

PARK CITY MUNICIPAL CORPORATION  
PLANNING COMMISSION MEETING MINUTES  
COUNCIL CHAMBERS  
MARSAC MUNICIPAL BUILDING  
OCTOBER 14, 2015

COMMISSIONERS IN ATTENDANCE:

Chair Adam Strachan, Melissa Band, Preston Campbell, Steve Joyce, John Phillips, Doug Thimm, Nann Worel

EX OFFICIO:

Planning Director, Bruce Erickson; Kirsten Whetstone, Planner; Francisco Astorga, Planner; John Boehm, Planner; Polly Samuels McLean, Assistant City Attorney

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REGULAR MEETING

**ROLL CALL**

Chair Strachan called the meeting to order at 5:35 p.m. and noted that all Commissioners were present.

**ADOPTION OF MINUTES**

September 23, 2015

Commissioner Worel referred to page 6 of the Staff report, page 4 of the Minutes, first sentence and changed upper dining to correctly read **outdoor dining**. Commissioner Worel referred to page 10 of the Staff report, page 8 of the Minutes, last sentence and added an "s" to the end of building. The sentence should correctly read, "There were just a few buildings that they were looking at."

MOTION: Commissioner Joyce moved to APPROVE the minutes of September 23, 2015 as amended. Commissioner Worel seconded the motion.

VOTE: The motion passed unanimously.

**PUBLIC INPUT**

There were no comments.

**STAFF/COMMISSIONER COMMUNICATIONS AND DISCLOSURES**

It was noted that Commissioners Strachan, Joyce and Worel had attended the City Council meeting when the Alice Claim applications were discussed. Commissioner Joyce provided an update. He noted that the City Council looked at two issues regarding the Alice Claim.

The first was a discussion on the negative recommendation that was forwarded from the Planning Commission. The second was to look at the "Gully Plan", which was a new plan that looked very similar to what the Planning Commission had asked for in terms of moving structures off the hill, more compact, and smaller houses. Commission Joyce reported that the applicants had asked the City Council to process the plan without remanding it back to the Planning Commission. The City Council declined that request and ultimately remanded it back to the Planning Commission. Commission Joyce noted that since it was only a work session the applicant still had the opportunity to present their original plan to the City Council for review and a decision on the negative recommendation. He believed the City Council strongly advised the applicant to put the Gully Plan back into the process and begin with the Planning Commission. From a procedural standpoint, Commissioner Joyce was pleased that the City Council strongly supported the work that the Planning Commission had done on this project and directed the applicant to come back to the Planning Commission.

Commissioner Worel recalled that when Vail came forward with the Gondola and the Snow Hut project for approval, a condition of approval was that the historic sites inventory would be completed by October 1<sup>st</sup>. Planning Director Erickson stated that Vail had submitted the inventory on time, as well as a draft of the plan they were required to submit for financing future projects. The City had also received the financial commitment that would be dedicated to the first historic site preservation. Director Erickson noted that the Staff was currently conducting a review of the inventory. The Planning Commission would be updated as soon as the review is completed and Vail has the opportunity look at their comments.

Director Erickson reported that Diane Foster and the Summit County Manager have talked about bringing in a consultant to learn about consensus building. Some members from the City Council and the County Council plan to attend. It is a three-day intensive training. The date is yet to be determined, but sometime late winter. Director Erickson encouraged anyone from the Planning Commission to attend if they were interested. He would forward the information to the Commissioners but they should not feel pressured or obligated to attend because it is an extensive time commitment.

Director Erickson introduced Ann Laurent, Park City's new Community Development Director. He noted that Ms. Laurent has an extraordinary background and he was excited to be working with her.

Ann Laurent stated that she comes to Park City from Los Alamos, New Mexico but she grew up in Scottsdale, Arizona. She went back East for college and after meeting her husband they lived in the Midwest before moving to Los Alamos. She has two middle school children. Ms. Laurent stated that she loves this line of work and she was looking

forward to her new position in Park City. She enjoys working with the Staff and all of the challenges they encounter are very familiar. Ms. Laurent was anxious to work with the Planning Commission as they move forward on many good issues.

The Commissioners welcomed Ms. Laurent.

Director Erickson noted that typically the Planning Commission has one meeting in December and November because of the Thanksgiving and Christmas holidays. However, because there are important ordinances coming forward that need to be completed on time in addition to LMC changes, he asked if the Planning Commission would consider a second meeting in November and possibly December to get everything accomplished before the end of the year.

The Commissioners and Staff discussed potential meeting dates and tentatively set Tuesday, November 17<sup>th</sup> for the second meeting in November. How much they accomplish in November would determine whether or not a second meeting might be necessary in December.

Commissioner Joyce recalled only having one meeting in January because of Sundance, and he asked if the Staff could look at scheduling a second meeting for that month as well. Director Erickson noted that several Staff members focus all of their time in January on Sundance permits and enforcement. Finding time to prepare for a meeting could be difficult; however they would look into it. Commissioner Joyce suggested that they could turn the second meeting in January into a work session to discuss some of the issues if the Staff is not available.

Planner Astorga announced that Bruce Erickson was appointed as the Planning Director for Park City and was no longer an Interim Planning Director. The Planning Commission congratulated Mr. Erickson and welcomed him to his permanent position.

Planner Astorga announced that Planner John Boehm was leaving the Planning Department next month to move to Australia. He will be missed. The Commissioners congratulated Planner Boehm and wished him luck.

## **WORK SESSION**

### Discussion of the use of Consent Agendas

Director Erickson noted that the Planning Commission previously had questions regarding Consent Agenda. City Attorney Mark Harrington had briefly touched on Consent Agendas

during a previous meeting; however, because it was brief they decided to schedule a work session for a more in-depth explanation and discussion.

Director Erickson introduced Nicole Cottle, the West Valley City Community Development Director. Ms. Cottle was under contract with Park City to help with some of the more complicated project approvals. Mr. Erickson stated that Ms. Cottle was experienced in handling Consent Agenda items and she was in attendance this evening to talk to the Planning Commission. Assistant City Attorney McLean also had some knowledge and was prepared to answer questions.

Assistant City Attorney McLean explained that the Planning Director sets the agenda. The Planning Commission can also provide input for the agenda. She understood from the minutes that City Attorney Mark Harrington was trying to explain that there have been legal issues with items that were on Consent. The Legal Department has concerns about plat amendment because per the Code, plat amendments require a public hearing and putting it on the Consent Agenda exposes the City legally. Even though the City makes it easy for the public to comment, it creates a difficult situation. She believed Ms. Cottle would speak to that issue and plat amendments are handled in West Valley City. Ms. McLean stated that if the goal of the Planning Commission was to expedite moving through a list of plat amendments, they could find other ways to expedite the process without being on a Consent Agenda.

Nicole Cottle stated that when she contracted with Park City she was asked to help look at the processes and procedures of the City to make sure everything was in proper order so the City could be "King Kong". Ms. Cottle explained that she uses the term "King Kong" because whatever policy direction is set by the Planning Commission and City Council on any issue, those decisions need to be as defensible as possible.

Ms. Cottle stated that they started to look through all of the processes and procedures, not just Consent Agendas. As they started to look at the Consent Agenda in detail they started to discuss what could be done to make those types of decisions bulletproof. They talked about the specific issue of putting public hearing required items on a Consent Agenda. Ms. Cottle stated that when the City is challenged on a decision, the easiest thing for the opposing lawyer to do it to challenge on procedure. If the City has not followed the procedure exactly, it is easy for a lawyer make a case or for a judge to make a decision without hearing the facts. Ms. Cottle remarked that the Planning Commission could be completely correct in their assessment and followed every step to make their decision, but if they missed one procedural issue it is not defensible.

Ms. Cottle stated that in looking at this issue as a team, they decided to bring the Consent Agenda discussion to the Planning Commission this evening. Based on her understanding

and experience as a land use lawyer for 17 years, she has had a lot of opportunity to lose in court and to lose on procedure. For that reason she wants Park City and any other jurisdiction she works with to be "King Kong". After their discussions the Staff decided that it was best to schedule public hearing items under the Regular Agenda and not on a Consent Agenda; and at the same time look at ways to expedite the process. Ms. Cottle personally recommended that any item requiring a public hearing should not be handled on a Consent Agenda.

Commissioner Band asked Ms. Cottle if she had personally seen a number of lawsuits resulting from Consent Agenda items, or whether it was something they were anticipating and trying to avoid. Ms. Cottle replied that she personally has never seen a Planning Commission or a City Council put an item on a Consent Agenda that required a public hearing. Therefore, the short answer to the question was no, she had not seen a specific case. However, she had not researched outside of Utah so there might be a case. Ms. Cottle reiterated that procedurally Consent Agendas leave them open to the potential argument.

Commissioner Band pointed out that the Chair always opens a public hearing and asks if anyone from the public has comments on any of the Consent Agenda items. If someone wishes to speak that particular item is pulled from the Consent Agenda. She felt that process already addressed the legal issue and Ms. Cottle's concerns because the public is given the opportunity to speak on any of the items. Ms. Cottle explained that the first issue was that a lawyer would challenge an item that was put on the Consent Agenda because it is easy to challenge. The second issue is the fact that someone has to proactively say they want to speak on an item, which is more intimidating than just coming to the podium once the public hearing has been opened for a specific item. Ms. Cottle believed that placing Consent Agenda items on the Regular Agenda would only take two or three minutes longer than approving them all at once on a Consent Agenda.

Ms. Cottle emphasized that the intent is to make sure that the Planning Commission makes the strongest and most defensible decisions possible so there are no loose ends when the Staff has to defend their position.

Commissioner Band asked if would be more acceptable if the Chair read through the list of Consent Agenda items and opened a public hearing on each one separately. Ms. Cottle felt that approach might get them closer to the intent of the State law, but it may not change the general perception of handling each item individually.

Commissioner Joyce stated that the Planning Commission takes public input on everything on the agenda, regardless of the item or how small the matter. For that reason, nothing would ever be placed on a Consent Agenda without calling for a public hearing. If

someone was going to be “chilled” or intimidated by having to speak on a Consent Agenda item, that same logic could be said about publicly commenting on a Steep Slope CUP.

Assistant City Attorney McLean remarked that most times the Planning Commission opens a public hearing and closes the public hearing, and then re-opens the public hearing at the next meeting if the item was continued. She noted that if the Planning Commission takes public comment and sends the item back for more information, it is not necessary to open the public hearing again when the item comes back. Commissioner Joyce stated that on occasions when the Planning Commission has not opened a public hearing on a returning item, they were told that it was noticed for public hearing and they needed to take public input. Ms. McLean replied that noticing for public hearing is a habit and because the City wants people to participate. Commissioner Joyce clarified that he was not opposed to the process. He was responding to Ms. Cottle’s comment that some items require public hearing and others do not by pointing out that the Planning Commission takes public input on everything. They post for public hearings and they open up public hearings without exception.

Ms. McLean stated that under State Law and under the LMC, subdivisions and plat amendments require a public hearing. She noted that the Staff could come back with a list of items that require public hearings under State Code, and they could also change the LMC to address some of the conflicts. Ms. McLean noted that under State Code Conditional Use Permits do not require a public hearing. The LMC requires a public hearing for CUPs, but the Code also states that CUPs can be on the Consent Agenda.

Commissioner Joyce liked the current policy of allowing public input. If people care enough to attend a meeting, they should be given the opportunity to speak. He was not interested in changing that policy. Commissioner Joyce clarified that he was one who raised the idea of using a Consent Agenda because each item takes 10 to 15 minutes longer than just opening a public hearing on all Consent Agenda Items and only pulling off the ones that people have issues with. For example, if there were six Consent Agenda items and no one wanted to comment, those six items were approved in 30 seconds in a much more efficient process for both the Commissioners and the public.

Commissioner Joyce remarked that the Staff is very conservative about what goes on the Consent Agenda. If they receive any public input on an item or items that have been divisive or contentious in the past are not put on the Consent Agenda.

Commissioner Band was unclear as to why they started having a Consent Agenda and then changed. She agreed that if it causes the City legal issues there should not be a Consent Agenda; which is why she asked if there was a precedent for legal problems or if they were just trying to avoid it. In her opinion there is a significant difference between the

two. Commissioner Band believed they should not always be afraid to try something; particularly in this case where they call for public input on all Consent Agenda items. It gives the public the same opportunity that they would have with items on the Regular Agenda.

Commissioner Worel stated that the Consent Agenda came in towards the end of her term as Chair of the Planning Commission. She agreed with Commissioner Joyce that it was started because they had a number of applications at each meeting for something as simple as removing a lot line and there was never public input. It became tedious, which is why the Staff decided that a Consent Agenda was appropriate for these types of items.

Chair Strachan noted that the LMC specifically allows for a Consent Agenda in front of the Planning Commission. If an applicant submits an application for a plat amendment or an extension of time they have the right to request that it be placed on the Consent Agenda if it is uncontested. He questioned how they could tell an applicant they were not entitled to invoke that Code provision. Chair Strachan stated that unless that provision is removed from Code, it sends a mixed message to an applicant.

Assistant City Attorney McLean believed that was a deficiency in the Code. Currently there is no criteria for what goes on a Consent Agenda and the Staff makes that decision arbitrarily. That procedure opens them up to treating applications differently. Chair Strachan read language from LMC regarding Consent Agendas and he agreed that the language was very vague.

Director Erickson noted that State Law requires a public hearing on any plat action. The question before the legal team is whether or not those items can be bundled. The second question is whether or not the Planning Commission wants to see Conditional Uses as public input Consent Agenda items as opposed to public hearings items on the Regular Agenda. If their preference is Consent Agenda, the LMC would have to be revised to allow for that. Director Erickson believed that the neighbors would want to comment on a Steep Slope CUP application in the Historic District. However, the public might not be as interested in a CUP application in Park Meadows related to a green front yard. Director Erickson clarified that those were the types of policy issues they were facing. If they decide to bundle the plat amendments, the Staff needs to establish a clear set of guidelines so if it has to be defended in Court, they would have the answers and point to the criteria. Director Erickson pointed out that this was just a work session so those decisions could not be made this evening.

Chair Strachan believed there was consensus among the Planning Commission to keep the Consent Agenda as a time saving tool. However, it was clear that the Code needed to

be revised to add better criteria and clarification for when an item can be placed on the Consent Agenda.

Commissioner Thimm pointed out that the Planning Commission did not come up with the Consent Agenda. It has occurred in Park City and he assumed there was precedent for Consent Agendas in other jurisdictions. If they intended to look into it further, he suggested that they look into successful procedures that have allowed Consent Agendas so they can streamline the process. Commissioner Thimm remarked that there have been nights when the agenda has been full and the meeting has gone very late. In addition to the Commissioners and Staff staying late, the public is kept late as well. Commissioner Thimm agreed that everyone wanted their decisions to be bulletproof, and he would like to know if that could be successfully accomplished using the Consent Agenda.

Ms. Cottle stated that the Planning Commission had outlined the same direction that the Planning Department and the Legal Department were following. They were trying to clean up the ordinance and research successful paths to create a more streamlined process from start to finish.

**CONTINUATIONS (Public Hearing and Continue to date specified.)**

1. 550 Park Avenue – Steep Slope Conditional Use Permit for construction of a new single-family dwelling and a Conditional Use Permit for a parking area with five or more spaces. (Application PL-14-02451) (Application PL-15-02471)

Planner Astorga reported that the agenda was updated to include this item for Continuation. He noted that the Staff typically does a one-page write-up for a continuation; however, they discovered the mistake too late to include the write-up in the Staff report. Fortunately, the mistake was caught early enough to amend the Agenda to avoid having to re-notice this item.

Planner Astorga noted that three people had made public comment and he would inform them that the CUPs were continued to the next meeting.

Director Erickson noted that the continuation date on the Agenda was October 14<sup>th</sup>. Planner Astorga clarified that the Agenda was incorrect and the correct date should be October 28<sup>th</sup>.

Chair Strachan opened the public hearing. There were no comments. Chair Strachan closed the public hearing.

MOTION: Commissioner Worel moved to CONTINUE 550 Park Avenue - Steep Slope CUP for construction of a new single family dwelling, and CUP for a parking area with five or more spaces to October 28, 2015. Commissioner Phillips seconded the motion.

VOTE: The motion passed unanimously.

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

1. **134 Main Street – 134 Main Street Plat Amendment- proposal to remove existing lot lines within the property to create one lot of record.**  
**(Application PL-15-02868)**

Planner John Boehm reviewed the application for the 134 Main Street Plat Amendment. The owner of 134 Main Street was requesting a plat amendment for the purpose of combining lots 13, a portion of lot 14, and an unplatted metes and bounds parcel into one single lot of record on Main Street. The applicant was requesting the plat amendment in order to construct a new single family home on the site.

Planner Boehm stated that the property is currently vacant and has a historic home to the north and a non-historic home to the south. The applicant came to the Planning Department in March 2015 and met with the Staff during a Design Review Team meeting. During that meeting the Staff informed the applicant that a plat amendment would be required in order to meet the minimum lot size requirement for the HR-2 District. They also discussed several issues regarding compatibility with historic structures. The applicant is well aware of all the challenges they face if they proceed with construction, including parking, flood plain, soils, etc.

The Planning Staff found good cause for this plat amendment. Combining the lots would create a single Code compliant size lot from a substandard lot, a remnant lot and a metes and bounds parcel. The Staff recommended that the Planning Commission conduct a public and consider forward a positive recommendation for the 134 Main Street plat based on the findings of fact, conclusions of law and conditions of approval as found in the draft ordinance.

Marshall King, representing the applicant, was present to answer questions.

Chair Strachan opened the public hearing.

There were no comments.

Chair Strachan closed the public hearing.

Commissioner Phillips read from Finding #7 on page 20 of the Staff report. "The maximum footprint allowed for this lot would be 1,201 square feet." Using the equation in the LMC to calculate footprint, he calculated a footprint of 876.3. Commissioner Phillips stated that per the LMC a 1,201 footprint was for a lot area of 2,813. He pointed out that this lot fell way below that lot area and was closer to a standard 25' x 75' Old Town lot of 1,875 square feet.

Planner Boehm stated that Commissioner Phillips was correct. The proposed plat amendment would create a single lot of close to 2,000 square feet. He apologized for the error.

Marshall King recalled a number similar to what Commissioner Phillips had calculated. Commissioner Phillips requested that his calculation of 876.3 be verified by the Staff.

Assistant City Attorney McLean recommended that the Planning Commission make the motion to amend Finding of Fact #7. The Staff can verify the math and if it is slightly different they would inform the City Council of the difference.

MOTION: Commissioner Joyce moved to forward a POSITIVE recommendation to the City Council for the 134 Main Street Plat Amendment in accordance with the Findings of Fact, Conclusion of Law and Conditions of Approval as amended with the revision to Finding #7 regarding the footprint calculation, and verification by Staff. Commissioner Band seconded the motion.

VOTE: The motion passed unanimously.

#### Findings of Fact – 134 Main Street

1. The plat is located at 134 Main Street within the Historic Residential (HR-2) District, Subzone-B.
2. The 134 Main Street Plat Amendment consists of Lots 13, a portion of Lot 14, and an un-platted metes and bounds parcel located in Block 20 of the Snyder's Addition to the Park City Survey.
3. On August 6, 2015 the applicants submitted an application for a plat amendment to combine Lots 13, a portion of Lot 14, and an un-platted metes and bounds parcel, into one (1) lot of record containing a total of 1,956 square feet.
4. The application was deemed complete on August 10, 2015.

5. The HR-2 zone requires a minimum lot area of 1,875 square feet for a single family dwelling.
6. The proposed plat amendment creates one (1) lot of record consisting of 1,956 square feet.
7. The maximum footprint allowed in the HR-2 zone is 876.3 square feet for the proposed lot based on the lot area of the lot.
8. The property is currently vacant.
9. Lot 13 does not currently meet the minimum lot size requirement for single-family homes in the HR-2 District
10. The remnant of lot 14 is undevelopable as it does not meet the minimum lot size or width for single-family homes in the HR-2 District.
11. The un-platted, metes and bounds parcel on the property is undevelopable as it does not meet the minimum lot size or width for single-family homes in the HR-2 District.
12. The lot is located in a FEMA Flood Zone A.

#### Conclusions of Law – 134 Main Street

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

#### Conditions of Approval – 134 Main Street

1. The City Attorney and City Engineer will review and approve the final form and content of the plat amendment for compliance with State law, the Land Management Code, and the conditions of approval, prior to recordation of the plat.

2. The applicant will record the plat amendment at the County within one year from the date of City Council approval. If recordation has not occurred within one year's time, this approval for the plat will be void, unless a complete application requesting an extension is made in writing prior to the expiration date and an extension is granted by the City Council.

3. Modified 13-D sprinklers will be required for new construction by the Chief Building Official at the time of review of the building permit submittal and shall be noted on the final mylar prior to recordation.

4. The City will require a 10 foot wide snow storage easement along the front of the property and a 10 foot wide stream and drainage meandering corridor easement along the rear of the property.

5. The applicant must meet all requirements for construction of structure in a FEMA Flood Zone A.

2. **1055 Norfolk Avenue – 812 Norfolk Plat Amendment – proposal to remove interior lot line to combine lots into one lot of record.**  
**(Application PL-15-02877)**

Planner Boehm reviewed the application for a plat amendment at 812 Norfolk Avenue to combine Lot 14 and a remnant portion of Lot 15 into a single lot of record located on Norfolk Avenue. The applicant was requesting this plat amendment in order to renovate the existing historic home located on the property. The existing historic home was built across the lot line in 1906 and the lot line needs to be removed before the applicant can renovate the historic structure. Planner Boehm noted that currently the existing historic home did not meet the side yard sets due to the fact that the property line runs through the middle of the house.

The Planning Staff found good cause for this plat amendment. Combining the lots would remove the existing lot line between the two lots and through the existing historic home. The plat will incorporate a remnant half lot into a platted lot and resolve the existing non-compliant setback issues. The Staff recommended that the Planning Commission conduct a public hearing and consider forwarding a positive recommendation for the 1055 Norfolk Avenue plat amendment based on the finding of fact, conclusions of law, and conditions of approval as found in the draft ordinance.

Marshall King, representing the applicant, was present to answer questions.

Chair Strachan opened the public hearing.

There were no comments.

Chair Strachan closed the public hearing.

MOTION: Commissioner Joyce moved to forward a POSITIVE recommendation to the City Council for 1055 Norfolk Avenue plat amendment proposal to remove an interior lot line. Commissioner Band seconded the motion.

VOTE: The motion passed unanimously.

Findings of Fact – 1055 Norfolk Avenue

1. The plat is located at 1055 Norfolk Avenue within the Historic Residential (HR-1) District.
2. The 1055 Norfolk Avenue Plat Amendment consists of Lots 14 and the southerly ½ of 15 of Block 16 of the Snyder's Addition to the Park City Survey.
3. On August 6, 2015 the applicants submitted an application for a plat amendment to combine one and a half (1.5) lots containing a total of 2,812.5 square feet into one (1) lot of record.
4. The application was deemed complete on August 10, 2015.
5. The HR-1 zone requires a minimum lot area of 1,875 square feet for a single family dwelling.
6. The proposed plat amendment creates one (1) lot of record consisting of 2,812.5 square feet.
7. The maximum footprint allowed in the HR-1 zone is 1,201 square feet for the proposed lot based on the lot area of the lot.
8. There is an existing historic structure located at 1055 Norfolk Avenue.
9. The existing historic structure does not meet the current side yard setback requirement of three feet (3') along the current lot line between Lots 14 and 15.
10. The remnant of lot 15 is undevelopable as is twelve and a half feet in width (12.5')

which does not meet the minimum lot width in the HR-1 district of twenty-five feet (25').

11. The plat amendment secures public snow storage easements of ten (10') feet across the frontage of the lot.

Conclusions of Law – 1055 Norfolk Avenue

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

Conditions of Approval – 1055 Norfolk Avenue

1. The City Attorney and City Engineer will review and approve the final form and content of the plat amendment for compliance with State law, the Land Management Code, and the conditions of approval, prior to recordation of the plat.
2. The applicant will record the plat amendment at the County within one year from the date of City Council approval. If recordation has not occurred within one year's time, this approval for the plat will be void, unless a complete application requesting an extension is made in writing prior to the expiration date and an extension is granted by the City Council.
3. Modified 13-D sprinklers will be required for new construction by the Chief Building Official at the time of review of the building permit submittal and shall be noted on the final mylar prior to recordation.
4. A ten foot (10') wide public snow storage easement is required along the frontage of the lot on Norfolk Avenue and shall be shown on the plat.
3. **812 Norfolk Avenue – 812 Norfolk Plat Amendment – proposal to remove interior lot line to combine lots into one lot of record (Application PL-15-02886)**

Planner Boehm handed out copies of public input he received earlier that day. He had also emailed it to the Commissioners when he received it that morning.

Planner Boehm reviewed the application for a plat amendment at 812 Norfolk to combine Lot 19 and a remnant portion of Lot 18 into one single lot of record on Norfolk Avenue. An existing non-historic single family home that sits on the site was built across the lot lines in 1972. The applicant intends to demolish the existing non-historic structure at 812 Norfolk and construct a new single family home on the combined lots.

The Planning Staff found good cause for this plat amendment. Combining the lots will remove the existing lot line between the two lots and through the existing non-historic home. The plat will incorporate a remnant one-half lot into a platted lot and resolve any existing non-compliant setback issues.

Regarding the public input that was received that morning, the Staff found that the dispute on the east property line was a civil matter. The Planning Department received a complete application for a plat amendment and the application meets all of the LMC requirements. It also includes a survey stamped by a license surveyor showing that the wall is within the property boundaries. The Staff must base their recommendation on that information.

The Staff recommended that the Planning Commission conduct a public hearing and consider forwarding a positive recommendation for the 812 Norfolk plat amendment based on the findings of fact, conclusions of law and conditions of approval found in the draft ordinance.

Commissioner Worel asked whether the civil matter should be addressed in a condition of approval. Assistant City Attorney McLean replied that it was a civil matter between the parties. The applicant bears the risk of having to come back to the Planning Commission to amend the plat if the civil issue cannot be resolved.

Chair Strachan asked if the new structure would come back to the Planning Commission for a CUP. Planner Boehm answered no, because it would not require a Steep Slope CUP.

Chair Strachan opened the public hearing.

There were no comments.

Chair Strachan closed the public hearing.

Commissioner Phillips had the same issue with the square foot calculation in Finding of Fact #7 that he addressed in 134 Main Street. He pointed out that in the table in the LMC, 1,201 square feet was the number for a 3,750 square foot lot. However, he calculated the footprint square footage for this item to be 1,075.5. Again, he asked the Staff to double-check his calculation.

MOTION: Commissioner Worel moved to forward a POSITIVE recommendation to the City Council for the 812 Norfolk Avenue plat based on the Findings of Fact, Conclusions of Law and Conditions of Approval as amended with the revision to Finding #7 regarding the footprint calculation, and verification by Staff. Commissioner Thimm seconded the motion.

VOTE: The motion passed unanimously.

#### Findings of Fact – 812 Norfolk Avenue

1. The plat is located at 812 Norfolk Avenue within the Historic Residential (HR-1) District.
2. The 812 Norfolk Avenue Plat Amendment consists of Lots 19 and the southerly ½ of 18 of Block 11 of the Snyder's Addition to the Park City Survey.
3. On August 6, 2015 the applicants submitted an application for a plat amendment to combine one and a half (1.5) lots containing a total of 2,472.5 square feet into one (1) lot of record.
4. The application was deemed complete on August 10, 2015.
5. The HR-1 zone requires a minimum lot area of 1,875 square feet for a single family dwelling.
6. The proposed plat amendment creates one (1) lot of record consisting of 2,472.5 square feet.
7. The maximum footprint allowed in the HR-1 zone is 1,075.5 square feet for the proposed lot based on the lot area of the lot.
8. There is an existing, non-historic structure located at 812 Norfolk Avenue.
9. The existing structure does not meet the current side yard setback requirement of three feet (3') along the current lot line between Lots 18 and 19.

10. The remnant parcel of lot 18 is undevelopable as is twelve and a half feet (12.5') in width which does not meet the minimum lot width in the HR-1 district of twenty-five feet (25').

11. The plat amendment secures public snow storage easements of ten (10') feet across the frontage of the lot.

#### Conclusions of Law – 812 Norfolk Avenue

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

#### Conditions of Approval – 812 Norfolk Avenue

1. The City Attorney and City Engineer will review and approve the final form and content of the plat amendment for compliance with State law, the Land Management Code, and the conditions of approval, prior to recordation of the plat.
2. The applicant will record the plat amendment at the County within one year from the date of City Council approval. If recordation has not occurred within one year's time, this approval for the plat will be void, unless a complete application requesting an extension is made in writing prior to the expiration date and an extension is granted by the City Council.
3. Modified 13-D sprinklers will be required for new construction by the Chief Building Official at the time of review of the building permit submittal and shall be noted on the final mylar prior to recordation.
4. A four foot (4') wide walkway easement along the north property line of the combined lots will be recorded on the plat.
5. A ten foot (10') wide public snow storage easement is required along the frontage of the lot on Norfolk Avenue and shall be shown on the plat

4. **333 Main Street – First Amendment to the Parkite Commercial Condominium record of survey plat to create two commercial condominium units from a portion of the existing platted commercial convertible area.**  
**(Application PL-15-02912)**

Planner Kirsten Whetstone reviewed the request to amend the Parkite Commercial Condominium record of survey for the purpose of platting two private commercial condominium units located at 333 Main Street. It was recently remodeled and a Certificate of Occupancy had been issued. Planner Whetstone stated that this Commercial Condominium Record of Survey plat had been previously recorded. The intent is to divide a portion of the large convertible commercial space into two commercial condominium spaces D & E, which would allow those spaces to be sold as private commercial spaces. The remaining portion would be kept as commercial convertible space.

Planner Whetstone noted that the application also memorializes an access easement through the tunnel and out to Swede Alley for the commercial space in the basement. It does not provide access that was not already recorded. She explained that it was granted on the residential condominium plat and the applicants wanted to have it on this plat because it dictates the commercial spaces.

Planner Whetstone reported on a call she received from a member of the public wanting to make sure there was no additional access to Park Avenue for commercial space. She informed that person that it would not provide access for commercial units out to Park Avenue. Planner Whetstone remarked that there was no change in the uses of these spaces. It would be used as retail space and subject to the vertical zoning ordinance. There is no capability for restaurant use.

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

Marshall King, representing the applicant, was present to answer questions.

Chair Strachan opened the public hearing.

There were no comments.

Chair Strachan closed the public hearing.

MOTION: Commissioner Band moved to forward a POSITIVE recommendation to the City Council for 333 Main Street for the First Amendment to the Parkite Commercial Condominium record of survey plat to create two commercial condominium units from a portion of the existing platted commercial convertible area, based on the Findings of Fact, Conclusions of Law and Conditions of Approval. Commissioner Phillips seconded the motion.

VOTE: The motion passed unanimously.

Findings of Fact – 333 Main Street

1. The property is located at 333 Main Street between Main Street and Park Avenue and consists of Lot A of the 333 Main Street plat amendment. There is an existing four story commercial building on the property that was recently remodeled and a certificate of occupancy was issued in October 2015.
2. On February 27, 2009, a Historic District Design Review (HDDR) was approved for a complete renovation of the building. On May 2, 2011, a revised Historic District Design Review application was approved for modifications to the interior space and exterior skin of the building in compliance with the revised 2009 Design Guidelines for Historic Districts and Sites and to reflect the proposed residential uses where the interior spaces changed the exterior elevations, windows, access, patios, etc. An additional revision to the May 2, 2011 HDDR action letter clarifying access to the building, to include language that the north and south tunnels provide access to the building in addition to Main Street and Park Avenue, was approved on July 30, 2012.
3. On March 26, 2009, the City Council approved a plat amendment to create a single lot of record from the multiple underlying lots for the existing Main Street Mall building known as the 333 Main Street Subdivision. On March 8, 2010, the Council extended the approval for one year. The 333 Main Street one lot subdivision plat was recorded at Summit County on April 12, 2011.
4. Commercial uses within the HCB zone are allowed uses. Commercial uses within the HR2 portion are below the grade of Park Avenue and are existing nonconforming uses.
5. Residential condominium spaces within the building were platted with The Parkite Residential Condominiums record of survey plat application that was approved by the City Council on July 10, 2014 and recorded at Summit County on December 5, 2014.

6. Commercial areas within the building were platted with The Parkite Commercial Condominiums record of survey plat approved by City Council on September 18, 2014 and recorded at Summit County on December 5, 2014.

7. The property is encumbered with a recorded 99 year lease agreement to provide parking for the property at 364 Park Avenue. This lease agreement is identified on the plat because of the duration of the lease. The parking subject to the lease is currently provided within a garage in the Main Street Mall building with access to Park Avenue. The private 559 sf garage space is platted as unit 1G on the residential condominium record of survey plat for this property.

8. Five (5) easements for existing emergency and pedestrian access, utility, and parking easements as described in the title report and land title of survey for 333 Main Street were memorialized with the recorded subdivision plat.

9. This plat amendment does not change the existing access, utility, and parking easements.

10. This property is subject to a February 28, 1986 Master Parking Agreement which was amended in 1987 to effectuate an agreement between the City and the owner with regards to providing parking for a third floor of the Main Street Mall (for office uses proposed with the original construction). The property was assessed and paid into the Main Street Parking Improvement District for the 1.5 FAR (for commercial and retail on the main and lower floors).

11. This plat amendment does not change the parking requirements or parking agreements.

12. Commercial space is located at the street along the Main Street frontage, including commercial space within the historic structures, with residential space located above and/or behind commercial space. All of the storefront units are subject to the vertical zoning ordinance as described in LMC Chapter 15-26-2 Uses.

13. Access is provided to a parking garage via the existing north tunnel for residential condominium units only. The parking garage is located on the lowest level and is designated as common area for the residential uses.

14. Loading and services for the commercial uses, which are retail uses, will be from Swede alley via the south tunnel and from Main Street. No loading for commercial uses will be from Park Avenue as there is no access to Park Avenue from the

commercial units, other than required emergency egress.

15. An elevator was constructed at the Main Street level to provide ADA access to Unit C-1 on the Lower Level. A walkway from the elevator to Unit C-1 provides ADA access. Easements for the elevator and walkway were recorded and documented on The Parkite Commercial Condominium plat providing perpetual ADA access to Commercial Unit C-1, as well as access to the south tunnel.

16. Following recordation of the Parkite Residential Condominium record of survey plat on December 5, 2014, the residential HOA granted an easement to the commercial HOA over this space (elevator and walkway) for the benefit of the commercial units consistent with the limited common ownership designation on the commercial plat.

17. The access easement for C-2 is memorialized on Sheet 3 of this amended plat.

18. On September 1, 2015, an application was submitted to the Planning Department requesting an amendment to The Parkite Commercial Condominium record of survey plat to create two commercial condominium units (Unit D and Unit E) from platted commercial convertible space and to memorialize the access easement for Unit C-2 on the lower level.

19. Unit D is identified as 1,851 square feet in area. Unit E is identified as 2,758 square feet in area. The remaining commercial convertible space decreases by 4,609 square feet to 10,883 square feet.

20. Creation of private commercial condominium units allows this commercial area to be sold as a private commercial unit, as opposed to being a tenant leased space. No change of use or changes to any existing easements or agreements are proposed with this requested plat amendment.

#### Conclusions of Law – 333 Main Street

1. There is good cause for this amended condominium plat.
2. The amended condominium plat is consistent with the Park City Land Management Code and applicable State law regarding condominium plats.
3. Neither the public nor any person will be materially injured by the proposed amended condominium plat.
4. Approval of the amended condominium plat, subject to the conditions stated below,

does not adversely affect the health, safety and welfare of the citizens of Park City.

Conditions of Approval – 333 Main Street

1. The City Attorney and City Engineer will review and approve the final form and content of the condominium plat for compliance with State law, the Land Management Code, the recorded subdivision plat, and any conditions of approval, prior to recordation of the plat.
2. The applicant will record the condominium plat at the County within one year from the date of City Council approval. If recordation has not occurred within one year's time, this approval for the plat will be void, unless an extension request is made in writing prior to the expiration date and the extension is granted by the City Council.
3. All conditions of approval of the 333 Main Street Subdivision plat and approved Historic District Design Review shall continue to apply.
4. All new construction at this property shall comply with applicable building and fire codes and any current non-compliance issues for tenant spaces, such as ADA access and bathrooms, emergency access, etc. shall be addressed prior to building permit issuance.
5. Elevator space and associated easements are to be shown on the record of survey plat.
5. **Land Management Code Amendment regarding Nightly Rentals use in the HRL Chapter 2.1 and Definitions Chapter 15 (Application PL-15-02817)**

Chair Strachan commended Planner Astorga on his work in preparing the Staff report. It was a complete package with excellent analysis and good visuals.

Planner Astorga stated that this item was a pending ordinance to prohibit nightly rentals from the HRL East District. He explained that the HRL District identified in the zoning map is found in two parts of town. The one they were looking at this evening is known as the McHenry Avenue sub-area neighborhood. The second portion of the HRL District is the King/Sampson/Upper Norfolk area. Planner Astorga clarified that this particular LMC amendment would only apply to the McHenry sub-area neighborhood.

Planner Astorga reported that the Staff first identified the number of sites in the District and came up with a total of 24 sites. They then went to the Summit County website to identify whether those sites were primary or secondary ownership. They found that three sites

were vacant and identified on the County website as residential secondary unimproved. The two other categories were residential primary improved and residential secondary improved. Planner Astorga reported that 13 sites were primary and 8 sites were secondary. He noted that the Staff reviewed the City records for business licenses that were issued for nightly rental and found one license. However, after researching further they found that in 2007 the Planning Commission approved a conditional use permit for a nightly rental at 202 Ontario. Planner Astorga pointed out that within the last ten years the Planning Department has only looked at one nightly rental in this part of the District, and it was on Ontario Avenue and not McHenry. He remarked that even though it is not part of the specific McHenry neighborhood, it is still part of that specific zoning district. Planner Astorga presented a site plan to show that three sites on the end completely access off of Ontario Avenue and not Rossi Hill.

Planner Astorga explained that this issue began prior to 2008 and the Planning Department has had many conversations regarding nightly rental use in this specific District. He stated that McHenry Road is narrow and after having several discussions with the City Engineer it was determined that the road width does not meet specific engineer codes. Planner Astorga noted that the primary reason for this amendment were the impacts that have to be mitigated for a conditional use permit, specifically in terms of additional vehicles that would impact this neighborhood.

Planner Astorga reported that the pending ordinance activated on May 13, 2015. Due to various reasons, this was the first time the Planning Department had the opportunity to do additional research and bring it to the Planning Commission. Planner Astorga stated that the Staff also looked at the nightly rental strategy in the General Plan that was recently adopted. That section of the General Plan was included in the Staff report on pages 83-91. The Staff had done an occupancy and second home analysis and each neighborhood was identified in a specific category on page 87 of the Staff report. It was broken down into primary residential or resort oriented. Planner Astorga noted that Old Town fell in the middle of the two categories because 48% of Old Town is already nightly rental. In addition, 25% of all nightly rental licenses were found in Old Town. He explained that the strategy in the General Plan indicates that they should continue to entertain both types of neighborhoods within Old Town. However, because Old Town already has a high designation at 48%, the Staff believes that prohibiting nightly rental from this small McHenry neighborhood would strengthen the primary neighborhood and contribute to the mix they were trying to accomplish in Old Town based on its proximity to the Resort.

Planner Astorga stated that based on the strategy in the General Plan, as well as the purpose statements of the HRL District, the Staff recommended that the Planning Commission consider removing the conditional use designation for nightly rentals in this specific area of town.

Planner Astorga reported that noticing letters were sent to every property owner for this meeting, even though it was not required by State Code. However, because of a noticing discrepancy the Planning Commission would not be able to take action on this item this evening. He requested that the Planning Commission continue this item to October 28, 2015; but possibly give a head nod this evening on whether or not they agreed with the Staff recommendation. He was also interested in hearing their comments to see if any issues need to be fine-tuned before they take formal action at the next meeting. Planner Astorga noted that the City Council would take action on this amendment on November 5<sup>th</sup> because the pending ordinance expires 180 days from its inception.

Planner Astorga had received two letters of public input. One was from Mary Wintzer, a property owner in this District who supported the amendment. The second letter was from Steve Elrich, a property owner outside of this District who was concerned that his neighborhood would be next. Planner Astorga had informed Mr. Elrich that the Planning Department was not ready to make a recommendation outside of this neighborhood; and that due to the proximity to the Resort the Staff believed it would not be appropriate to remove that conditional use from his neighborhood. Planner Astorga noted that this particular amendment has always been noticed for this specific neighborhood only.

Chair Strachan opened the public hearing.

Mary Wintzer, a resident at 320 McHenry, stated that Merritt and Bob Bennett and David and Stacy Wintzer could not attend this evening but they supported this amendment to prohibit nightly rentals in the McHenry neighborhood. Ms. Wintzer noted that Barbara and John Rennell were in Switzerland and they neither supported nor opposed the amendment.

Ms. Wintzer thought Planner Astorga had identified the key impacts regarding the poor access. The road narrows to one lane in the winter and it is a substandard road. She stated that even though Ontario was included, the neighbors on McHenry were the ones making this request. They are a unique neighborhood unlike any in Old Town. They applied for and received a no nightly rental designation in 1983 because they knew who they were and what they wanted for their neighborhood. In 25 years the City has never had a nightly rental application on McHenry, which speaks to the spirit, the character, and the fabric of their neighborhood. They are totally different from any Old Town area. Ms. Wintzer remarked that the McHenry neighborhood has larger lots with yards. They have open space and everything else you would find in a normal neighborhood. It is like "human penguin colony" and the neighbors take care of each other. The neighbors built the park on dedicated McHenry after obtaining permission from the City. It overlooks Old Town and they received a State Beautification award for it. Tourists enjoy it as well as hikers and others in the community. Ms. Wintzer stated that there is a lot of camaraderie and carrying

not only about their neighborhood but also Old Town. They feel strongly about keeping the neighborhood the way it is even after they are gone. It is a viable neighborhood that spans several generations. Ms. Wintzer clarified that the McHenry neighbors were asking that they not be subjected to not knowing who was staying on their street or knowing whether they will meet someone on the road who does not know how to safely drive the streets. Ms. Wintzer believed her neighborhood represents the spirit of Old Town and what Old Town once was. They exemplify sense of community, small town feeling, and natural setting because of the open space. When people come to McHenry Avenue they know they are someplace different than any other area of Old Town. She emphasized that the neighbors were asking to be recognized and to have their neighborhood preserved. Ms. Wintzer pointed out that their property values have increased because of the character of the neighborhood. That was their argument 25 years ago and it is still true today because people are willing to pay for neighborhood security and community.

Michael Kaplan stated that he lives in the neighborhood and he agreed with some of the points Ms. Wintzer had made. However, he has been living there for 16 years and he purchased his house with the intent of turning it into a nightly rental. Changing the Code would affect what he thought he could do when he bought the house. Mr. Kaplan noted that most of the properties on the street about properties that are allowed to be nightly rentals. They still hear the noise and are awakened late at night from nightly rental properties. Mr. Kaplan stated that a prohibition on nightly rentals could have a negative effect when someone wants to sell their property if it cannot be used as nightly rental property. He noted that Planner Astorga presented fine-tuning the ordinance as an option. Mr. Kaplan suggested grandfathering the properties that currently exist with the ability to have nightly rentals and to have the ordinance in place for properties that will be built in the future. He thought that would be a better compromise.

Commissioner Campbell asked if Mr. Kaplan would be willing to have the grandfather clause expire with the transfer of a property. Mr. Kaplan was not prepared to answer that question without giving it more thought. His suggestion was an effort to meet the needs of those who currently live there.

Assistant City Attorney McLean explained that State law regulates non-conforming uses. If a nightly rental existed prior to this ordinance being pending, that use would be vested and it could continue as long as it was not abandoned for more than one year. However, once the pending ordinance was started they would not be able to grandfather the use.

Anita Baer stated that she has lived on McHenry for 26 years and it is a great neighborhood. She has a piece of property for sale and she has contingencies on it such as no flat roof and no nightly rentals. If her property sells that would be part of the condition of the sale. Mr. Baer lives alone and she feels safe in her neighborhood. If this

ordinance is not adopted, she might consider moving because she wants to live in a neighborhood and not a place where different people come in and out.

Charlie Wintzer pointed out that the ordinance was changed to allow nightly rentals ten years ago. If Mr. Kaplan has owned his property for 16 years he purchased it before nightly rentals were allowed in the neighborhood. Ms. Wintzer stated that when he was on the Planning Commission they denied two CUPs for nightly rental on Sampson. The condition to mitigate the traffic was that they would park in the parking structure and walk up on a snowy night. With the lack of enforcement they questioned how they could be done but the City Council overturned their decision. Mr. Wintzer remarked that over time he has come to the conclusion that a CUP is an allowed use and you need to fight harder to get whatever you want. If a CUP is an allowed use, it would be taken advantage of. He honestly believed their properties are worth more money without nightly rentals. If someone wants nightly rental they can go anywhere else in town. Those who do not want nightly rental will come to this neighborhood.

David Constable stated that he and his wife were doing an addition on 287 McHenry. They purchased the property 12 years ago and at that time he believed it was a nightly rental free zone. He was disappointed when he recently discovered that nightly rentals could be allowed. Mr. Constable was currently living in a rental unit on Daly Avenue until their house is finished. Prior to that they were on Deer Valley Drive where there were six nightly rentals next to them and one across the street. In his opinion, residents and nightly rentals do not co-exist. Nightly rentals create traffic and parking problems, as well as the major problem of different agenda. People come on vacation with the idea of having fun, which is a completely different attitude from someone who lives there on a permanent basis. Mr. Constable thought it was unfair to subject a full-time resident to that kind of disturbance. He believed this area of town was a perfect place to prohibit nightly rentals and create a balance in the community by allowing this to be a real neighborhood. Mr. Constable commented on Mr. Kaplan's and noted that there are only two or three lots left on McHenry that can be built on. At this point grandfathering would be a moot point. Mr. Constable was not concerned about property values and he thought the ordinance would be a bonus.

Matey Erdos, a 16 year resident at 310 McHenry, stated that she was compelled to McHenry for the reasons Ms. Wintzer had described. It is a great neighborhood and a great community. She intends to stay there full time for as long as she could. Ms. Erdos was opposed to nightly rentals and stated that she over-emphasized and underscored what some of the others have said. Ms. Erdos was concerned that they had not emphasized enough the volume of traffic coming up and down a very narrow steep street. It was as grave concern because she did not believe McHenry could handle the volume of traffic from nightly rentals. Ms. Erdos echoed her support for not allowing nightly rentals on McHenry.

Chair Strachan closed the public hearing.

Commissioner Band asked for clarification on how McHenry went from not being allowed nightly rental to allowing nightly rental ten years ago. Planner Astorga stated that the City did a major LMC rewrite in 1999 where the City amended every zoning district in the entire City. Based on his research, the HRL District was created sometime in the 1980s, and in 2000 the nightly rental use was re-introduced as a result of the LMC rewrite.

Charlie Wintzer explained that when the Code was first put in place, the neighborhood, with the help of Bill Ligety who was the Planning Director, wrote the HRL zone to keep it single-family and larger lots. The neighbors on Sampson also liked that idea and asked if they could be part of the HRL. When Sampson started to become ski in ski-out property the development community put pressure on the City to make a change. The neighbors on McHenry were busy getting ready for the Olympics and failed to notice that a change was being made that would affect their neighborhood. Ms. Wintzer clarified that the change was due to pressure from the developers to change Sampson; not McHenry. For that reason, the neighbors were only requesting this amendment for McHenry and not the entire HRL zone.

Commissioner Band was completely in favor of allowing the residents to go back to prohibiting nightly rentals because it was in accordance with the General Plan. She used to live on Empire and she moved away because she had a young child and there were no families. They have talked about keeping Park City Park City and the General Plan and the community are in favor of trying to keep some pockets of Old Town where people actually live. Commissioner Band would like to see this happen more often.

Commissioner Thimm thought the proposal was consistent with the LMC. He was familiar with the street and it is difficult to drive. He shared the concern about someone unfamiliar with Park City trying to drive the road in snow. He believed it was a well-founded reason and why the LMC was set up. Commissioner Thimm remarked that in addition to preserving the neighborhood it was also a public safety decision. He pointed out that the Planning Commission does not consider property values, but they do follow the Land Management Code.

Commissioner Thimm asked if the City needed to rewrite a new zone for this amendment. He was unsure how they could place an ordinance on a portion of a zone. Commissioner Joyce pointed out that footnote was attached stating that this conditional use only applies in the west half of the HRL. Commissioner Thimm was pleased with that it could be addressed with a footnote because he was concerned about creating a new district.

Chair Strachan stated that his only question was whether the subzone should be defined more specifically, as opposed to Sampson/King/Ridge. He was concerned that someone on the border might interpret that to mean they could have nightly rentals. Chair Strachan recommended having a survey line to delineate exactly where the subzone starts and stops. Planner Astorga replied that his recommendation was doable.

Commissioner Campbell was in favor of people in the neighborhood being able to self-govern on this type of an issue. His only hesitation was that the decision by the neighbors was not unanimous. During public input at least one resident was opposed and he felt like they would be taking away a right that he has now. Commissioner Campbell asked if the Planning Commission had the right to take away the right of nightly rentals.

Assistant City Attorney McLean stated that it was a zoning decision and the Planning Commission has the ability to make legislative decisions. She noted that any LMC change affects the property rights for someone. As an example, Director Erickson pointed out that every time they write a legislative act that reduces height the people who have not already built are subject to the new height restriction, regardless of what their neighbor was allowed to do. Commissioner Campbell understood the example; however, they do not reduce the height for existing houses and make them comply with the new restriction. Director Erickson replied that if someone currently has a valid business license for nightly rentals and the conditional use has not expired, it would become a valid non-conforming use.

Commissioner Campbell understood the difference and he was comfortable with the explanation. Commissioner Joyce clarified that if a conditional use permit for nightly rental lapses for more than one year, the use goes away and nightly rentals would no longer be permitted. Director Erickson replied that he was correct.

Commissioner Joyce stated that he lives in one of the true anomalies in town that is platted as no nightly rentals. His only concern was that the City has primarily left nightly rental enforcement to the HOAs. He asked if an HOA governed this area. Ms. Wintzer stated that they used to have an HOA but the City said they were not a subdivision and the HOA was discontinued.

Commissioner Joyce favored the amendment to prohibit nightly rentals, but he thought they needed to be careful in how they justify it. He was comfortable justifying it on the fact that the majority of residents have requested it. However, he would have an issue justifying it based on the substandard street because almost all the streets in Old Town are narrow and substandard. If that is the justification, they would have to evenly apply it to all the areas with those types of streets. He preferred not to use safety as the reason for approving this amendment.

Director Erickson stated that substandard streets needed to be read in combination with the other criteria in the LMC, such as neighborhood character, which they determine through public input, and preservation of a mix of housing types in the district, etc. He noted that the Findings were crafted to include all of the requirements from the LMC and the General Plan for neighborhood protection in that area. Commissioner Joyce was satisfied with that explanation.

Commissioner Phillips favored the amendment and he specifically agreed with the comments made by Commissioners Thimm and Band. He would like the Staff to research whether other areas were suitable for this type of neighborhood because it is a good way to preserve Park City. It is a main mission for the community as it evolves and continues to evolve. Commissioner Phillips felt this was preserving a neighborhood just as they like to preserve historic homes.

Commissioner Worel stated that as she read the Staff report she was reminded of the Sampson Avenue request for nightly rentals that the Planning Commission denied. She was on the Planning Commission at that time and the main concern were the impacts that additional traffic and parking would create for snow removal and emergency vehicles. She has been on McHenry and she sees the same situation. Commissioner Worel stated that asking people to park at China Bridge in the middle of winter and walk is not an option because people will not do it. She did not believe it was fair to put the burden of enforcement on the neighbors, which was another issue that was raised when they looked at the nightly rental on Sampson Avenue. It is unpleasant for anyone to have to call the police or a tow truck and the neighbors should not have to bear that burden. Commissioner Worel was in favor of enforcing no nightly rentals in the McHenry Avenue neighborhood.

MOTION: Commissioner Band moved to CONTINUE the Land Management Code amendment regarding night rentals use in the HRL East neighborhood, Chapter 2.1 and Definitions Chapter 15 to October 28, 2015. Commissioner Joyce seconded the motion.

VOTE: The motion passed unanimously.

6. **Land Management Code Amendments regarding vertical zoning storefront regulations in Chapter 15-2.5-2 Uses in Historic Recreation Commercial (HRC), Chapter 15-2.6-2 Uses in Historic Commercial Business (HDB), and associated definitions in Chapter 15-15, Defined Terms (Application PL-15-02810)**

Planner Whetstone requested that the Planning Commission review amendments to Chapter 2.5 which is the Historic Recreation Commercial (HRC) zone, the lower Main

Street area, as well as Chapter 2.6, the Historic Commercial Business (HCB) zone, which is basically Main Street and includes Heber and Swede Alley.

The Staff recommended that the Planning Commission conduct a public hearing, provide direction and continue this item to November 11<sup>th</sup>.

Planner Whetstone noted that this item came before the Planning Commission in June at which time they discussed changing the language to include storefronts on private plazas. After hearing public input, attending HCPA meetings and visiting the sites, the Staff removed the language regarding plazas from the amendment.

Planner Whetstone stated that vertical zoning is a planning tool that regulates the location of uses vertically within a building or site. It is desirable in downtown business districts to reserve the street level for high level activity and revenue generating uses that promote the vitality of the street. Those uses include retail shops, restaurants, bars, galleries and similar uses. Office and residential uses would be on the floors above the storefront.

Planner Whetstone stated that the purpose of the proposed amendments is to amend and clarify language in the zoning sections to have a footnote that excludes specific uses from storefront property, as well as clarifying the definition of storefront property. Planner Whetstone reiterated that the Staff originally proposed to include private plazas but that language has since been removed.

Planner Whetstone referred to Goal 16, Objective 16B and Strategy 16.1-10 of the General Plan, which talks about historic Main Street being the heart of the City for residents and to encourage tourism in the District. The Objective says to limit uses within the first story of building along Main Street to retail and restaurant establishments that are inviting to the passing pedestrian, and to discourage office uses, real estate show rooms, parking, etc. Planner Whetstone noted that the Implementation Strategy states that the City should re-examine the existing vertical zoning ordinance from 2007 that requires commercial retail shops along Main Street, and consider strengthening the ordinance. Planner Whetstone noted that the City's Economic Development Strategic Plan had similar language and suggests that uses that are not inviting to the general public and have a negative impact on the economy and the vitality should be removed from storefront properties.

Planner Whetstone stated that the objective of these amendments is to clarify and strengthen the existing regulations to specifically address the adopted Goals and Strategies of the General Plan.

Planner Whetstone referred to the language changes outlined on page 97 of the Staff report. She noted that one change that was different from the existing language was to

exclude the west side of Park Avenue from the HRC zoned storefront properties. She pointed out that the uses on the west side back up to the HR-1 zone, which is a residential zone, where offices and other compatible uses and have worked well. Planner Whetstone stated that language excluding the HRC zoned areas north of 8<sup>th</sup> Street currently exists. The remaining language was consistent and the Staff no longer suggested removing the buildings of the Summit Watch Plaza at 702, 710, 780, 804, 890 and 900 Main Street. Those storefronts face the private plaza and based on input from the HPCA, property owners, business owners and others, the Staff determined that this was not the time to consider this type of a regulation. However, the Staff recommended revisiting the issue in 3-5 years.

Planner Whetstone stated that one change in the HCB zone is to clarify in the tables that hotels are not allowed in storefront areas. Lobbies and access for uses on the second floor would be allowed in a small storefront with a door. Planner Whetstone commented on a change that was not presented at the Planning Commission meeting in June, which is to relook at private event space and consider adding it to the list of conditional uses in these two zones as an administrative conditional use. They should also consider including vertical zoning for that use. Planner Whetstone noted that typically event spaces are active a few times during the year and sit empty the rest of the time. The Staff would like the Planning Commission to consider allowing a private event space to be located within storefront property with an approved MFL or Special Event permit for the duration of the event as part of the footnote. Otherwise it would require an Administrative CUP and be subject to vertical zoning.

Planner Whetstone stated that when a definition appears in two places in the Code and the definition is amended, there is a risk of not wording it exactly the same in both places. She recommended removing the definition of Storefront Property under "S" and leave it under Property Storefront with an amended definition to read, "A separately enclosed space area or unit that fronts on a public street. The term "fronts on a public street" shall mean a separate enclosed space area or unit with 1) a window or entrance within 50 feet of the adjacent public street measured from the edge of pavement to the window or entrance; and 2) a window or entrance that is not more than eight feet above or below grade of the adjacent public street."

Planner Whetstone noted that there are split level and multi-level properties on Main Street. The Staff was not proposing to regulate areas that are right at the street but within the basement.

Planner Whetstone clarified that the definition of Private Plaza on page 99 of the Staff report was added because the term Private Plaza is used in some of the regulations but it

is not defined by definition. She emphasized that Private Plaza would not be added to the Vertical Zoning Ordinance.

Planner Whetstone requested input from the Commissioners on discussion items listed on page 99 of the Staff report. She presented a revised HRC map. Director Erickson noted that there was some imprecision in the mapping, particularly relating to the Building at 738, Marriott Plaza. He indicated the section that would be regulated on Main Street. The private plaza on the backside would not be regulated. Director Erickson stated that once the plaza goes above six feet it is not regulated with the storefront. He also commented on 692 Main Street and clarified that the intent is to regulate the street side of that building but not the private plaza side.

Commissioner Joyce asked for the logic of why so many specific buildings were excluded, particularly since they already agreed not include plazas and the rules that are in place give exclusions. Planner Whetstone stated that it was primarily due to previous agreements within Master Planned Developments. The previous language specifically excluded HRC zoned properties north of 8<sup>th</sup> Street. Director Erickson explained that the intent was to achieve a balance between storefront activities and other activities that would bring people to Main Street on a more regular basis. In the past they over-regulated storefronts and conceptualized drop-off and restaurant business because there were less people on the lower streets. They heard from the business community that allowing additional office spaces in that area would bring more people to Main Street on a regular basis.

Commissioner Joyce asked why that would not apply to all of Main Street. Director Erickson replied that it varies in tourist attractiveness. Commissioner Joyce stated in his time on the Planning Commission he has learned that anytime something is done a third of the people are unhappy. In this case, Lower Main Street did not want vertical zoning because they would be negatively affected. At the same time those on Upper Main Street complain that there is no activity at the top of the street. Commissioner Joyce noted that there will always be pushback whenever a change is proposed.

Director Erickson understood the point Commissioner Joyce was making. He explained that this was an economic test to drive the broadest possible sector of people to the businesses in HRC and HCB. When it was originally instituted it was over-regulated and that regulation was not accomplishing what it was intended to do, which was to encourage business use on lower Main Street in the HCB District. Director Erickson stated that conceptually the west side of Park is a transition zone designed to be a mix of uses in that location. On the east side of Park Avenue they wanted to preserve the storefront facades because that was the Main Street business district. Director Erickson pointed out that this was the type of discussion they wanted from the Planning Commission and he appreciated the question regarding Staff strategy. He explained that the Staff's strategy was 1)

deregulate the places where the current regulation was not working; and 2) have a defined business district with storefronts in the District and the option to do storefronts on the margins; with the idea of driving four or five of the market sectors to the streets on upper or lower Main.

Planner Whetstone requested input from the Commissioners regarding the west side of Park Avenue. She pointed out that the properties north of 8<sup>th</sup> Street on the west side were all residential properties in the HRC.

Commissioner Band stated that she was the one who initially said that if they wanted to create vitality they should not allow offices in storefronts. They talked about plazas and that the highest and best use for those areas was retail, commercial, etc. However, after walking the area with Alison Butz she recognized that there were serious problems that were not conducive to uses. Commissioner Band strongly believed they should go towards the highest and best use, but at the same time she thought they needed to look at the reality and understand that some of these are not great spots. If they could entice a business that has employees who would use the rest of Main Street she would be comfortable with that solution. Commissioner Band liked the idea of revisiting the issue in three to five years because things change and they do not know what will happen over time. She reiterated her previous position of not allowing private clubs on the street level.

Chair Strachan opened the public hearing.

Alison Butz representing the Historic Park City Alliance stated that HPCA was 100% in favor of the regulations outlined in the Staff report. They appreciate the Staff walking the area and understanding some of the concerns about the plazas. Ms. Butz was happy to relook at this in three years. She believed that if the market continues they would see business move down there anyway. However, to require someone to open a retail store in some of those challenging spaces would result in businesses failing. Ms. Butz favored giving opportunities for success with an office use within the next few years. Regarding event space in storefront property, she noted the HPCA was supportive of that only being allowed during a Master Festival License or a Special Event Permit. What they currently see is a decrease in vibrancy around those larger spaces that are only occupied during January. She hoped that by restricting events during the other times of years it would spur on some year-around uses in those areas. It was part of a larger discussion by the HPCA regarding tenant mix of how to maintain authenticity, local businesses, the mom and pop shops, and maintain historic Park City and Main Street as a shopping and entertainment District. It is harder to sell that idea when buildings are vacant. Ms. Butz appreciated the work the Staff had done.

Mike Sweeney stated he carefully read the Staff report and he generally agreed with Ms. Butz except for special events. He noted that there are places where special events should occur, but the issue that the HPCA was raising situations like the Claimjumper, where the building owner does not need the money and only uses the space for special events or private event. Mr. Sweeney noted that there were no definitions for a public event and a private event. He thought they needed to think about these things because currently every restaurant can hold a private event without obtaining an Administrative CUP because they sell out their restaurant for one night. In reality, they are doing what the HPCA wants to do, which is bring more people to Main Street. Mr. Sweeney suggested that some of the language in the document needed to be clarified. In general, he was very pleased with what Director Erickson and Planner Whetstone had drafted but they needed to work on specific definitions. Mr. Sweeney stated that he holds private and public events on his deck. He pulled an Administrative CUP that he pulled in 2006 which allows him to do certain things on the deck, subject to the rest of the Code and making sure it is a safe event. Mr. Sweeney requested the opportunity to spend more time with the Staff and walk through this process. He also had issue with the 50' horizontal off of public streets. He did not want to encourage people to have a 50' setback on Main Street or any other commercial area streets. Mr. Sweeney thought the language should be clarified. He liked what was currently in place. He did not think it was acceptable to encourage people who have vacant spaces to go back 50 feet on Main Street. A 50' setback did not make sense. Mr. Sweeney stated that if there is a hole on Main Street, for example the Kimball Art Center, it stops the transition of people moving across the street, which is not good. They need to keep the continuity of the shops all the way along the street.

Mr. Sweeney commented on the question regarding Park Avenue on the west side. He stated that there is an approved project by the bridge which has commercial space, but it was questionable whether someone would spend the money to do the project. Mr. Sweeney commented on projects on the east side of Park Avenue below the Sumo Restaurant and noted that they now have commercial space all the way down to 9<sup>th</sup> Street. He would like to see that evolve into something special.

Chair Strachan closed the public hearing.

Commissioner Band thought the Staff had done a great job. In terms of the discussion points on page 99 she was satisfied with Items 1 and 2. Item 3, she liked that they defined Public Plaza even though she agreed that they should not force that issue at this time. Commissioner Band was in agreement with Items 4, 5 and 6.

Commissioner Thimm believed that excluding the plaza areas was the right thing to do. He has been on those plazas and even during the busy season it was always very quiet. He thought allowing office uses on the plazas was appropriate. Commissioner Thimm

reviewed the list of discussion points. He agreed with Item 1. Item 2, talks about lobbies and access points being appropriate at street level for prohibited uses, and he thought they should also include exits. Commissioner Thimm was not opposed to limiting to a certain percentage, but he suggesting adding the caveat that there could be a minimum allowable size depending on the size of the building. For example, a three-foot wide lobby would not be appropriate if the intent is to have an access point where people can connect to that space and out to the sidewalk.

Planner Whetstone noted that the Staff had that same thought, and the question was how to clarify the size of a lobby to avoid having an entire storefront lobby. The Staff still needed to work out the details.

Commissioner Thimm thought the suggestion in Item 3 to revisit the lower Main Street area in three to five years was a good idea. Regarding Item 4, Commissioner Thimm asked why exclusions were being looked at. Planner Whetstone clarified that it was primarily the plaza space. Item 5 addressed transitional edges. Commissioner Thimm agreed with providing a transition at the edge of the zone. He believed that softening the edge of a zone when there is a drastic change to the next zone was appropriate. With regard to Item 6, whether new construction and remodels should create storefronts, Commissioner Thimm agreed with the language providing that there was enough latitude to allow for replacement in kind to improve the aesthetics, even if there was not a change in use. Planner Whetstone reported that the Staff was still working with the Legal Department on where that regulation would fit in the Code.

Assistant City Attorney McLean stated that the Legal Department was thinking about requiring storefront property in the zone where this applies, and anything pre-existing would fall under the non-conforming status, and the non-complying structure would match the State Code. If more than 50% of the building was renovated or changed, it would lose that non-conforming status and they would have to put in a storefront.

Commissioner Campbell thought they needed to support whatever occurs in the Plazas regardless of whether or not they like the design in the lower Main Street area. Anything they could do to make it more viable was worth doing. Commissioner Campbell understood from the discussion that an office could go into plaza space now, but when this is reviewed in three years it might not be allowed. Assistant City Attorney McLean replied that if it is changed in three years, the existing offices would be grandfathered. Ms. McLean noted that currently there are real estate offices on Main Street because they were in existence prior to the 2009 LMC amendments. As long as they continue that use and do not abandon it for more than one year, they are allowed to continue that use.

Commissioner Joyce was comfortable with everything except what was excluded. He thought the west side of Park Avenue could become an issue. Currently there is a lot of residential, which is fine, because it would all be grandfathered until the use is abandoned. However, he was concerned about the possibility of tearing down residential houses to build commercial that is allowed in the zone. Commissioner Joyce understood the cut off at 9<sup>th</sup> Street because it is the end of Main Street, but he did not understand 8<sup>th</sup> Street on Main Street or Park Avenue because it seemed unusually artificial.

Director Erickson suggested that they reconsider the HRC designation on the west side because vertical zoning would not have the controls Commissioner Joyce was looking for. Director Erickson thought that was a discussion worth having at a different time if the Commissioners agreed that additional study needed to be done on whether vertical zoning was appropriate for the west side of Park Avenue. He is an advocate of the free market, but he questioned whether the free market would work well on the west side or if some regulation was needed.

Commissioner Joyce asked if they make the changes and include down to 9<sup>th</sup> Street whether that would be included anyway because they were MPDs. Director Erickson believed they would be grandfathered in because they were previous MPDs. Planner Whetstone thought it would depend on what was specified in the Development Agreement. She pointed out that since there is less activity going further away from Main Street north towards 9th, the Staff did not feel that this was the appropriate time to look at it.

Director Erickson stated that the Staff could come back with more strategy clarification. The Staff was pushing towards free market north of 8<sup>th</sup>, but if regulatory affairs are needed the Commissioners could make that decision. Commissioner Joyce appreciated the offer to come back with additional strategies because unless they do something different they could risk losing it. He was primarily interested in looking at the east side of Park Avenue and Main Street.

Chair Strachan wanted to know if an MPD would be subject to vertical zoning. Assistant City Attorney McLean agreed with Planner Whetstone that it would depend on the development agreement. If the developer agreement is silent and just says commercial then it would be subject to the regulations of the zone. She would look at the wording in the development agreement.

Commissioner Phillips favored the idea of getting more information. He thought the Staff had done a good job. Commissioner Phillips liked the removal of the plaza and the idea of revisiting the issue. However, instead of a three to five year time frame he suggested relooking at it when the buildings fill up to a certain point.

Director Erickson stated that this District is under constant review by the Historic Main Street Business Alliance and the two organizations managed by the City Council. It is an ongoing, constant review. Director Erickson noted that the three to five year period would allow enough time to gather evidence without being too long. Commissioner Phillips agreed with the comments made by his fellow Commissioners. He believed the amendment was in line with the intention of the General Plan.

Commissioner Worel echoed the comments of her fellow Commissioners. She thought it would be helpful to get more strategic information on why this all came to be the way it is. Commissioner Worel appreciated the comment by Mike Sweeney in regards to needing more definitions. She noted that page 96 of the Staff report talks about abandonment of buildings. She asked if someone has a business license and only open three months a year, whether the remainder of the year would be considered abandonment. Assistant City Attorney McLean stated that it would depend on the use. However, if the owner has an active business license for three weeks of the year it would not be considered abandonment. Commissioner Worel noted that it would not protect from all the dark spaces on the street. Ms. McLean stated that dark spaces would be a separate conversation. Commissioner Worel was still not clear on what would constitute abandonment. Chair Strachan believed that abandonment would be the intent to abandon the use. Ms. McLean remarked that abandonment has to do with being grandfathered in. An existing non-conforming use is allowed to continue until it is abandoned for 12 months. She pointed out that there is no way to equate that an empty building was not a use. Ms. McLean stated that the question has been raised in the past and there is a large concern by the Main Street Merchants regarding those dark spaces. She was unsure how a City could tell someone that they must have an active business inside of their building. Commissioner Worel thought there could be a way but this was not the time to discuss it.

MOTION: Commissioner Band moved to CONTINUE the Land Management Code Amendments regarding vertical zoning storefront regulations in Chapter 15-2.5-2, Chapter 15-2.6-2 and the associated definitions in Chapter 15-15 to November 11, 2015. Commissioner Thimm seconded the motion.

VOTE: The motion passed unanimously.

7. **Consideration of an ordinance amending the Land Management Code Section 15, Chapter 11 and all historic zones to expand the Historic Sites Inventory and require review by the Historic Preservation Board of any demolition permit in a historic district and associated definitions in Chapter 1515.**  
(Application PL-15-02895)

Director Erickson reported that the information the Planning Commission was seeing for the first time was reviewed by the City Council and the Historic Preservation Board in a joint meeting a month ago. It was also reviewed in detail at the last HPB meeting.

Planner Grahn requested that the Planning Commission provide input and direction on what was being proposed. She noted that redlines have not been proposed to the LMC but the Staff would come back with those redlines.

Planner Grahn commented on six topics for discussion as outlined in the Staff report.

- 1) Historic Designations. The Staff was proposing to add a third category called Contributory and it would be for building over years old.
- 2) Define Demolition and modify the LMC definition to include the ANSI definition, which also includes dismantling, razing or wrecking.
- 3) Demolition Permit Review. The HPB has been reviewing demolition requests.
- 4) Noticing requirement for demolition reviews. Currently there is no noticing requirement and the Staff was proposing to be consistent with the requirements for the Historic District Design Review in that 14 days prior to the hearing they would post a property notice on the site, as well as send a mailing notice.
- 5) Demolition by Neglect.
- 6) Criteria for Visual Compatibility.

Following the discussion this evening, Planner Grahn requested that the Planning Commission continue this item to November 11<sup>th</sup>.

Chair Strachan opened the public hearing.

There were no comments.

Chair Strachan closed the public hearing.

Director Erickson clarified that there was a distinction between the LMC changes and the Historic District Design Guideline changes. The distinction was in the visual compatibility section. If the Planning Commission chose to bifurcate due to time constraints, he preferred that they focus on the Land Management Code amendments since those were under the pending ordinance.

Planner Grahn commented on the change under Historic Designation to add the third category of "Contributory". The criteria for Contributory was defined on page 166 of the Staff report.

Commissioner Phillips noted that the Staff report indicated that Contributory sites would be identified through a survey that was not yet completed. He asked when that survey would be completed. Planner Grahn replied that the Staff would set the criteria and the categories. CRSA was currently conducting an intensive level survey of Old Town and the City was looking at hiring another firm to do a reconnaissance level survey of buildings that were identified as contributory. The Staff believed that approximately 113 buildings need to be surveyed. Once they have the survey results the Staff will determine whether they fall under Landmark, Significant or Contributory. Planner Grahn explained that Contributory sites would be listed on a separate list and would not be designated to the Historic Sites Inventory. If an owner receives grant funds for a Contributory building, it would be moved over and protected on the Historic Sites Inventory.

Commissioner Joyce understood that someone interesting in purchasing a historic house would know that the house was considered Contributory before buying it rather than finding out when they want to remodel or do an addition. Planner Grahn replied that he was correct. However, the challenging part is that the 40 year mark keeps moving and the list would be updated periodically to make sure everything is captured.

Chair Strachan asked if it was incumbent upon the owner to find out if the structure is on the list or whether it would show on a title report. Director Erickson stated that it would not come up on a title report. He believed it would be part of the normal due diligence that anyone should do when purchasing property.

Commissioner Band assumed that the Board of Realtors would create a form for it. She had sent the information to the Board of Realtors so they would be aware of what to expect. She thought it would be similar to the addendum that was done for soils.

Director Erickson stated that at a minimum they want to make sure they have an Inventory. The City was not interested in regulating unless a component of a historic building can be redone or a grant is awarded. They also want to make sure they have a record of history after the mining area to present day. That was the reason for the floating 40 year mark. Director Erickson remarked that the types of structures that are Contributory provide the opportunity to a better job of defining neighborhood character because they contribute to the neighborhood.

Commissioner Joyce thought the term “Contributory” was vague. He noted that A-frames are part of the ski culture in Park City and pre-1975, but there is no interest in preserving them. Director Erickson explained that the ski era buildings are contributory in terms of mass and scale, but not particularly for the A-frame design. For example, if someone was looking for a new home in and they see five homes in the neighborhood that are the same size, that would be the neighborhood compatibility for how large the new home could be. Director Erickson clarified that at this point they were not regulating ski era homes, but they want to be able to tell that story 30 years from now. If A-frames go away at least they would be documented.

Commissioner Joyce stated that his question was more about the limitations of what they will allow people to do with Contributory structures. He gave the example of owning an A-frame that was on the list. Planner Grahn explained that the A-frame structure would be evaluated by Staff and reviewed by the HPB. Commissioner Joyce was concerned about going down the path of preserving structures that were previously determined not worth saving.

Commissioner Band asked if the HPB could prohibit someone from tearing down their A-frame structure. Commissioner Phillips pointed out that just like the Planning Commission the HPB Board changes over time and in five or ten years they might be trying to decipher what was intended. Commissioner Phillips was concerned that the process left the door open for more opinionate discretion.

Planner Grahn stated that the Staff intends to create demolition review criteria that the HPB could apply so everyone is treated equally. The Staff would be working with the HPB to define specific criteria to make sure it is a fair review process.

Commissioner Band wanted to know if the HPB would have the purview to deny demolition of a Contributory home. She noted that the Planning Commission was being asked to discuss this issue, but it was difficult without seeing the criteria to understand what could or could not be done. Commissioner Band stated that the process of going through the City for anything is extremely onerous and she was concerned about adding another layer. She agreed with most of what was in the pending ordinance, but she struggled with the idea of Contributory structures because it was very vague.

Commissioner Worel concurred. She was bothered by the vagueness when she read the Staff report. Commissioner Joyce thought the language, “rhythm and pattern of the streetscape” was particularly vague. Commissioner Band was not in favor of leaving anything vague or arbitrary. The HPB review should not be a subjective process. If they establish that the HPB could not keep someone from demolishing a Contributory structure, she questioned why it would go before the HPB. Director Erickson stated that it would be

the same reason that someone would go before the HPB for a Landmark or Significant Site. It is a public decision-making process that is not left to the Staff.

Director Erickson stated that the Staff did not intend to make the language vague; however rhythm, scale and compatibility are terms of art in their profession. The Staff would come back with greater definition on those terms, along with a proper set of criteria. Director Erickson noted that there were only 113 homes to be evaluated and if they do not meet the established criteria they would not be listed.

Commissioner Campbell pointed out that the list would grow every year because of the floating 40 year mark. Commissioner Phillips stated that the citizens should not have to worry from year to year whether their structure might be listed as Contributory.

Assistant City Attorney McLean stated that from a legal standpoint it would be helpful for the Staff to address the Contributory Site. She pointed out that in order to qualify the site would have to meet items A through E on page 166 of the Staff report. She read from Item B, which states that it has to be contributing to the Mining Era Residences National Register District. She interprets that to mean that it would not be just any house. It must be contributing. She asked the Staff to clarify that statement. Ms. McLean felt it was important to recognize that what was being proposed would not prevent demolition of any contributory structure unless it received a grant from the City.

Commissioner Thimm asked if the category of contributory lined up with the contributory definitions that are part of SHPO and part of the National Register. Planner Grahn replied that the answer was yes and no. She explained that SHPO is based on the National Register. The Landmark buildings in Park City are National Register eligible or considered National Register eligible because they are located within the District and contribute. Significant buildings would most likely fall into the Contributory category based on a Reconnaissance level survey. The new Contributory category was more in response to the pending ordinance in trying to review and capture some of the buildings that are not clearly defined by Landmark and Significant.

Director Erickson stated that this was benchmarked across other Districts ranging from Breckenridge to Crested Butte to Denver to San Francisco to Salt Lake City. In most cases they have a category like Contributory. He clarified that the Park City Staff did not invent this category.

Commissioner Thimm pointed out that every year another building becomes 40 or 50 years old. He assumed there would be a survey to actually establish that and he wanted to know how often surveys would be conducted. Planner Grahn replied that currently they only looked at buildings that were 1975 and younger. She noted that in ten years those building

would be 50 years old and some may be National Register eligible. The question is whether they want to save the 40 year old buildings that were built in the 1980s. That is a decision that the community will have to make.

Commissioner Campbell questioned how something that was built in the 1980s would contribute to the Mining Era. Planner Grahn replied that it would depend on how the structure was designed. Commissioner Band stated that it was more about the story of the town. Director Erickson remarked that a replicate building could be contributory to the District and not be eligible for demolition because it received grants. Planner Grahn pointed out that if a Landmark or Significant structure was not allowed to be demolished but the City allowed reconstruction or panelization, it would remain on the Historic Sites Inventory rather than be listed Contributory. Director Erickson stated that if someone wanted to build a structure in 2015 to match a miner's home, it would probably be designated as Contributory 40 years from now.

Commissioner Joyce read from page 167 of the Staff report under Demolition Permit Review, "The purpose behind this provision is to create a vehicle for reviewing and approving the demolition (as defined above), panelization, reconstruction, rotation....of structures that are 40 years or older that are in the H District or identified as historic." He understood that any structure that was already historic would have gone through this review without the pending ordinance. The only new piece is the Contributory designation. Planner Grahn replied that he was correct. She explained that prior to this pending ordinance a panelization or reconstruction project on a Landmark or Significant structure would have been reviewed and approved by Staff. Under this pending ordinance the HPB would make that determination rather than the Chief Building Official or the Planning Director. Commissioner Joyce originally understood that nothing in the process would prevent someone from demolishing a contributory building. However, from Planner Grahn's explanation it appears that the HPB would approve or deny demolition, which means the HPB could prevent a demolition. Director Erickson agreed that the HPB could deny a demolition; however, they would have to work harder to deny at the contributory level.

Commissioner Joyce thought it was important to be clear to the public that under this ordinance a new category of buildings will be required to go through an approval process. Commissioner Band noted that one change with the ordinance is that panelization is considered demolition. Planner Grahn replied that panelization has always been considered demolition, but what is new is that the pending ordinance states that any demolition as defined by the International Building Code requires HPB review. She explained that under the IBC demolition can mean scraping the lot, panelizing or reconstruction. It can also mean cutting a 4" square for a dryer vent because the wood in that 4" square is being demolished.

Director Erickson offered to come back with additional clarification. Commissioner Campbell stated that if the HPB has to work harder to prevent a demolition of a contributory building, he wanted to know what “work harder” means. Commissioner Thimm concurred.

Commissioner Thimm stated that based on his work he was familiar with designations at the 50 year mark. He wanted to know how demolition from 40 to 49 years was different from the year 50. Planner Grahn felt the Staff needed to work on clarification because most of the Landmark and Significant structures are 100 years old. She offered to come back with suggestions to help clarify that process. Commissioner Joyce wanted to know what happens to a 40 year old building that is listed when it becomes 50 years old. Commissioner Worel asked if it would be reviewed again at the 50 year mark. Commissioner Thimm assumed that at the 50 year mark there would be a new survey that might change the designation of a Contributory building to Significant. He thought the process was nebulous as currently proposed. Commissioner Thimm recalled from how it was presented at a previous meeting that there was no change in what happened to a building from year 40 to 49, other than to identify it. He thought it now sounded like the HPB would be reviewing those structures and that review could allow a provision for denial. He believed that was a significant change from what was originally discussed. Commissioner Thimm could not say whether it was right or wrong because it was not clear.

Assistant City Attorney stated that the Staff purposely decided not to put in the redlines because they did not want to spend time redlining Code without knowing what the Commissioners would or would not support. She suggested that Planner Grahn ask questions that would help her bring back the redlines to the Planning Commission.

Planner Grahn commented on the Demolition Permit Review. She stated that currently under the pending ordinance, if a structure is 40 years or older, the HPB was reviewing any materials being removed from a structure, as well as scraping the lot, panelizing, or reconstructing. The Staff met with the HPB to hear their input. Planner Grahn stated that the HPB would like to continue reviewing items that are 40 years or older, but they do not want to review demolition of materials that are not on the historic portion of the structure such as materials from a newer addition.

Commissioner Band was not opposed, but she felt that once an addition goes through the Historic Design Review and is added to the historic structure, the entire structure then becomes historic and should be looked at as a whole. Commissioner Thimm that Commissioner Band’s thinking was consistent with SHIPO in that once a building is designated the changes are the evolution of that building.

Planner Grahn noted that the Historic Preservation Board does not do Design Review. Therefore, the HPB only looks at removal of materials and they do not have a say in what material goes back in its place.

Commissioner Joyce could not understand why the HPB would look at everything over 40 years old regardless of whether it was on the Contributory list or the HSI. He wanted to know the reason for adding the extra step on buildings that were already determined to be historically insignificant. Planner Grahn stated that buildings that were potentially historic were slipping through the cracks, which is one reason for the pending ordinance. The Staff will be relooking at strengthening the Design Guidelines to make sure the HPB has something to compare a demolition to. Director Erickson explained that the HPB has other roles and responsibilities, including preservation of historic neighborhoods. The reaction from the City Council and the public was that neighborhoods were being destroyed because buildings were being demolished, and even the non-historic buildings contributed to the neighborhood. For that reason the City tasked the HPB with protecting the neighborhood in conjunction with other LMC designated authorities.

Chair Strachan used the example of a house that goes through the analysis because it is 41 years old and it is deemed not contributory and completely insignificant. Two years later the owner decides to tear it down he then has to go through another process before the HPB and risk that the HPB could make a different determination. Chair Strachan could not understand why they needed the second process when the structure was already determined to be insignificant and a non-issue.

Chair Strachan stated they should either review all the demolition requests or create criteria for a Contributory structure, but it should not be both. An owner should not have to go through the process twice. Commissioner Band concurred. If the concern was structures slipping through the cracks then every demolition in the Historic District should go through a review process and they should eliminate the Contributory survey. Commissioner Worel agreed.

Chair Strachan was concerned about a slippery slope where the HPB could arbitrarily decide what was contributory because it would be impossible to define the criteria as specifically as they would like without using subjective terms. Commissioner Campbell agreed because what the HPB understands now could be interpreted differently by another HPB Board ten years from now. Commissioner Phillips reiterated that it was one of his biggest concerns.

Planner Grahn thought the Planning Commission had raised good questions and it was something the Staff needed to keep working through.

Commissioner Thimm asked if he was correct in assuming that there was still no definition for demolition. Planner Grahn stated that page 166 of the Staff report contained the definition from the LMC. However, the Staff was proposing to modify that definition to include more about dismantling, raising and wrecking, and to also make clear that it is not part of the CAD process. The revised definition would come back as part of the redlines.

Planner Grahn summarized that the Planning Commission wanted the Staff to clear up the vagueness, provide clarification on the 40 to 50 year process, and to create clear criteria. Chair Strachan also wanted them to revisit the idea of making someone goes through an HPB review twice.

Commissioner Band commented on Demolition by Neglect. She was in favor of strengthening the language, but she questioned how peeling handrails and trim contribute to demolition by neglect. Commissioner Joyce stated that he was trying to figure out how he would apply Demolition by Neglect in terms of what they were asking people to do to the mine sites. He asked for clarification at the next meeting regarding how this affects the mine sites and what Talisker or Vail would be required to do and what the penalty would be if they did not comply.

Director Erickson stated that a topic for another meeting would be Certificates of Appropriateness for Demolition versus Demolition by Neglect versus Building Abatement.

Commissioner Campbell commented on the fact that so many people are not aware of this ordinance and what it means. He asked if it was possible to create publicly searchable registry on the Park City website where a current homeowner or a perspective buyer could quickly find out where their house or potential purchase falls on the list. He thought it was important to publicize the new Contributory category and have the criteria easily displayed.

**MOTION:** Commissioner Thimm moved to CONTINUE the LMC Amendments concerning Historic Preservation to November 11, 2015. Commissioner Campbell seconded the motion.

**VOTE:** The motion passed unanimously.

The Park City Planning Commission Meeting adjourned at 8:55 p.m.

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