cashel remarked that the applicant did a study and he had commissioned a review of that study in 2008 by an independent transportation engineer. His review indicated that the project's contribution to peak hour traffic is quite small. Mr. Cashel believed there was little they could do in terms of linking that with some type of mitigation measure on a State road. Mr. Cashel stated that in looking at SR248, the models show that with traffic growth much greater than this project, and with integration of the Park and Ride and the bus HOV lanes, they would not eliminate any kind of queuing on that road without major enhancements. However, they will maintain a level of service consistent with what exists today.

Commissioner Savage asked Mr. Cashel for the assumptions regarding the amount of growth of traffic that led to the decision to put in an HOV lane and a Park and Ride. He asked if they were close to what was projected. Mr. Cashel did not have a specific number. He stated that there is significant growth in traffic on that corridor as growth continues to occur in and around the City. Mr. Cashel explained that the data they put in the model was based on actual counts and it forecast out. The available data was from 2009. When they ran that with the UEs coming in with this project, during Christmas week at the peak hour the traffic was at 5% at build out. The percentage was less on a regular day.

City Attorney Harrington agreed that there was an obvious problem, however, they cannot use pending development to cure deficiencies in level of service. In addition, there is a proportionality issue. They can only tie this project with things that are roughly proportional to a better cause. Commissioner Hontz stated that she was trying to be very clear about separating new development and what this applicant is responsible for versus what exists.

Commissioner Hontz was comfortable with the revised language to Condition #62 as proposed by Mr. Harrington. The language was further revised to state that the results of the annual assessment and traffic counts for the SR248/Richardson Flat intersection would be provided to UDOT with supporting data as applicable.

Commissioner Hontz noted that the Planning Commission previously discussed a ROS condition. Planner Whetstone recalled a comment to the effect that after approval, the open space area would be rezoned into the ROS. She understood that this would be a separate process and could not be a condition of this approval. City Attorney Harrington clarified that zoning is a legislative process that cannot be addressed in an MPD. Commissioner Hontz stated that in looking at the zoning map, it is important to keep the fringes or edges of the community surrounded by open space. Mr. Harrington stated that zones should not be property specific. To rezone an internal parcel to an internal project creates spot zoning and other issues. Commissioner Hontz felt they would be eliminating the spot zoning that was created with the CT zone and reconnecting the ROS to create a green fringe around the community. City Attorney Harrington remarked that the Planning Commission could make a policy recommendation to the City Council for a rezone.

Chair Wintzer pointed out that the Planning Commission has the ability to record those spots as open space, or make notes on the plat that prohibits development in those open space areas.

Director Eddington asked if there was any benefit in terms of information to the Transportation Division, for an additional transportation study that addressed counts and turning movements at the intersection of Richard Flat and SR24 this year, and the same study again at 50% of Certification of Occupancy for the project, combined with an analysis of the traffic movements out of Park City Heights on to Richardson Flat. He clarified that a condition requiring additional studies would not keep the project from moving forward.

Mr. Cashel replied that additional information is always beneficial, however, he believed they would have the same capability with the new model. If the Planning Commission required additional studies, that information would be useful. City Attorney Harrington believed the language drafted for Condition #62 provided enough basis to coordinate with the Transportation Division on both points.

Chair Wintzer opened the public hearing.

There was no comment.

Chair Wintzer closed the public hearing.

Chair Wintzer was disappointed with the lack of public interest on a project this large and significant.

Commissioner Hontz stated that in reviewing minutes from previous meetings, particularly from earlier meetings, she found that the intent of the Commission and the ultimate position of each Commissioner was often not clear. For that reason, she felt it was important for the Planning Commission to make clear comments this evening and to tackle any remaining issues.

Commissioner Hontz echoed Chair Wintzer and Commissioner Savage regarding the lack of public input during this process. She believed one reason was that people do not realize that this project is in the City. Commissioner Hontz commented on the typical "not in my backyard" attitude and felt that that very soon people will realize that this is everyone's backyard. If this project is approved, she believed elected officials in both the City and the County would hear significant feedback.

Commissioner Hontz stated that she was involved in what was the only joint City/County Planning and Visioning study that encompassed this particular property. At that time they talked about the vision of what should happen at Quinn's Junction on property where the hospital is now located and where Park City Heights is proposed, as well as other properties. Commissioner Hontz stated that the opinions were varied in the discussions, but the consensus was to keep it similar or the same to what the zoning was under the County. At that time, zoning for this property was 1 per 20, or 1 per 40, depending on where it was on the site. Commissioner Hontz noted that there was considerable public input during the joint study because people felt they had the opportunity to voice what they would like to see on that site and for the region in general. Commissioner Hontz stated that she was unable to find the Quinn's Junction study. However, she found an email where she had requested the study but never received it.

Commissioner Hontz stated that if this project is approved, there is a potential to lose some goodwill and relationships they might have had with the County. Based on recent meetings with the Snyder County Planning Commission, regardless of what happens on this project moving forward, she was hopeful that the County would understand the difficult position they encountered in terms of the process that the project has gone through on this property. Commissioner Hontz remarked that annexations, annexation agreements and development agreements are legitimate and positive way to approve development. When they go through that process and reach an agreement, they should be able to move forward with it. However, not everything in the agreement makes her comfortable in terms of the project meeting the Conclusions of Law. Commissioner Hontz stated that as the project progressed during the review, she believed it became a much better project. She credited that to the work the Planning Commission and the applicant did together. However, she still struggled with getting the project to meet Conclusion of Law #2, 3 and 5 that, "The MPD as conditioned, is compatible with surrounding structures in use, scale, mass and circulation"; "The MPD as conditioned, is consistent with the Park City General Plan"; that the MPD as conditioned, strengthens and enhances the resort character of Park City". She understood what was accomplished through the annexation and how some of those restrictions went away.

Commissioner Hontz stated that when she thinks about the General Plan, which references and mirrors some of the policies the American Planning Association has on Smart Growth, it talks about the uniqueness and distinctiveness of a place, and reducing and limiting sprawl as much as possible. Commissioner Hontz believed there were definite benefits to this project in terms of providing affordable housing and more opportunities to have a greater and better community. However, she was trying to balance that with the topography and the sense of open space that would be lost as you enter or leave Park City. With the approval of this project, they would lose a little more of the uniqueness and distinctiveness of Park City. Commissioner Hontz referred to her earlier comment regarding the zoning map. One place that keeps Park City unique is its fringes, however, this project does the exact opposite. There is ample open space within the development, but it takes away the open space on the fringe that the public expects.

Commissioner Savage stated that he came into this process fairly late and found that the decisions made by a past Planning Commission were imposed on this Planning Commission and the approval of this project, and they were left to deal with the "sins of the fathers". Speaking as an individual and based on his limited ability, he found it difficult to discern whether or not the Conclusions of Law were met. For that reason he relies on the opinion of Counsel. Commissioner Savage remarked that if it was possible to re-do the project, he believed the outcome would be different. However, that was not the case and they needed to move forward. He stated that it was an honor working with the Planning Commission in terms of the rigor, depth, and passion in which they dealt with the issues, and a privilege working with the applicants due to their willingness to respond to concerns and comments. Commissioner Savage hoped that the project had not been overly managed to the point of challenging its ability to be an economic success.

Commissioner Pettit admitted that she was one of the "fathers who had sinned". She explained the difficulty coming on as a new Planning Commissioner and being faced with a project of this magnitude. If she could do it over, her earlier vote would have been very different. Commissioner Pettit stated that location was her primary concern with this project, but she understood that would

not change. She found it interesting that the Planning Commission had the opportunity this evening to look at one piece of the General Plan process that specifically focuses on growth management. She noted that several elements stood out as to why this is not the best project given some of the goals and objectives for the community. One objective is to remain a small, historic town with a sense of community, while preserving its natural setting. Another objective is to prevent sprawl and encourage responsible development. Commissioner Pettit believed the community was bumping up against a very significant tension between growth and the desire to remain a small, historic town with a resort economy. She was concerned that Park City was close to reaching the point where the tension would put too much pressure on their ability to sustain themselves as a resort community and a small historic town.

Commissioner Pettit felt this project highlighted the importance of not proactively seeking large projects within the City boundaries, especially those that are disconnected from the core amenities and the City. Commissioner Pettit thought this project highlighted very serious issues that need to be considered going forward. It is important for the Planning Commission to understand those issues as they move forward with the General Plan. Commissioner Pettit appreciated the way this project had evolved into what she believed was the best project given the location. She also appreciated the creativeness and willingness on the part of the applicant, to create an opportunity with the community to design a project that other communities can emulate in terms of sustainable and green development. For that reason she was proud of the opportunity to go through that process and if this project is approved, she hoped it was something they could be proud of in years to come.

Commissioner Strachan incorporated his comments from the April 27<sup>th</sup> meeting, where he specifically identified where the Conclusions of Law came up short, along with his general comments. Commissioner Strachan stated that he still had concerns with Conclusion of Law #1, that the MPD as conditioned complied with the LMC. He read the purpose of LMC, Chapter 15-1-2, (E) "To allow development in a manner that encourages the preservation of scenic vistas, environmentally sensitive lands, historic structures, the integrity of historic districts, and unique urban scale of the original Park City". Commissioner Strachan could not find how this project met that purpose statement. He also did not believe it met (F), "Delivery of municipal Services"; (G) To prevent development that adds to the degradation of air quality due to the development's dependence on the car. It also did not meet the finding regarding enhancing the resort character of the community.

Commissioner Strachan referred to Conclusion of Law #10 and stated that he could not make the finding that, "The MPD promotes use of non-vehicular forms of transportation". He pointed out that aside from the trails, there is no alternative to the car. The bus stop is planned but it is not conditioned and there is no certainty that it will come to fruition.

Commissioner Strachan believed that the issues related to compliance with the General Plan had been discussed numerous times. He recalled that during the pre-MPD stage, the Planning Commission discussed the fact that this would not get any easier if they approved the MPD. They also said that finding initial compliance with the General Plan would be passing the buck. Commissioner Strachan stated that the buck stops tonight and they were still faced with the General Plan. He did not believe the project met Goal #6 of the General Plan, which is "To

manage the amount, rate, form, and location of growth. Park City should expand its boundaries when the expansion helps retain community identity, enhance the open space buffer, and preserve gateways to the City”.

Commissioner Strachan remarked that this was suburban sprawl. It had cul-de-sacs, driveways, garages and cars. When and if this project breaks ground, the outcry from the public to both the Planning Commission and the City Council will become very apparent. He agreed with Commissioner Pettit's comments regarding the General Plan presentation this evening, and the top goals of the community. He noted that the wish list was no more growth and no more cars. He believed this project was the complete opposite of that wish list. Commissioner Strachan stated that sprawl has impacts to the community that were identified in this process but were not mitigated. In their haste to provide affordable housing, he believed they turned a blind eye to those impacts. Commissioner Strachan was certain that would go down in the history of this town as a mistake.

Chair Wintzer echoed Commissioner Pettit in terms of being on the past Planning Commission. He also apologized to a former chairman who had spoken eloquently to the same comments as Commissioner Strachan, but was out voted at the time. Chair Wintzer remarked that all the comments and concerns expressed this evening and throughout the process were issues that should have been dealt with five years ago when it was annexed into the City and placed in the CT zone. Chair Wintzer noted that he was on the Planning Commission at that time and the Commissioners all voted in favor of doing that. Now that the project is in this zone and in the City, the impacts related to the General Plan were not the problem of this project, because it followed what had been approved.

Chair Wintzer stated that he was looking at this project, not as to whether or not it should have been annexed, but whether or not this is the best use within the CT zone and for what was permitted. He believed this current project was so much better than what was originally approved, and he believed it was as good as they could get in that location. Chair Wintzer commended his fellow Commissioners on their dedication. It has been a painful and timely process and this Planning Commission did a fabulous job. Chair Wintzer also thanked Dick Peek and Richard Luskin for their participation and input. They followed this project all the way through, but due to circumstances and timing, they were not able see it to a vote.

Chair Wintzer believed that the downside of not approving this project was worse than the upside, and for that reason he thought it should be approved this evening.

**MOTION:** Commissioner Savage moved to APPROVE the Park City Heights MPD based on the Findings of Fact, Conclusions of Law and Conditions of Approval as amended at this meeting. Commissioner Pettit seconded the motion.

**VOTE:** The motion passed 3-2. Commissioners Wintzer, Pettit and Savage voted in favor of the motion. Commissioners Strachan and Hontz voted against the motion.

Mr. White noted that the applicant would return with the design guidelines. He requested that the Planning Commission submit their comments on the design guidelines in a timely manner.

Chair Wintzer requested that Planner Whetstone provide the red lined copy of the findings of fact, conclusions of law and conditions of approval with the final draft, so the Planning Commission could compare them for accuracy.

Given the magnitude of the changes made this evening, City Attorney Harrington suggested that the Planning Commission sign off on the action letter prior to it going out with the modified conditions.

#### Findings of Fact – Park City Heights MPD

1. The Park City Heights MPD includes the following:
  - a. 160 market rate units distributed in a mix of: cottage units on smaller lots (lots are approximately 6,000 to 8,600 sf in size); single-family detached units on approximately 8,000 sf to 27,000 sf lots; and single-family detached on two upper lots which are approximately 44,000 and 48,000 sf each. The approximate distribution of types of product is identified in the Design Guidelines.
  - b. 28 deed restricted townhouse units (44.78 affordable unit equivalents or AUE). These 28 units meet the required IHC affordable units under their affordable housing obligation and are configured as seven four-plexes.
  - c. 16 deed restricted units (32 AUE). These 16 units meet the affordable housing required by the CT zone (LMC 15-2.23-4(A) (8)) and the Affordable Housing Resolution 17-99. These units are configured as a mix of single-family detached, cottage homes, and townhouse units.
  - d. 35 additional non-required deed restricted affordable units in a mix of unit types.
  - e. All units (including all deed restricted units) will be constructed to LEED for Homes Silver rating, as stated in the Annexation Agreement, with each unit also achieving a minimum combined 10 points for water efficiency/conservation. Third party inspection will be provided. An industry standard Third Party inspector shall be mutually agreed upon by the Chief Building Official and the applicant prior to building permit issuance.
  - f. A total of 171.5 acres of open space (not including open space within individual lots) is provided. This is approximately 72% of the entire 239 acres. This total includes the 24 acre parcel located adjacent to Highway 248 that is deeded to the City for open space.
  - g. An additional 5 acres of deeded open space is provided on Round Valley Drive adjacent to US 40 south of the Park City Medical Center. This open space is not included in the 72% figure. This is in exchange for transferring the 28 IHC deed restricted townhouse units to the PC Heights neighborhood. This parcel is deed restricted per requirements of the Burbidge/IHC Annexation and Development Agreements.
  - h. A dedicated 3.55 acre (155,000 sf) public neighborhood City Park with field, tot lot and playground equipment, shade structure, paths, natural area, and other amenities to be designed and constructed by the developer and maintained by the City. This park is included in the open space calculations.. Bathrooms are proposed in the club house with exterior access for the park users.

- i. A 15,000 sf (approx.) community gardens area within the PC Heights neighborhood. This area is included in the open space calculations.
  - j. 3 to 4 miles of soft surface trails within and around the property and additional mile or so of hard surfaced sidewalks and paths along the Project's streets.
  - k. Trail connections to the Rail Trail and Quinn's trail, including trail on the north side of Richardson Flat Road from the 248 underpass to the Rail Trail and trail on the south side of the Road from the project to the Rail Trail. Trail connection to the south property line for future connections to the Jordanelle area. Trail easement on north side of Richardson Flat Road from Rail Trail to east property line. Trail connections to the Park City and Snyderville Basin back country trails system. Trails are further described in Finding #11.
  - l. Transit bus shelters along Richardson Flat road including "dial-a-ride signs" (City bus service expected to be extended to Park City Heights and the Park and Ride).
  - m. Bike racks at the club house and public park.
  - n. Cross walk across Richardson Flat road at the rail trail.
  - o. A 3,000 sf community center/club house area to be constructed by the developer with dedicated future ancillary support uses or possible daycare center parcels (Parcels I and J as shown on the preliminary plat). Exterior access bathrooms will be available for park users. Construction of a daycare facility would be by the owner of the daycare facility and not by the Park City Heights development.
  - p. Water infrastructure improvements that enhance the City's overall water system and provide redundancy as required by the Water Agreement executed as part of the Annexation Agreement. Water shares were dedicated to the City as part of a pre-annexation agreement.
  - q. Transportation improvements to the Richardson Flat/248 intersection including lane improvements and installation of a traffic signal to provide intersection safety (controlled left turn) and putting the Park and Ride facility and Park City Heights on the City bus route. These transportation improvements meet the requirements in the Annexation Agreement.
  - r. Following Wildlife recommendations as identified in the Biological Resources Overview prepared by Logan, Simpson Design, Inc. amended March 17, 2011.
  - s. Design Guidelines approved as part of this MPD apply to all lots, with the exception of the 2 upper lots proposed to be subject to the CCRs for the Oaks at Deer Valley, or equivalent.
  - t. No sound barrier walls or structures along US 40 within or related to the MPD.
2. The Park City Heights MPD is subject to the Park City Heights Annexation Agreement approved by the City Council on May 27, 2010. The Annexation Agreement sets forth terms and conditions of annexation, zoning, affordable housing, land use, density, transportation and traffic, phasing, trails, fire prevention, road and road design, utilities and water, fiscal impact analysis, snow removal, fees, and sustainable development requirements for the 239 acre Park City Heights MPD. The MPD as conditioned is in compliance with the requirements of the Annexation Agreement.
  3. The Park City Heights Annexation Agreement includes a Water Agreement as an integral component. The Water Agreement sets forth terms and conditions related to water facilities, restrictions regarding water, and phasing of development as it relates to

completion of water infrastructure. The MPD as conditioned is in compliance with the Water Agreement.

4. On June 17, 2010, the applicants submitted a pre-MPD application based on the annexation approval and agreement. The Planning Commission reviewed the pre-MPD application at two (2) meetings (July 14<sup>and</sup> August 11, 2010) and found the application to be in initial compliance with applicable elements of the Park City General Plan.
5. On June 30, 2010, the applicants submitted a complete MPD application.
6. The property was posted and notice was mailed to property owners within 300 feet. Legal notice was also published in the Park Record as required by the Land Management Code.
7. Public hearings on the MPD were held on October 13<sup>th</sup>, November 10<sup>th</sup>, and December 8<sup>th</sup>, 2010 and on February 9<sup>th</sup>, February 23<sup>rd</sup>, March 9<sup>th</sup> and March 23<sup>rd</sup>, 2011 and on April 27, 2011.
8. The property is located within the Community Transition (CT) zone. The MPD is in compliance with all applicable requirements of the CT zone, including density, uses, building setbacks, building height, parking, open space, affordable housing, and sustainable development requirements.
9. Access to the site is from Richardson Flat Road, a public road previously known as Old Dump Road. Access is also proposed to the currently unimproved US 40 frontage road (UDOT) along the east property line. No roads are provided through the Park City Heights MPD to the Oaks, Royal Oaks, or any other neighborhood within the Deer Valley MPD, consistent with the Annexation Agreement.
10. Utilities are available in the area, however extension of utilities or utility upgrades to the development site are required. A final utility plan will be submitted with the final subdivision plats to be reviewed by the Interdepartmental and Utility Service providers Development Review Team. City Staff will provide utility coordination meetings to ensure that utilities are provided in the most efficient, logical manner and that comply with best practices, including consideration of aesthetics in the location of above ground utility boxes. Location of utility boxes shall be shown on the final utility plans. The MPD phasing plan shall be consistent with conditions of the Annexation Agreement related to provision of public services and facilities.
11. The MPD includes 1) a paved connector trail on the south side of and separated from Richardson Flat Road, from the project to the Rail Trail, 2) a paved connector trail on the north side of and separated from Richardson Flat Road, from the SR 248 underpass to the Rail Trail, 3) a trail connection from trails within the project to the south property boundary line, 4) a trail easement along the north side of and separated from Richardson Flat Road from the Rail Trail to the east property boundary line, and 5) several miles of paved and soft surfaced trails throughout the development. All trails will be constructed by the developer consistent with the Park City Trails Master Plan.
12. The MPD includes a dedicated neighborhood public park to be constructed by the developer according to the City's parks plan, and as further directed by the City Council. Bathrooms are provided at the clubhouse with exterior access for the park users.
13. Parking within the MPD is proposed at two spaces per unit within private garages. Additional surface parking is provided for guests, the community gardens/park area, and the neighborhood clubhouse/meeting area. The streets have been designed to allow for parking on one-side per the City Engineer. Final street design will be determined at the

time of the final plat and additional off-street guest parking areas will be incorporated into the design.

14. The proposed MPD density of 1 unit per acre complies with the density allowed by the CT zone. (239 units on 239 acres) The net density is 0.82 units per acre (195 units on 239 acres), excluding the 44 required deed restricted housing units. The density is consistent with the Annexation Agreement. If the additional 35 deed restricted affordable units are included in this analysis the net density is 0.67 units per acre (160 units on 239 acres).
15. The LMC requires a Sensitive Lands Analysis for all Master Planned Development applications. The MPD application included a Sensitive Lands Analysis.
16. A portion of property is located within the designated SR 248 Entry Corridor. This area is identified in the MPD as open space and all required entry corridor setbacks of 200' are complied with.
17. The property contains SLO designated steep slopes, ridgelines and wetland areas. These areas are identified in the MPD as open space areas and all required wetland and stream setbacks are complied with.
18. A wildlife study was conducted and a report (December 2010) was prepared by Logan Simpson Design, Inc. A revised report was prepared on March 17, 2011. The wildlife study addresses requirements of the Land Management Code and provides recommendation for mitigation of impacts on wildlife.
19. The site plan complies with the minimum MPD required 25' setback around the perimeter of the property. Setbacks range from 25' to 690' (and greater to the south property line).
20. The locations of the proposed units are consistent with the MPD site planning and Sensitive Lands Overlay criteria.
21. The property is visible from the designated LMC Vantage point along State Road 248 and a visual analysis was conducted by the applicant from this Vantage point. Additional visual analysis was provided from the intersection of Richardson Flat Road and SR 248. Units along the western perimeter are most visible along the minor ridge from SR 248. Any units that are over the 28' height limit as measured in the zone will be required to obtain an Administrative Conditional Use Permit. .
22. Structures containing more than four units and future non-residential structures on Parcels I and J will be more visible due to the location along Richardson Flat Road and the potential massing. Additional review through the conditional use process is warranted for these parcels and uses.
23. Design Guidelines for the Park City Heights MPD address site planning, architecture and design, sustainability and best practices, landscaping and water conservation, and other requirements of the Annexation Agreement.
24. A comprehensive traffic study and analysis of the Property and surrounding properties, including existing and future traffic and circulation conditions was performed by the Applicant's traffic consultant, Hales Engineering, dated June 7, 2007, on file at the Park City Planning Department. An updated traffic volume and trip generation report was provided by Hales Engineering on September 27, 2010. An additional traffic update was provided in 2008 by InterPlan Co at the request of the City Transportation Department. The Hales Engineering study was utilized during the annexation process in the determination of density and requirements for traffic and transportation related impact mitigations. The City's Transportation Department is preparing a Short range Transit Development Plan studying demand for transit, routes, efficiency of the transit system, etc

to be completed in July of 2011. This Transit Plan will address the timeline for bus service in the Quinn's Junction area. The City's Transportation Master Plan update will include the projected traffic from Park City Heights MPD in the recommendations for transportation improvements within the City.

25. Construction traffic is required to be addressed in the Construction Mitigation Plan.
26. A Geotechnical Study for the Park City Heights Development was provided by Gordon, Spilker Huber Geotechnical Consultants, Inc. (June 9, 2006). Expansive clay soils were encountered across the site in the upper two and one-half to nine and one-half feet. Shallow bedrock was found within portions of the site. Special construction methods, removal of these unsuitable soils, and other mitigations are spelled out in the Study.
27. A Fire Protection Report (March 2011) identifies potential Wildland urban interface areas within the MPD. Prior to issuance of building permits the Building Department will review individual building fire protection plans for compliance with recommendations of the Fire Protection Report and applicable building and fire codes. The fire protection component of the plan shall ensure that Park City's ISO rating is not negatively affected by development of the site.
28. Affordable housing obligations of the MPD are consistent with the affordable housing described by the Park City Heights Annexation Agreement, Housing Resolution 17-99 and as required by the CT zone. The MPD provides up to an additional 35 deed restricted housing units over the 28 deed restricted townhouse units (44.78 affordable unit equivalents (AUE) required by the IHC MPD and the 16 deed restricted units (32 AUE) required by the CT zone for the 160 market rate units). These affordable units are configured as a mix of single-family detached, duplexes, cottage units, and attached townhouse units. The additional 35 non-required deed restricted affordable units are proposed to be a mix of unit types as part of this MPD consistent with the needs described in Housing Market Assessment for Park City, dated September 2010. As part of the mix of unit types, rental housing will be considered consistent with the needs described in the September 2010 Housing Market Assessment.
29. No building height exceptions have been requested and all buildings will comply with the height limitations of the CT zone.
30. Lots have been positioned to minimize visual impacts on adjacent structures. Potential problems on neighboring properties caused by shadows, loss of solar access, and loss of air circulation, have been mitigated to the extent possible as further described in the Park City Heights Design Guidelines.
31. Utilities must be extended to the site to sustain the anticipated uses. Thirty (30') foot wide non-exclusive utility easements are generally necessary for long term maintenance and shall be dedicated on the final subdivision plats. Off-site improvements are necessary to serve the site with utilities.
32. Off-site trail and intersection improvements may create traffic delays and potential detours, short term access and private driveway blockage, increased transit time, parking inconveniences, and other impacts on the adjacent neighborhoods and to the community in general. Construction Mitigation Plans are required and shall be required to include mitigation for these issues.
33. A Construction Mitigation Plan (CMP) is necessary to identify impacts and propose reasonable mitigation of these impacts on the site, neighborhood, and community due to construction of this project. The CMP shall include information about specific construction

- phasing, traffic, parking, service and delivery, stock-piling of materials and staging of work, work hours, noise control, temporary lighting, trash management and recycling, mud and dust control, construction signs, temporary road and/or trail closures, limits of disturbance fencing, protection of existing vegetation, erosion control and storm water management.
34. Final road designs will be provided to the Planning Commission for review with the final subdivision plats. To minimize visual impacts and to minimize disturbance of existing vegetation due to large areas of cut and fill slopes, low retaining structures (in steps of 4' to 6') are recommended. These low retaining structures may be stepped to minimize their height. Design of these retaining structures is included in the PC Heights Design Guidelines to ensure consistency of design, materials, and colors throughout the development.
  35. A storm water run-off and drainage plan is necessary to ensure compliance with Park City's Storm Water Management Plan and storm water Best Management Practices for storm water during construction and post construction with special considerations to protect the wetlands delineated on and adjacent to the site.
  36. A financial guarantee for all landscaping and public improvements is necessary to ensure completion of these improvements and to protect the public from liability and physical harm if these improvements are not completed by the developer or owner in a timely manner. This financial guarantee is required prior to building permit issuance.
  37. Parcels I and J are identified on the preliminary subdivision plat as potential future support commercial and/or child care center or similar uses pad sites. These parcels are currently used as a temporary, dirt parking lot. Construction of a daycare center is not the responsibility of the applicant/developer of Park City Heights.
  38. A master sign plan is required for Planning Department review and approval and all individual signs require a sign permit prior to installation.
  39. Sound mitigation may be desired by owners of units along US 40. Conditions of approval prohibit sound barrier walls within the MPD. However, other sound mitigation measures may be accomplished with landscaping, berming, smart housing design and insulation, and sound barriers constructed as part of the dwelling units.
  40. Section 15-6-4 (G) of the LMC states that once the Planning Commission has approved an MPD, the approval shall be put in the form of a Development Agreement.
  41. The applicant stipulates to the conditions of approval.
  42. The discussion in the Analysis sections of this report and the Analysis sections of the March 23, 2011 Planning Commission Staff Report (Exhibit A) are incorporated herein.
  43. The applicants have met with Rocky Mountain Power and have increased the Rocky Mountain Powerline setbacks as required by this Utility.
  44. The site plan for the proposed MPD has been designed to minimize the visual impacts of the development from the SR 248 Entry Corridor and has preserved, through open space, the natural views of the mountains, hillsides and natural vegetation consistent with Park City's "resort character".
  45. The 171.5 acres of open space adjacent the development, the trail connections and improvements, and proposed neighborhood public park, as conditioned, will provide additional recreational opportunities to the Park City community and its visitors, which strengthens and enhances the resort character of Park City.
  46. The opportunities for mixed affordable housing types, including rental units, within the development will strengthen the resort economy by providing attainable housing options in

a sustainable and energy efficient community for workers in Park City's tourism/resort based industries.

47. Surrounding uses include open space, Highway 248, US 40, the Rail Trail, the Municipal Water Treatment Plant, Quinn's recreation complex (fields and ice rink), and the IHC medical center and offices
48. The MPD provides direct connection to and critical improvements of the Rail Trail and provides alternative transportation opportunities for recreation and commuting, such as biking, walking, in-line skating, and cross country skiing to Park City's business district at Prospector Square (within 2 miles) and to the IHC medical complex.

#### Conclusions of Law – Park City Heights MPD

1. The MPD, as conditioned, complies with all requirements outlined in the applicable sections of the Land Management Code, specifically Chapter 6- Master Planned Developments Section 15-6-5 as stated in Exhibit A, March 23, 2011 Planning Commission Staff Report.
2. The MPD, as conditioned, is compatible with surrounding structures in use, scale, mass, and circulation.
3. The MPD, as conditioned, is consistent with the Park City General Plan.
4. The MPD, as conditioned, is consistent with the Park City Heights Annexation Agreement.
5. The MPD, as conditioned, strengthens and enhances the resort character of Park City
6. The MPD, as conditioned, is Compatible in use, scale and mass with adjacent properties, and promotes neighborhood Compatibility.
7. The MPD provides amenities to the community so that there is no net loss of community amenities.
8. The MPD is consistent with the employee Affordable Housing requirements as adopted by the City Council at the time the Application was filed.
9. The MPD has been designed to place Development on the most Developable Land and preserves significant features and vegetation to the extent possible.
10. The MPD promotes the Use of non-vehicular forms of transportation through the site design and by providing trail connections.
11. The MPD has been noticed and public hearings held in accordance with the LMC.

#### Conditions of Approval – Park City Heights MPD

1. All standard project conditions shall apply (Exhibit E).
2. A final subdivision plat for each phase, or sub phase, of development shall be submitted for review by the Planning Commission and City Council and shall be recorded prior to issuance of building permits for individual units within that plat. The plats shall be consistent with the LMC, preliminary plat and the PC Heights site plan and documents reviewed and approved by the Planning Commission during the MPD approval. Final street design, including final cut and fill calculations and limit of disturbance areas, shall be submitted with all final subdivision plats to be reviewed and approved by the Planning Commission during final subdivision review. Off-street guest parking areas shall be identified on the final plats.
3. A limit of disturbance area (LOD), maximum building footprint and/or house size limitation and a setback requirement table for the lots shall be included on the final plats consistent with the Park City Heights Design Guidelines.
4. A note shall be added to the final plats stating that a landscape plan shall be submitted for City review and approval for each lot, prior to building permit issuance for that lot.
5. A note shall be added to the final plats stating that all units (including all deed restricted units) shall be constructed to LEED for Homes Silver rating, as stated in the Annexation Agreement, with each unit also achieving a minimum combined 10 points for water efficiency/conservation. Third party inspection will be provided to confirm compliance with the standards. An industry standard Third Party inspector shall be mutually agreed upon by the Chief Building Official and the applicant prior to building permit issuance.
6. A final landscaping and irrigation plan for common areas shall be submitted with the final plats for each phase. Entry and perimeter landscaping shall be completed within six (6) months of issuance of the first building permit, weather and ground conditions permitting. Other Project landscaping, shall be completed within nine (9) months of issuance of 50% of building permits or within six (6) months of any individual Certificate of Occupancy. Landscaping materials and irrigation shall comply with the requirements of the Annexation Agreement, including the Water Agreement, and the Park City Heights Design Guidelines.
7. All exterior building materials, colors and final design details must comply with the approved Park City Heights Design Guidelines and shall be approved by staff prior to building permit issuance.
8. All exterior lighting, including any street and/or path lighting shall be designed to limit the trespass of light into the night sky as much as possible and shall conform to the LMC Sections 15-5-5-(l) and 15-3-3(c) and the Park City Heights Design Guidelines.
9. All exterior lighting, with the exception of bollard lighting at the park shall be privately maintained.
10. A Construction Mitigation Plan (CMP) shall be submitted and approved by the City for compliance with the Municipal Code, as a condition precedent to issuance of any grading or building permits. The CMP shall address construction phasing, staging, storage of materials, circulation and traffic, parking, service and delivery, re-vegetation of disturbed areas, temporary signs and construction lighting, hours of operation, dust and mud control, storm water management, and other items as may be required by the Building Department. The immediate neighborhood and community at large shall be provided notice at least 24 hours in advance of construction work impacting private driveways, street closures, and interruption of utility service. The CMP shall include a site and landscape plan for the sales

office building (either within the clubhouse or within a finished unit) to address landscaping, lighting, and parking for the sales office. Construction Mitigation Plans shall provide mitigation measures for traffic delays and potential detours, short term access and private driveway blockage, increased transit time, parking inconveniences, and other impacts on the adjacent neighborhoods and to the community in general.

11. The CMP shall address disposal and treatment of all excavated materials. The capping of exposed soils within the City's Soils Ordinance Boundary is subject to all applicable regulations and requirements of the Park City Soils Ordinance Title 11, Chapter 15- Park City Landscaping and Maintenance of Soil Cover. A detailed Limit of Disturbance (LOD) plan shall be submitted as part of the CMP. The Limits of Disturbance for the entire site shall be minimized to the greatest extent possible, using best construction practices, and shall include the use of additional low retaining walls and steeper slopes to prevent unnecessary disturbance of native vegetation.
12. A construction recycling area and an excavation materials storage area shall be provided within the development to reduce the number of construction trips to and from the development. This condition applies at a minimum to the first two phases of development and may be waived for subsequent phases of development upon request by the applicant and upon review by the Planning, Building, and Engineering Departments.
13. A storm water run-off and drainage plan shall be submitted with the building plans and approved prior to issuance of any building permits. The plan shall follow Park City's Storm Water Management Plan and the project shall implement storm water Best Management Practices. Post development drainage shall not exceed pre-development drainage conditions and special consideration shall be made to protect the wetlands delineated on and adjacent to the site.
14. Maintenance of sidewalks (including, without limitation, snow removal), trails, lighting, and landscaping within the rights-of-way and common areas, with the exception of the public park and public trails, shall be provided by the HOA, unless otherwise agreed upon by the City Council. Language regarding ownership and maintenance of the open space and common areas shall be included on the final subdivision plats.
15. A financial guarantee, in a form and amount acceptable to the City and in conformance with the LMC Subdivision Regulations, for the value of all public improvements, pedestrian amenities and trails, sidewalks, bus stop amenities, landscaping (including landscaping to re-vegetate and re-landscape areas disturbed by construction related to the MPD) to be completed according to the final approved plans shall be provided to the City prior to building permit issuance for new construction within each phase of construction. All public improvements shall be completed according to City standards and accepted by the City Council prior to release of this guarantee.
16. Final utility plans, consistent with preliminary utility plans reviewed by the Planning Commission during the MPD review, shall be submitted with the final subdivision plats. Utility plans shall be reviewed by the Interdepartmental staff members and the utility service providers as the Development Review Team. Utilities for the MPD shall be placed underground.
17. The City Engineer shall review and approve all associated utility and public improvements plans (including streets and sidewalks, grading, drainage, trails, public necessity signs, street signs and lighting, and other required items) for compliance with the LMC and City standards as a condition precedent to final subdivision plat recordation. This shall include

phasing plans for street construction to ensure adequate fire turn-arounds that minimize disturbance of native vegetation. Due to expansive soils in the area, grading and drainage plans shall include a comprehensive lot drainage plan for the entire phase of each final subdivision plat.

18. Above ground utility boxes must be shown on the final utility plans. The location of these boxes shall comply with best practices for the location of above ground utility boxes. These boxes shall be located in the most efficient, logical, and aesthetic locations, preferably underground. If located above ground the boxes shall be screened to minimize visual impacts and locations shall be approved by the City Engineer.
19. The Snyderville Basin Water Reclamation District's review and approval of the utility plans and final subdivision plats, for conformance with the District's standards for review, is a condition precedent to plat recordation and building permit issuance.
20. All construction, including grading and trails, within the Park City Soils Ordinance area shall comply with restrictions and requirements of the Park City Soils Ordinance (Municipal Code Title 11, Chapter 15).
21. Trail improvements necessary to connect the Rail Trail to the Hwy 248 tunnel trail on the north side of Richardson Flat Road, as well as the trail connection from the Rail Trail to the public park on the south side of Richardson Flat Road, will likely impact the wetlands in this area. Precedent to issuance of a building permit for these trails a wetlands impacts and enhancements plan shall be reviewed by the Planning Staff. All required wetlands permits shall be obtained from the required agencies.
22. Mitigation for the disturbance of any wetland areas shall be identified on the trail construction plan and shall include enhancements of wetlands as an amenity feature for users of the trail system.
23. Enhancements to wetland areas and other disturbed areas within the MPD could include but are not limited to: educational signs, such as identification of plants and animals, ecological processes, wetlands ecology, and insights into seasonal changes to the landscape; plantings that encourage and/or provide food sources for wildlife; additional on-site water sources; clean up of degraded areas; and new nesting habitat/bird and small mammal boxes.
24. Lots 89 and 90 of the preliminary subdivision plat shall be shifted to match the trail phasing plan to locate the trail connection on the open space.
25. All construction, including streets, utilities, and structures shall comply with recommendations of the June 9, 2006, Geotechnical Study for the Park City Heights Development provided by Gordon, Spilker Huber Geotechnical Consultants, Inc. Special construction methods, removal of unsuitable soils, and other mitigation measures are recommended in the Study. Additional soils studies and geotechnical reports may be required by the Building Department prior to issuance of building permits for streets, utility installation, and structures.
26. A detailed review against the Uniform Building and Fire Codes in use at the time of building permit submittal is a condition precedent to issuance of full building permit.
27. Fire protection and emergency access plans shall be submitted prior to the issuance of any building permits and shall be consistent with applicable building and fire codes and shall take into consideration the recommendations of the Fire Protection Report (March 2011). The fire protection plans shall include any required fire sprinkler systems and landscaping restrictions within the Wildland interface zones. The plans shall ensure that Park City's ISO

- rating is not negatively affected by the development.
28. A limit of disturbance area shall be identified during the building permit review and construction fencing will be required to mitigate construction impacts. Silt fencing is required during construction in areas where run-off and construction may impact adjacent wetlands, water ways, and undisturbed areas as determined by the Building Department.
  29. Trail easements for all proposed trails in the MPD shall be platted on the final recorded subdivision plats. All trails shall be constructed consistent with the Park City Trails Master Plan and the Snyderville Basin Trails Master Plan. Connections to undeveloped property to the south providing future connections to the Wasatch County shall be consistent with the Wasatch County Trails Plan.
  30. Construction of the public park, trails within the first phase, trail connections to the Rail Trail on both the north and south sides of Richardson Flat road, as described in the findings, and other neighborhood amenities associated with the first phase, shall commence upon issuance of the 40<sup>th</sup> building permit for Phase I (as described in the Annexation Agreement) and shall be complete within 9 months from commencement of construction, unless otherwise directed by City Council. In subsequent phases, trails, amenities, and other improvements shall be completed prior to issuance of 50% of the certificates of occupancy for the units within that phase, or as otherwise stated in the Development Agreement.
  31. The neighborhood public park shall be developed in accordance with standards set forth and required by the City Council, Recreation Advisory Board and city standards. A minimum area of 100 by 80 yards shall be initially free from fixed improvements until final field design is approved or further conditioned at subdivision approval. The park will include bathrooms in the club house with exterior access for park users.
  32. An Affordable Housing Plan, consistent with the Park City Heights Annexation Agreement and as required by LMC Section 15-6-5 (J), shall be reviewed by the Planning Commission and a recommendation shall be forwarded to the Park City Housing Authority. The Park City Housing Authority shall approve the final Park City Heights Affordable Housing Plan prior to issuance of any building permits for units within the MPD.
  33. As a condition precedent to receiving a certificate of occupancy for any market rate unit the City shall be provided with proof of compliance with the approved Affordable Housing Plan.
  34. A master sign plan for the neighborhood shall be submitted, reviewed for compliance with the Park City Sign Code, and approved by the City, as a condition precedent to issuance of any individual sign permits.
  35. No sound barrier walls or structures along Hwy 40 are permitted within the MPD. To the extent sound mitigation measures are utilized within the MPD, such measures shall be limited to landscaping and berms, energy efficient housing design and insulation, and sound mitigation constructed as part of the design of the dwelling units and shall be reviewed by the Planning Department for compliance with the Design Guidelines.
  36. Approval of this Master Planned Development is subject to LMC Chapter 6- Master Planned Developments and shall expire two years from the date of execution of the Development Agreement unless Construction, as defined by the Uniform Building Code, has commenced on the project.
  37. Pursuant to Section 15-6-4 (G) of the LMC, once the Planning Commission has approved an MPD, the approval shall be put in the form of a Development Agreement. The Development Agreement must be ratified by the Planning Commission within 6 months of

- this approval. The Development Agreement shall be signed by the Mayor on behalf of the City Council and recorded with the Summit County Recorder.
38. The Park City Soils Boundary shall be identified on the final plats (if applicable).
  39. Timing of completion of all required items and public benefits shall be further described and stated in the Development Agreement.
  40. No through roads may be provided through the Park City Heights MPD to the Deer Valley MPD subdivisions.
  41. A re-vegetation plan for Parcels I and J and the open space parcel at the northeast corner of the development area of Phase I shall be submitted with the final road and utility plans. Re-vegetation of these parcels shall be completed prior to issuance of the 28<sup>th</sup> certificate of occupancy for the Park City Heights MPD. If this area is used as a construction staging, construction recycling area, and excavated materials storage area, a new construction staging area will need to be approved by the Planning Department for the remainder of Phase I and for subsequent phases and shall be re-vegetated in a like manner with the issuance of certificates of occupancy for the final units in the respective phase.
  42. Noxious weeds shall be managed per the Summit County noxious weeds ordinances during construction and in perpetuity by including regulations in the CMP, Design Guidelines, and CCRs.
  43. One additional site visit is required by certified biologists during May or June 2011 to: a) validate the observations of the preliminary biological report and, b) to further study and identify wildlife movement corridors, evidence of species of high public interest (Elk, Moose, Deer, and other small mammals), locations of den or nesting sites, and any areas of high native species diversity. The report shall include additional recommendations on mitigating impacts of the development on wildlife and wildlife corridors. The report shall be provided to the Planning Department and reviewed by the Planning Commission prior to issuance of any grading or building permits.
  44. Clearing and grubbing of vegetation and soils shall be minimized from April through July to avoid disturbance of nesting birds, unless a detailed search for active nests is conducted and submitted to the Planning Director for review by a certified wildlife biologist.
  45. As a condition precedent to building permit issuance for any structure containing more than 4 units, and for any non-residential structure proposed to be constructed on Parcels I and J of the preliminary subdivision plat, a conditional use permit shall be approved by the Planning Commission.
  46. Due to the visual exposure of these lots on the minor ridge, as a condition precedent to building permit issuance for construction of a house on the western perimeter lots, namely Lots 23, 24, 30, 31, 66, 67, 76 and 77 of the preliminary subdivision plat prepared by Ensign and dated 1/17/11, a conditional use permit shall be obtained if the proposed building height is greater than 28 feet.
  47. The applicants shall approach the adjacent property owner to the west to explore a mutually agreeable plan for incorporating the parcel into the Park City MPD and transferring density to the Park City Heights neighborhood in exchange for open space designation of this highly sensitive and visible parcel of land and the potential to relocate the upper western cul-de-sac to a less visible location.
  48. All work within the Rail Trail ROW requires review by and permits issued by the Utah State Parks/Mountain Trails Foundation, in addition to the City. The Rail Trail shall remain open to pedestrians during construction to the extent possible.

49. High energy use amenities, such as snow melt systems, heated driveways, exterior heated pools and fireplaces, shall require energy off-sets and/or require the power to be from alternative energy sources.
50. All conditions, requirements, and stipulations of the Park City Heights Annexation Agreement and Water Agreement continue to apply to this MPD.
51. The final MPD phasing plan shall be consistent with conditions of the Water Agreement as to provision of public services and facilities.
52. All transportation mitigation requirements, as stated in the Annexation Agreement, continue to apply to this MPD.
53. The Applicant must meet all applicable bonding requirements.
54. Bus shelters on both the north and south sides of Richardson Flat Road shall be constructed within 60 days of issuance of the 40<sup>th</sup> certificate of occupancy. The shelter design and location shall be approved by the City Planning, Engineering, Building, and Transportation Departments and shall include a sign with the phone number of the Park City Bus service dial-a-ride. Information regarding the dial-a-ride service shall be posted within the shelters.
55. Sheet c4.0 (LOD Erosion Control Plan) shall be amended as follows: Note 1 shall read that the LOD for roadways is not to extend beyond 3' from the cut/fill limits as shown on the plan. Note 2: A 4 to 6 foot engineered wall shall be used in areas outside the limits of future home and driveway construction and where proposed cut/fill is in excess of 10' vertical as measured from the top back of curb to cut/fill catch point. Note 3: Proposed retaining walls shall not exceed 6 feet where they are necessary. A system of 4' to 6' walls with no individual wall exceeding 6', (i.e. tiered walls) may be used. The walls shall be separated by a 3' landscaped area from top back of lower wall to toe of upper wall. Note 4: Exceptions to these standards may be granted by the Planning Commission at the time of final subdivision plat review as necessary to minimize overall total disturbance.
56. House size limitations for all lots within the MPD shall be identified in the Design Guidelines subject to further appropriate reduction if found necessary during the final subdivision plat process, taking into consideration the size of the lots, visibility of the lots from the LMC Vantage Points, solar access of adjacent lots, onsite snow storage, and ability to achieve LEED for Homes Silver rating to meet the applicable standards of LMC 15-7.3-3. Nothing herein shall preclude the applicant from proposing alternative methods of mitigation. Specifically, and without limitation, the Design Guidelines shall provide that house sizes of the Homestead lots shall be no greater than the following (as delineated below by lot numbers per the preliminary plat prepared by Ensign and dated 1/17/11)

Lots 58 thru 66- 4000 square feet  
Lots 130 thru 154- 4000 square feet  
Lots 163 thru 164- 4000 square feet  
Lots 70 thru 72- 5000 square feet  
Lots 105 thru 129- 5000 square feet  
Lots 155 thru 156- 5000 square feet  
Lots 77 thru 98- 6000 square feet

The Design Guidelines shall reflect a preference for smaller homes consistent with (a) “best practices” in sustainable design and development to address the materials and energy

impacts of larger homes and (b) the historic pattern of residential development in Old Town

57. The Park City Heights Design Guidelines shall be approved by the Planning Commission prior to the submittal of the Development Agreement to the Planning Commission and before any activity or permits can be pulled for the MPD. No pre-development work, including grading, clearing, etc. can occur prior to approval of the Design Guidelines by the Planning Commission.
58. The Park City Heights Design Guidelines are an integral component of the Park City Heights MPD and substantive amendments to the Design Guidelines require Planning Commission approval. Minor amendments shall be reviewed by the Planning Director for consideration and approval.
59. Adequate snow storage easements, as determined in consultation with the Park City Public Works, will be granted to accommodate for the on-site storage of snow. Snow storage shall not block internal pedestrian sidewalks and circulation trails. Removal of snow from the Park City Heights MPD is discouraged with the final decision to haul snow from this area to be made by the City's Public Works Director.
60. To further encourage non-vehicular transportation, trail maps will be posted in the clubhouse for the benefit of future residents. There will also be a ride-share board located within the clubhouse that residents may utilize in order to plan carpooling which will further limit trips from the development. The dial-a-ride phone number shall be posted at the ride-share board. The HOA shall post information and consider a bike-share program.
61. The Park City Heights Design Guidelines and CCRs shall include information related to the history of the site and Quinn's Junction region.
62. All transportation mitigation elements, as required by the Park City Heights Annexation Agreement (July 2, 2010) continue to apply to this MPD. The Applicants, as required by the Annexation Agreement, shall complete, with the first Phase (first 90 UEs) of the MPD (as described in the Annexation Agreement), the SR 248/Richardson Flat intersection improvements with all required deceleration and acceleration lanes; and shall include the required infrastructure (fiber optic, control boxes, computer links, etc.) to synchronize this traffic signal with the UDOT coordinated signal system on SR 248, within the Park City limits at the time of this MPD. At the time the traffic signal is installed, the Applicants shall request in writing that UDOT fully synchronize signals along SR 248, with supporting data as applicable. Required improvements to Richardson Flat Road, including 5' wide bike lanes, as stated in the Annexation Agreement, shall be complete with the first Phase (first 90 UEs) of the MPD. The cost sharing methodology between the Applicants and any assigns, for these mitigation elements, shall be detailed in the Park City Heights Development Agreement. The Applicant shall provide an annual assessment of traffic counts and bus needs generated by the MPD for five (5) consecutive years following issuance of the first certificate of occupancy. The applicants shall participate with the City to conduct an annual assessment, which shall include peak period counts of both summer and winter traffic in the vicinity of the SR 248/Richardson Flat Road intersection, and submit such to UDOT. This information shall be coordinated with best available UDOT data and analysis. This assessment shall be incorporated into ongoing Park City Transportation Master Plan and the Park City Transit planning efforts with UDOT. This information shall be presented annually to the Planning Commission in conjunction with an update of the City Transportation Master Plan.

**4. 2780 Telemark Drive – Appeal of Staff’s Determination  
(Application #PL-11-01234)**

Planner Astorga reported that this item was a quasi-judicial appeal of the Planning Staff’s determination of setbacks. The applicant, Ms. Zimmer, was presented by her attorney, Wade R. Budge. The subject property was located at 2780 Telemark Drive, Lot 42 of the Solamere Subdivision located in the RD District.

Planner Astorga noted that the applicant was appealing the Staff’s determination that the proposed basement addition is located within the side yard setback. In March 2011, the Staff denied the applicant’s proposal to expand the below grade livable basement area into the side yard setback. The side yard setback is 12 feet and the proposed basement would extend seven 7 feet into the side yard setbacks.

Planner Astorga stated that under the LMC, the burden of proof is on the appellant to prove that the Planning Department erred in the application of the Land Management Code. The Planning Commission reviews factual matters de novo and shall determine the correctness of the decision in the interpretation and application of the Land Management Code. Planner Astorga read from the Code, “The side yard must be open and free of any structure except for patios, decks, pathway, steps and similar structures not more than 30 inches in height above final grade, provided that there is at least one foot setback to the side lot line”. He explained that the Staff found that while the proposed extension of the below grade exercise room clearly meets the definition of structure, it does not meet the exception because the basement areas is not a structure similar to a patio, deck, pathway or staircase. Therefore, the basement extension does not fit the criteria for the exception. The Staff determined that it would need to meet the 12 foot setbacks.

The Staff recommended that the Planning Commission review the findings of fact and conclusions of law, and consider upholding the Planning Staff’s determination and deny the appeal.

Wade Budge, counsel representing the applicant, stated that Ms. Zimmer had passed away the day before. However, her son was very much involved with this property and requested that they continue with the appeal. Mr. Budge stated that this home in the Solamere Subdivision was built in the 1983. He agreed with the Staff report in terms of the facts and the issues. However, he believed there were additional facts and details that would compel a different result. Mr. Budge had prepared binders with important information to help the Commissioners better understand the site, and why he believes the request that was made complies with the ordinance as written.

Mr. Budge referred to Tab A and a photograph that was taken from the neighboring property, which is a vacant lot. He pointed out two stakes in the photo that represented the boundary line between the two lots. Mr. Budge indicated the wall of the garage and explained that their proposal was to extend that wall, but below ground, to the fountain. Where the fountain is located, it would cut straight in to adjoin another corner coming out from the home. Part of the request was to

replace the patio and actually remove some of the hardscape material that abuts next to the property line and create a five foot landscaped buffer. It would be replaced with a deck and the deck would extend over it. The finished grade would be less than 30 inches.

Mr. Budge remarked that Tab B would give the Planning Commission a better sense of the location of the property line. He indicated an atrium window and noted that the runoff from the home drops straight down into a ramp that descends into the floor where the exercise room is currently located. That design has created a number of issues that result in constant flooding. Mr. Budge stated that the purpose behind this request is to bring the structure out and place it far enough away from that window, and cover it with a deck structure that would direct water out and away from the area that floods on a consistent basis.

Mr. Budge noted that Tab C showed examples of the ramp, the fountain, and provided a sense of space as to where the underground structure would extend. Tab D clearly showed the ramp, which has been problematic but could be remedied by this proposal.

Mr. Budge noted that Tab E showed how the snow accumulates.

Mr. Budge stated that Lowell Myer, an agent of Ms. Zimmer, met with Ron Ivie in 2010 and presented a drawing showing the proposed plan and its relationship to the setback and the boundary line. The summary of that discussion was that Mr. Ivie believed the plan would work, correctly believing that everything would be below a 30 inch grade. Mr. Ivie contacted Brooks Robinson and together they gave verbal agreement. Mr. Budge admitted that there was no written approval. Following that verbal agreement, Mr. Myer asked the contractor to prepare plans based on his discussion with Ron Ivie. Those plans were later taken to Brooks Robinson who drew a line on the plan, as shown on Tab F. The line cut the corner on the structure. From his discussion with Brooks Robinson, Mr. Myer understood that Mr. Robinson did not like having the corner come within five feet of the property line. Since that time, another drawing was prepared that incorporates the line drawn by Brooks Robinson. That drawing was attached as Exhibit H.

Mr. Budge noted that the applicant had made two requests of the City. One was to have a structure that would bring the underground structure to within five feet of the property line, and another request that would bring it to within 10 feet of the property line, from where the line was drawn. The result would be a two foot encroachment. The applicant proposed both requests to the Planning Department and both were rejected. For that reason, an appeal was filed based on the belief that applying the Code as written and correctly interpreting the rules of the Code, the applicant was entitled to an approval.

Mr. Budge stated that the Code provision that applies in the exception was 15-2.13-3(G) (6). The Code states that you can have no structure within 12 feet of the side yard setback, except for patios, decks, pathways, steps and similar Structures. The language further states, "not more than 30 inches in height above final grade". Mr. Budge remarked that two parts of the language were important for the analysis. One was that the word "Structures" is capitalized. The intent is not to limit the types of structures that are to be allowed in this area by that term alone. Instead, the term structure has a separate definition, which is, "Anything constructed, the use, of which requires a face location on or in the ground or attached to something having a fixed location on the ground, and which imposes an impervious material on or above the ground". The definition

includes "building". Mr. Budge had attached the definition to Exhibit H. He noted that the proposed basement addition is a structure, and that fact has been conceded by Staff. Mr. Budge stated that it is not the intent of the exception to allow anything within the side yard setback. It must be something that is limited. The limiting factor is that it cannot be more than 30 inches in height above final grade. He believed that was the critical language.

Mr. Budge remarked that the reason they have a "similar structure" is because the structure is similar in height and would not be any taller than 30 inches. Its appearance would be that of one of the items expressly identified in the Code, because it would be covered by a deck. Mr. Budge pointed out that if the language does not reflect what the City intended when the language was drafted, an amendment to the LMC could be proposed and adopted. However, the applicant should not be penalized because they have a situation that requires the use of the interpretation as written.

Mr. Budge stated that the courts have provided guidance on how to interpret ordinances. He felt an important case that is critical and applies in this situation, is the case of Patterson versus the Utah County Board of Adjustment, which was based on ambiguity in an ordinance. Patterson states that if there is an ambiguity, it must resolve in favor of the land owner. Mr. Budge stated that in Ms. Zimmer's case, there is an ambiguity and the applicant presented a reasonable interpretation that allows the use as proposed. Mr. Budge mentioned two other court cases that he believed supported their appeal.

Mr. Budge stated that what the applicant was proposing would not be harmful to the community. It would look like a deck and function as a deck, and it fits within the ordinance. The proposal allows them to address a very rare problem that occurs on this particular site. Mr. Budge urged the Planning Commission to overturn the Staff's interpretation and grant the applicant the right to build the project as proposed.

City Attorney Mark Harrington disagreed with Mr. Budge in terms of his compelling arguments regarding legality. He felt the problem with the ambiguity argument ignores the word "similar". Mr. Harrington stated that reading the Code provision in its entirety supports the Staff position, such as the express exemption to allow underground structures in side yard setbacks, even though they may have been underneath a "similar structure" that may be permitted on the surface. As an example, when the Planning Commission made a policy decision to allow underground parking structures within an MPD within the side yard setback, they took the additional step of carving out an express exception. Otherwise it would have been permitted by this very language. The key word is "similar" because that is meant to be structures or other things that are at grade and do not exceed 30 inches. Without that language, any underground structure could potentially qualify.

Mr. Harrington clarified that the Staff felt the intent was clear and it did not need to be further addressed.

Commissioner Savage asked about input from the neighbors. Planner Francisco replied that the Staff had not received public input. City Attorney Harrington remarked that the appeal requires the same noticing as the building permit application. No additional notice is required, other than posting the site indicating that a building permit has been issued.

Mr. Myer noted that the vacant lot was originally owned by Mr. and Mrs. Zimmer. Three or four years ago they sold it to the person who owned land to the west of their property. That gentleman lives in California and Mr. Myer contacted him. He had no objection to the proposal because it would not affect his property in any way.

Chair Wintzer opened the public hearing.

There was no comment.

Chair Wintzer closed the public hearing.

Commissioner Hontz asked if procedurally the request needed to be appealed before it could go to the Board of Adjustment. City Attorney Harrington explained that if the applicant had appealed this request to the Board of Adjustment, they would have the independent ability to apply for a variance or special assessment by virtue of special circumstances or site conditions. He noted that the Board of Adjustment is in a better position to consider the fact that there is no objection from the adjacent property owner, as opposed to the Planning Commission who needs to justify the Code. Mr. Harrington stated that if the Planning Commission wanted to allow structures more broadly underneath a permitted surface, they could initiate an ordinance amendment that carves out additional sections, like they did with underground parking in side yards setbacks.

Commissioner Pettit did not find ambiguity in the language as written, particularly in terms of reading this provision in the full context of the Land Management Code. She agreed that "similar" was the key work in terms of modified structures and what it relates to. Because the Planning Commission is charged with applying the Code and the applicant has the ability to pursue an exception through the Board of Adjustment, Commissioner Pettit was inclined to support the Staff's determination and deny the appeal.

Commissioner Hontz concurred with Commissioner Pettit. Based on the analysis provided, she did not believe they could find in favor of the appeal, regardless of whether or not it was an intelligent improvement. Commissioner Hontz was not interested in changing the Code because there was good reason for the existing language. Commissioner Hontz supported the Staff's determination.

Commissioner Strachan did not think the language was ambiguous. He noted that the rest of the side yard exceptions included bay windows, chimneys, window wells, roof overhangs, window sills, driveways, fences, etc., and none of those were habitable spaces. Commissioner Strachan felt that height was not a sufficient similarity because it needs to be similar in nature.

Commissioner Savage thought the language was marginally ambiguous, but not blatantly ambiguous. He was willing to support the appeal on the following basis. The first point was that the applicant had an experience with the Building Official who provided verbal approval of their objectives, and they proceeded on the basis of that approval. Having personally had a similar experience, Commissioner Savage believed the City should acknowledge some level of participation and be more lenient towards an allowance. On the second point, Commissioner Savage believed there was adequate precedence for this type of allowance. He commented on

several developments in Park City where the size of homes were limited to X-square feet. However, if a room was completely underground and below grade, that space was allowed in addition to the maximum square footage. The third point was the fact that this application does no harm to anyone. The physical appearance of the deck would be the same regardless of whether or not there is occupied space below the deck. Commissioner Savage believed the appeal had merit and he could support it.

Chair Wintzer agreed with the comments made by Commissioner Pettit and Commissioner Strachan. He would uphold the Staff's determination.

MOTION: Commissioner Pettit moved to DENY the appeal for 2780 Telemark Drive, Lot 42, Solamere Subdivision, in accordance with Findings of Fact and Conclusions of Law in the Staff report. Commissioner Strachan seconded the motion.

VOTE: The motion passed 3-1. Commissioners Hontz, Pettit and Strachan voted in favor of the motion. Commissioner Savage voted against the motion.

#### Findings of Fact – 2780 Telemark Drive

1. The property is located at 2780 Telemark Drive, Lot 42 of the Solamere Subdivision.
2. The zoning is Residential Development (RD) District.
3. The minimum Side Yard Setback in the RD District is twelve (12) feet.
4. On March 9, 2011 applicant submitted an application to build a below grade basement area seven feet into the side yard setback.
5. Pursuant to LMC 15-15-1(1.247) "Structure" is defined as, "Anything constructed, the use of which requires a fixed location on or in the ground, or attached to something having a fixed location on the ground and which imposes an impervious material on or above the ground; definition includes "Building".
6. Below grade enclosed, livable area meets the definition of a Structure.
7. Section 15-2.13-3(G) states the Side Yard must be open and free of any Structure except those listed as exceptions in LMC 15-2.13-3(G) (1-10).
8. LMC 15-2.13-3(G) (1-10) lists the exceptions for side yard setbacks. Below grade structures are not included as an exception.
9. LMC 15-2.13-3 (G) (6) lists an exception which states, "Patios, decks, pathways, steps, and similar Structures not more than thirty inches (30") in height above Final Grade, provided there is at least one foot (1') Setback to the Side Lot Line".

10. Below grade enclosed, livable area is not a similar Structure to patios, decks, pathways, steps and does not meet the exception pursuant to LMC 15-2.13-3 (G)(6).
11. On March 22, 2011, Staff denied applicant's proposal (BD-11-16089) to expand mostly below grade livable basement area into the Side Yard pursuant to LMC Section 15-2.13-3.
12. Planning Staff received a written appeal by the applicant's representative on April 1, 2011.

Conclusions of Law – 2780 Telemark Drive

1. Enclosed, livable area as an expansion of the existing house is not allowed within the Setback even if the area is to be located under a deck not exceeding 30" from final grade pursuant to Land Management Code Section 15-2.13-3.
2. The Planning Staff did not err in the application of the Land Management Code.

Order

1. The Planning Staff's decision to deny the application because enclosed, below grade livable area would be located within the Side Yard is upheld and the appeal for the Planning determination regarding 2790 Telemark Drive building permit BD-11-16089 is denied.

The Park City Planning Commission meeting adjourned at 10:15 p.m.

Approved by Planning Commission: \_\_\_\_\_