



CITIZEN'S PUBLIC HEARING HANDBOOK

Prepared by

Park City Municipal Corporation, City Attorney's Office

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The McPolin Farm was purchased by the Citizens of Park City in 1990 to protect and enhance the entry corridor and maintain open space. The farm is located at the north entrance to the city.



SECTION I. THE PUBLIC HEARING

A. What exactly is a Public Hearing and why is a Hearing part of the process?

A **Public Hearing** is the designated time during a public meeting when the applicable board or commission takes comment from the public regarding a pending application, or other particular matters subject to the jurisdiction of the board or commission. It is the public's reasonable opportunity to give testimony and offer evidence for or against the subject of the hearing. A public hearing process ensures that individuals will be given a meaningful opportunity to be heard before a decision is rendered that may affect their personal or property rights. It is important for citizens to understand that public hearings are generally not held for the purpose of taking a "straw vote," but are usually governed by specific review criteria. Therefore, in order to be effective, citizens must understand the relevant criteria applicable to each particular public hearing or land use decision.

B. Notice - Legal Notice, Published and Posted; Courtesy/Mailed.

Notice of a public hearing must be given in order to fulfill the requirement of due process. The notice requirement is important since it ensures that persons affected by the matter at hand will have sufficient opportunity to attend the public hearing and have the opportunity to be heard concerning their interest in the matter.

Legal notice is the notice required by state and local law, which varies depending on the particular action. Legal notice for land use matters under the Land Management Code of Park City Municipal Corporation (the "LMC") is required for public hearings as set forth in the Notice Matrix in LMC Section 15-1-12. See the Notice Matrix in Section 10 – Reference.

LMC notices must contain a description of the proposed action affecting the property, which is the subject of the public hearing, and the time, place and date set for the public hearing.

Notice is given in several ways. Notice requirements (1) and (2) are mandatory:

- (1) **Posted Notice.** The Planning Department must post notice on the subject property, i.e., the property, which is the subject of the application.
- (2) **Published Notice.** Published notice shall be given by publication in a newspaper having general circulation in Park City. Additionally, state law requires notice to be posted at: www.utah.gov/pmn/index.html.

(3) **Courtesy Notice.** As a courtesy to adjacent property owners affected by the matter set for public hearing, the Applicant shall provide the Planning Department with the following:

- (a) Stamped and pre-addressed envelopes for each property owner of record of each parcel located entirely or partly within three hundred feet (300') from all property lines of the subject property, and
- (b) A mailing list for those owners. Addresses must be obtained from the most recent Summit County tax assessment rolls.

*Courtesy notice is NOT a legal requirement and any defect in courtesy notice does not affect or invalidate any hearing or action by the City Council, Planning Commission, Board of Adjustment, or Historic Preservation Board. Furthermore, proof that notice was **posted** and **published** is enough to establish that notice was properly given.

** Caution: Your attendance at a meeting may waive the right to contest improper notice. For example, if you are an adjacent property owner and you come to the public hearing complaining that you did not receive notice, i.e., no notice, then you likely have waived your challenge as to whether proper notice was accomplished. It is evident that you received some kind of notice since you attended the public hearing!

Some hearings do not require the above notice and must be just listed on the published agenda of the regular meeting: non-land use Municipal Code amendments. Always check the applicable code or state regulation for specific notice requirements.

C. Who attends and why.

- (1) **Commission or Board members.** A quorum of the body must be present to conduct official business, including public hearings. Each body will have a chairperson who is responsible for running the meeting and controlling the public hearing.
- (2) **City Staff.** A senior or mid-manager is usually at each meeting to advise the body on technical issues. For the City Council, it is the City Manager; for the Planning Commission, Historic Preservation Board, and Board of Adjustment, it is usually the Planning Director or Principal Planner, for the Library Board, it is the Librarian and for the Recreation Advisory Board, it is the Recreation Manager. Individual employees assigned to pending applications are also available to present their staff reports. A member of the City Attorney's Office is typically present to answer legal questions.
- (3) **Recorder.** All meetings must have meeting minutes recorded and this is typically done by combination of manual notes by a staff or contract recorder, and an electronic recording device. The body subsequently must adopt each set of meeting minutes at a

public meeting. Meeting minutes and tapes are subject to retention requirements to ensure public access and preservation of official meeting records.

(4) **Applicant/Owner.** When the public hearing is regarding a particular application rather than a legislative matter like a code amendment, the Applicant or a designated representative i.e. attorney/architect is usually present. Since the Applicant is also entitled to due process within the approval process as a whole, and not just the public hearing, the Applicant is generally given an opportunity to address the body after the staff presentation and again in rebuttal to issues raised in the public hearing.

(5) **Public/Press.** State open meeting laws require all public meetings to be open to all citizens unless closed pursuant to specific and narrow exceptions: litigation, property disposition, security or personnel. Representatives of the press are usually present so public hearing participants should not be surprised to see their comments in the local media. Most City Council and Planning Commission meetings are recorded directly by the local public radio station, KPCW.

(6) **Peace Officer.** Rarely, but on occasion, the body may request the presence of a peace officer for security purposes and to keep the peace. This is typically only used in unusually large and contentious meetings. The City Council Chambers has a security camera directly monitored by Police Dispatch and is equipped with an emergency call button.

(7) **Other.** Some bodies have unofficial non-voting liaison members from the City Council or other community organizations like the Chamber of Commerce or the Historic Society. These representatives foster communication between the different levels of government and community leaders.

D. Public Hearing Process – Order of Business.

1. Mayor/Chairperson reads agenda title;
2. City Staff presentation – report and recommendation;
3. Applicant presentation;
4. Council/Board member questions, Applicant and/or City Staff respond to questions;
5. Mayor/Chairperson opens public hearing and invites public to comment;
6. Public comment is taken;
7. Staff/Applicant given opportunity to respond;
8. Mayor/Chairperson closes public hearing;
9. Council/Board discussion - Public comment is no longer allowed unless recognized by the Mayor/Chairperson;
10. Council/Board takes action – motion and/or direction;

E. Types - Legislative v. Administrative/Quasi-judicial.

There are three types of powers under which a governing body such as the Planning Commission and City Council take action in considering issues presented by Applicants.

“Legislative” refers the power to make, alter, amend and repeal laws. Generally, legislative actions are generated in the interest of the general public, they impact more than a single property owner. In planning and zoning, these actions include rezoning requests and amendments to the LMC, both of which relate to changes, alterations, and amendments of the current law. The legislative power granted to local governing bodies allows them to determine public policy for the general health, safety and welfare of the city.

“Administrative” means actions that are necessarily performed in order to carry out legislative policies and purposes of existing law. These actions involve the use of judgment by the governing body based upon criteria and standards of approval set out in the Park City Municipal Code (the “PCMC”) and LMC. In other words, an administrative act is applying existing law to a particular application. Examples of applications requiring administrative action include applications for requests under the current PCMC and LMC, applications for Conditional Use Permits (“CUPs”). For example, an application for a CUP requires the Applicant to meet certain requirements as set forth in the LMC. Deciding whether all requirements are fulfilled pursuant to the current law, the Planning Commission acts in its administrative capacity to approve or deny the CUP application.

“Quasi-judicial” is a term applied to actions of a governing body requiring it to investigate facts, or ascertain the existence of facts, hold hearings, and draw conclusions from them, as a basis for official action and to exercise discretion of a judicial nature. These actions include variances and appeals. Most quasi-judicial actions are a review of matters under an “error of law” standard which determines if the original decision maker made an error as a matter of law in applying a code or standard to a given set of facts or application.

F. Demystification and Deconstruction: The Utah Public Clamor Doctrine.

“Public Clamor” is simply citizen opposition (regardless of facts or technical compliance) to an application or decision by the reviewing body acting in an administrative or quasi-judicial capacity. It usually involves the protests and concerns of interested and often neighboring property owners who object to the matter before the reviewing body, such as a conditional use permit application as presented to the Planning Commission.

The “Public Clamor Doctrine” states that while “there is no impropriety in the solicitation of or reliance on the advice of neighboring landowners, the consent of neighboring landowners may not be made a criterion for the issuance or denial of a conditional use permit.” Thurston v. Cache County, 626 P.2d 440, 445 (Utah 1981). A reviewing body presented with an application must rely on facts, and not mere emotion or local opinion, in making such a decision whether to

deny or approve such application. A reasonable basis on the record must exist to support the decision, not just a straw vote by neighbors.

In other words, the governing body may take into consideration the public input surrounding an application since it is within the scope of due process to allow for public hearings and to allow any interested parties to give information and to present ideas on the matter at hand. However, the governing body cannot solely base its decision on “for” or “against” opinions in rendering its decision. It is the duty of the governing body to gather all available, pertinent information from all possible sources in rendering its decision and apply the applicable standard of review. Accordingly, citizen petitions stating merely support or opposition to a project are of little use in an administrative proceeding such as a CUP application. On the other hand, public input regarding facts that apply to the application (actual data regarding impacts such as traffic, noise, development conditions, parking, safety, etc.) are very useful. Getting this data is a heavy burden on neighbors when faced with technical information from staff and/or the applicant’s experts. If you can’t research the matter further, you may offer testimony based upon your personal observations that either support or contradict the evidence offered by staff or applicant. Another option may be to request that the reviewing body direct staff or the applicant to further research a particular issue and return with the information.

****Testimony tip****

Correctly frame your testimony by starting with: “This application is/is not consistent with the code because...”.

Example:

Public Clamor: “We don’t want Wal-Mart. We hate Wal-Mart. Why don’t you listen to us? We have 100 signatures that say NO WALMART.”

Good Testimony: “This application is inconsistent with the area planning recommendation of the General Plan that says big box retail should be avoided due to its negative impacts on existing small retail and our pedestrian oriented business district. The specific application is inconsistent with the applicable CUP criteria because [need to specify]”.

The public clamor doctrine has no application when a legislative body acts in a legislative capacity. Gayland v. Salt Lake County, 358 P.2d 633, 635-36 (Utah 1961). In other words, when acting in a purely law making, altering, amending, or repealing capacity, the public clamor doctrine has no affect on decisions made by the governing body. This is because when acting in a legislative capacity a body is acting in a direct representative manner of the citizens to determine public policy, rather than applying existing administrative criteria in a process that must also respect the due process rights of the Applicant. Similarly, state initiative and referendum options are only applicable to legislative matters, and not administrative land use decisions. An LMC amendment is subject to voter referendum, but the approval of a CUP is not.

G. Non-Public Hearing Items- Work Sessions

Often a matter is put on only the work session agenda. The work session is the part of the meeting where staff and board or commission typically discuss projects early in the process or handle administrative matters. Applicants may use work sessions prior to public hearings on their projects to get preliminary input early in the regulatory process. Public input may be allowed at the discretion of the board or commission. If there isn't time or public input isn't allowed in work session or later at the regular meeting in a public hearing, you may always provide comment to the board or commission at the beginning of the regular meeting at the time called "public input." However, comment at that time is usually not part of the "record" since the applicant probably won't have notice of or be present for your informal input so you should separately submit your comments to the staff person and request that they are included in the next public hearing staff report.



SECTION II. PROCEDURAL DUE PROCESS

A. What is Procedural Due Process?

In general, due process refers to “how” and “why” laws are enforced. It applies to all persons, citizen or alien, as well as to corporations. The concept of due process is enumerated in the United States Constitution and reiterated in the Utah Constitution.

The 5th Amendment of the United States Constitution provides that “[n]o person shall . . . be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use, without just compensation.” U.S. Const. Amendment V. The reference in the 5th Amendment of the United States Constitution applies only to the federal government and its courts and agencies.

The 14th Amendment of the United States Constitution extends the protection of due process to restrict all state governments, agencies, and courts. It states that “[n]o State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law.” U.S. Const. Amendment XIV, §1. Cities are political subdivisions of the state.

The Utah Constitution provides that “no person shall be deprived of life, liberty or property, without due process of law.” Utah Const. Art. I, §7.

“How” laws are enforced is procedural due process. Is a law too vague? Is it applied fairly to all? Does a law presume guilt? A law must be clear, fair, and have a presumption of innocence to comply with procedural due process.

Fairness in applicability and enforcement of laws is the essence of due process. Due process is flexible inasmuch as it should afford the “procedural protections that the given situation demands.” In re Worthen, 926 P.2d 853, 876 (Utah 1996).

The *minimum* requirements of procedural due process are (1) adequate notice and (2) an opportunity to be heard in a meaningful manner. V-1 Oil Company v. Department of Environmental Quality, 939 P.2d 1192, 1197 (Utah 1997). Affording citizens their due process right is the reasoning behind public hearing and notice requirements.

To be considered a meaningful hearing, the concerns of the affected parties should be heard by an impartial decision maker. Id. Additionally, a record is helpful to allow for judicial review, although if such record is not available or complete, the reviewing body must be allowed to determine the facts to ensure due process is given. Xanthos v. Board of Adjustment, 685 P.2d 1032, 1034 (Utah 1984).

B. Vesting and the Multiple Approval Process.

LMC Section 15-1-17 sets forth when an Applicant is vested. Vesting typically occurs at the time a complete application is filed with the City. Vesting generally means a pending application is free from subsequent zoning amendments or requirements. There are certain limited exceptions that include when amendments were pending at the time of application, or where the Council finds a compelling and countervailing interest in applying new requirements retroactively, a very difficult and seldom used standard.

Vesting is also used to explain when an Applicant is otherwise entitled to certain rights that were granted in a prior approval. This means if someone receives a MPD approval for an overall 100 acre property and subsequently applies for a CUP for 25 acres, the Planning Commission cannot go back and look at the underlying density granted in the MPD. They can only review the project for compliance with the CUP or specific criteria triggered by the next level of application, and overall consistency with the original MPD. This type of vesting usually expires with the termination or expiration of the original approval, but may be preserved by an approved phasing plan.



SECTION III. FINDINGS OF FACT, CONCLUSIONS OF LAW, AND CONDITIONS OF APPROVAL

A. Findings of Fact.

Findings of fact are a determination of specific facts about the application that the reviewing body finds to be true and which led to its conclusion that the application conforms or fails to conform to one or more applicable approval criteria. Findings of fact are legal footprints, the factual foundation for the decision-making body's conclusions as to whether the appropriate standards are met by the Applicant. The decision-making body's decision must be based on the facts supported in the record and the facts must address the appropriate standards. The burden of proof is on the Applicant to meet the standards.

Findings of fact promulgated and adopted by the Planning Commission or City Council are required to be formal in nature. Generic findings, or simple conclusions describing a general consensus among commissioners/councilors do not satisfy the "formal" requirement. In order to pass judicial scrutiny if a decision goes to appeal, the findings must incorporate the specific body of facts upon which the decision rests.

B. Conclusions of Law.

Conclusions of law are the statements of law of the decision-making body based on its finding of facts. Conclusions of law contain the application of the governing law to the facts of the matter. For example, if the findings of fact state that an Applicant met the requirements of a conditional use permit, then the conclusions of law will state the legal requirement and how the Applicant has met the legal requirement. The decision-making body looks to the actual law i.e. the Utah Code Annotated, the Park City Municipal Code, and other legal authority to formulate its conclusions of law.

C. Conditions of Approval.

After consideration of and deliberation about the factual information presented to the decision-making body, the decision-making body renders its findings of fact and conclusions of law. However, the decision-making body may render "conditions of approval" which are conditions required to be fulfilled by the Applicant in order to make the project comply. For example, an Applicant may be required to provide a landscaping plan that conforms to the specified standards before a building permit may be obtained.

Courts in Utah have found that as long as the decision-making body is acting reasonably, a condition of approval will be upheld. The standard of reasonableness is a constitutional standard and the condition must reasonably relate to an adverse or noncompliant impact that would otherwise exist in the project. Conditions cannot be made up subjectively, and must relate to specific standards or they can be challenged as “arbitrary and capricious,” a denial of due process or unlawful delegation of legislative authority.

However, Utah case law has established that when courts review the actions of an administrative body like planning commission, that body's actions are "endowed with a presumption of correctness and validity which the courts should not interfere with unless it is shown that there is no reasonable basis to justify the action taken." Xanthos at 1034. (quoting Cottonwood Heights Citizens Ass'n v. Board of Comm'rs, 593 P.2d 138, 140 (Utah 1979)); see also Springville Citizens for a Better Community v. City of Springville, 1999 UT 25, P24, 979 P.2d 332 (ruling that review of municipality's action is based on whether, in light of evidence before municipality, reasonable minds could reach same conclusion); 2 Antieau, *supra* P 32, § 29.07[2], at 29-59, majority of courts presume that local government legislation is valid and constitutional.

The Applicant has the burden of proving such condition of approval is not reasonable when challenging the decision-making body's action since in the reviewing body, in some cases the Board of Adjustment, and in other cases the District Court, “must not weigh the evidence anew but, instead, must determine whether the record discloses a reasonable basis for the municipality's decision.” See Springville Citizens, 1999 UT 25 at P24, 979 P.2d 332; Xanthos, 685 P.2d at 1035.

So, if as a citizen at a public hearing, you intend to recommend conditions of approval on a project, you should link those conditions to the requirements of the specific review criteria or adverse impacts as substantiated by facts in the record.



SECTION IV. STANDARDS OF APPROVAL

(always check the current code as standards may have changed **)**

A. Conditional Use Permit (“CUP”) Review Process – Park City Municipal Code/Land Management Code Title 15, Chapter 1 General Provisions and Procedures - Administrative.

The City shall issue a Conditional Use Permit so long as the Planning Commission concludes that:

- (1) the Application complies with all requirements of the Land Management Code;
- (2) the use will be compatible with surrounding structures in use, scale, mass and circulation;
- (3) the use is consistent with the Park City General Plan, as amended; and
- (4) the effects of any differences in use or scale have been mitigated through careful planning.

The Planning Department and/or Planning Commission must review each of the following items when considering a CUP:

- (1) size and location of the site;
- (2) traffic considerations including capacity of the existing streets in the area;
- (3) utility capacity;
- (4) emergency vehicle access;
- (5) location and amount of off-street parking;
- (6) internal vehicular and pedestrian circulation system;
- (7) fencing, screening, and landscaping;
- (8) building mass, bulk, and orientation, and the location of the building on the site;
- (9) usable open space;
- (10) signs and lighting;
- (11) physical design and compatibility with surrounding structures in mass, scale, style, design and architectural detailing;
- (12) noise, vibration, odors, steam, or other mechanical factors that might affect people and property off-site;

- (13) control of delivery and service vehicles, loading and unloading zones, and screening of trash pickup areas;
- (14) expected ownership and management of the project as primary residences, condominiums, time interval ownership, nightly rental, or commercial tenancies, how the form of ownership affects taxing entities; and
- (15) within and adjoining the site, impacts on environmentally sensitive lands, slope retention, and appropriateness of the proposed structure to the topography of the site.

B. Master Planned Development (“MPD”) Review Process - Park City Municipal Code/Land Management Code Title 15, Chapter 6 Master Planned Developments – Administrative/Legislative.

(1) **Public Pre-Application Process.** A pre-application conference shall be held with the Park City Planning Department staff in order for the Applicant to become acquainted with the MPD procedures and related City requirements and schedules. The Planning Department staff will give preliminary feedback to the potential Applicant based on information available at the pre-application conference and will inform the Applicant of issues or special requirements which may result from the proposal.

Pre-Application Public Meeting and Determination of Compliance. In order to provide an opportunity for the public and the Planning Commission to give preliminary input on a concept for a MPD, all MPD’s will be required to go through a pre-application public meeting before the Planning Commission. A pre-application will be filed with the Planning Department and shall include conceptual plans as stated on the application form and the applicable fee. The public will be notified and invited to attend and comment in accordance with Sections 15-1-12 and 15-1-19, Notice Matrix, of this Code.

At the pre-application meeting, the Applicant will have an opportunity to present the preliminary concepts for the proposed master planned development. This preliminary review will focus on the General Plan and zoning compliance for the proposed MPD. The public will be given an opportunity to comment on the preliminary concepts so that the Applicant can address neighborhood concerns in preparing an application for an MPD.

The Planning Commission shall review the preliminary information for compliance with the General Plan and will make a finding that the project complies with the General Plan. Such finding is to be made prior to the Applicant filing a formal MPD application. If no such finding can be made, the Applicant must submit a modified application or the General Plan would have to be modified prior to formal acceptance and processing of the application. For larger MPD’s, it is recommended that the Applicant host additional neighborhood meetings in preparation of filing of a formal application for an MPD.

For MPD's that are vested as part of large scale MPD's, the Planning Commission may waive the requirement for a pre-application meeting, but the Commission shall make a finding at the time of approval that the project is consistent with the large scale MPD.

(2) **Findings.** The Planning Commission must make the following findings in order to approve a MPD. In some cases, conditions of approval will be attached to the approval to ensure compliance with these findings.

- (a) The MPD, as conditioned, complies with all the requirements of the LMC;
- (b) The MPD, as conditioned, meets the minimum requirements of LMC Section 15-6-5;
- (c) The MPD, as conditioned, is consistent with the Park City General Plan;
- (d) The MPD, as conditioned, provides the highest value of open space, as determined by the Planning Commission;
- (e) The MPD, as conditioned, strengthens and enhances the resort character of Park City;
- (f) The MPD, as conditioned, compliments the natural features on the site and preserves significant features or vegetation to the extent possible;
- (g) The MPD, as conditioned, is compatible in use, scale and mass with adjacent properties, and promotes neighborhood compatibility;
- (h) The MPD provides amenities to the community so that there is no net loss of community amenities;
- (i) The MPD, as conditioned, is consistent with the employee affordable housing requirements as adopted by the City Council at the time the application was filed;
- (j) The MPD, as conditioned, meets the provisions of the sensitive lands provisions of the Land Management Code. The project has been designed to place development on the most developable land and least visually obtrusive portions of the site;
- (k) The MPD, as conditioned, promotes the use on non-vehicular forms of transportation through design and by providing trail connections; and
- (l) The MPD has been noticed and public hearing held in accordance with this Code.

C. Subdivisions Review Process – Park City Municipal Code/Land Management Code Title 15, Chapter 7 Subdivisions/Plats – Administrative.

(1) **Preliminary Plat Pre-Application Requirements.** Before preparing the preliminary plat for a subdivision, the Applicant should arrange for a pre-application conference with the Planning Department to discuss the procedure for approval of a subdivision plat and the requirements as to general layout of streets and for reservations of land, street improvements, drainage, sewerage, fire protection, mitigation of environmental impacts as determined, and similar matters, as well as the availability of existing services. The Planning Department shall also advise the Applicant, where appropriate, to discuss the proposed subdivision with those agencies who must eventually approve those aspects of the subdivision coming within their jurisdiction; such as, the Snyderville Basin Sewer Improvement District, the Park City Fire Service District, the Park City School District, and the various utility service providers.

(2) **Review of Preliminary Plat.** Staff shall consider and render a report to the next available regular meeting of the Planning Commission concerning the preliminary plat. The Planning Department staff shall transmit the preliminary plat for review to appropriate officials or agencies of the local government, adjoining counties or municipalities, school and special districts, and other official bodies as it deems necessary or as mandated by law, including any review required by metropolitan, regional, or state bodies under applicable state or federal law. The Planning Department shall request that all officials and agencies, to whom a request for review has been made, submit their report to Staff. Staff will consider all the reports submitted by the officials and agencies concerning the preliminary plat and shall submit a report for proposed action to the Planning Commission for the next available regular meetings. Once an application is received, Staff will work diligently to review the application, as quickly as time and workload allows. It is reasonable to expect that an application will appear before the Planning Commission with a recommendation within ninety (90) days of receipt of a complete application. The scale or complexity of a project or Staff workload may necessitate a longer processing period. In such cases, the Staff will notify the Applicant when an application is filed as to the projected time frame.

(3) **Planning Commission Review of Preliminary Plat.** The Planning Commission shall study the preliminary plat and the report of the Staff, taking into consideration the requirements of the subdivision Ordinance and the best use of the land being subdivided. Particular attention will be given to the arrangement, location and width of streets, their relation to sewerage disposal, drainage, erosion, location of mine or geologic hazards, Lot sizes and arrangement, the further development of adjoining lands as yet unsubdivided, and the requirements of the Official Zoning Map, General Plan, and Streets Master Plan, as adopted by the Planning Commission and City Council.

(4) **Preliminary Approval.** After the Planning Commission has reviewed the preliminary plat and the report of the Staff including any municipal recommendations and testimony and exhibits submitted at the public hearing, the Applicant shall be advised of any required changes and/or additions. One copy of the proposed preliminary plat shall be returned to the developer with the date of approval, conditional approval, or disapproval and the reasons therefore accompanying the plat.

(5) **Zoning Regulations.** Every plat shall conform to existing zoning regulations and subdivision regulations applicable at the time of proposed final approval, except that any plat which has received preliminary approval shall be exempt from any subsequent amendments to the Land Management Code rendering the plat nonconforming as to bulk or use, provided the final approval is obtained within the one (1) year period.

(6) **Final Subdivision Plat: Planning Commission and City Council Review.** After considering the final subdivision plat, the Planning Commission shall recommend approval or disapproval of the subdivision application and set forth in detail any conditions to which the approval is subject, or the reasons for disapproval. In the final ordinance, the City Council shall stipulate the period of time when the performance guarantee shall be filed or the required improvements installed, whichever is applicable. Provided, however, that no plats will be approved or released for recording until necessary guarantees have been established in accordance with the Land Management Code. In no event shall the period of time stipulated by the City Council for completion of required improvements exceed two (2) years from the date of the final ordinance.

D. Plat Amendments Review Process – Park City Municipal Code/Land Management Code Title 15, Chapter 7 Subdivisions/Plats – Administrative/Legislative.

The City Council may, on its own motion, or pursuant to a petition, consider at a public hearing any proposed vacation alteration or amendment of a subdivision plat, or any street, lot, alley or public use area contained in a subdivision plat, as provided in Section 10-9a-608 through 10-9a-610 of the Utah Code Annotated (2006) as amended. The standard of review is compliance with applicable subdivision regulations and that neither the public interest nor any person will be materially injured by the amendment.

E. Variances Review Process – Park City Municipal Code/Land Management Code Title 15, Chapter 10 Board of Adjustment – Quasi-Judicial.

Variances shall be granted only if all of the following conditions are found to exist:

(1) Literal enforcement of the Land Management Code would cause an unreasonable hardship for the Applicant that is not necessary to carry out the general purpose of the Land Management Code;

- (2) There are special circumstances attached to the property that do not generally apply to other properties in the same district;
- (3) Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same district;
- (4) The variance will not substantially affect the General Plan and will not be contrary to the public interest; and
- (5) The spirit of the Land Management Code is observed and substantial justice done.

In determining whether or not enforcement of the zoning ordinance would cause unreasonable hardship, the Board of Adjustment may not find an unreasonable hardship unless the alleged hardship is located on or associated with the property for which the variance is sought and comes from circumstances peculiar to the property, not from conditions that are general to the neighborhood.

In determining whether or not enforcement of the Land Management Code would cause unreasonable hardship, the Board of Adjustment may not find an unreasonable hardship if the hardship is self-imposed or economic.

In determining whether or not there are special circumstances attached to the property, the Board of Adjustment may find that special circumstances exist only if the special circumstances relate to the hardship complained of and deprive the property of privileges granted other properties in the same district.

The Applicant shall bear the burden of proving that all of the conditions justifying a variance have been met.

The Board of Adjustment and any other body may not grant use variances.

F. Code and Zoning Amendments Process – Park City Municipal Code/Land Management Code Title 15, Chapter 1 General Provisions - Legislative.

- (1) **Amendments to the Land Management Code and Zoning Map.** All amendments to the LMC must be made in the following manner:
 - (a) Application. An application must be filed first with the Planning Department on a form prescribed for that purpose. The Planning Department, upon its own initiative or at the direction of the City Council, Planning Commission, or Historic Preservation Board may initiate an amendment as provided below.

(2) **Hearings Before Planning Commission.** The Planning Commission shall hold a public hearing on all amendments to the LMC. Notice of amendment hearings before the Planning Commission shall be given by posting notice in at least three (3) public places within the City and providing at least fourteen (14) days published notice in a newspaper of general circulation within the City. The notice must state generally the nature of the proposed amendment, land affected, and the time, place, and date of the hearing. Once opened, the hearing may be continued, if necessary, without republication of notice until the hearing is closed.

(3) **Action By Planning Commission.** Following the hearing, the Planning Commission must adopt formal recommendation(s) to the City Council regarding the matter before it, approving, disapproving, or modifying the proposal. If the Planning Commission fails to take action within thirty (30) days of the public hearing, the City Council may consider the matter forwarded from the Planning Commission with a negative recommendation and may hear the matter.

(4) **Hearing Before City Council.** The City Council must hold a public hearing on all amendments to the LMC. Notice of the hearings shall be given by providing actual notice or posting notice in at least three (3) public places within the City and providing at least fourteen (14) days published notice in a newspaper of general circulation within the City. Once opened the hearing may be continued, if necessary, without republication of notice until the hearing is closed. Following the hearing, the Council must approve, disapprove, or modify and approve the proposal before it. Recommendations of the Planning Commission are advisory only.

(5) **Joint Hearings.** At the option of the City Council, the hearings before the Planning Commission and the Council may be consolidated into a single hearing, provided however, that separate votes are taken by the Commission and the Council. The Commission vote shall be taken first. Notice for any joint hearing shall be given by posting notice in at least three (3) public places within the City and by providing at least fourteen (14) days published notice in a newspaper of general circulation within the City.

(6) **Temporary or Emergency Zoning.** The City Council may, without a public hearing, enact an ordinance establishing temporary zoning regulations for any part or all of the area within the municipality if:

- (a) the City Council makes a finding of compelling, countervailing public interest; or
- (b) the area is unzoned.

Those temporary zoning regulations may prohibit or regulate the erection, construction, reconstruction, or alteration of any building or structure or subdivision approval. The City Council shall establish a period of limited effect for the ordinance, not to exceed six (6) months.

G. Annexation Review Process - Park City Municipal Code/Land Management Code Title 15, Chapter 8, Annexations – Legislative.

Annexations are done at the legislative discretion of the City Council. They generally must be consistent with the General Plan of the Land Management Code.

An annexation agreement would typically specify the zoning of the new area and the parameters as well, much like a master planned development.

State law imposes additional requirements and limitations. The City has adopted Land Management Code Chapter 15-8 Annexation and citizens should follow that process closely.



SECTION V. PREPAREDNESS AS A PARTICIPANT

A. Agenda.

An agenda is the schedule of business for a particular meeting and it lists all items to be considered by the reviewing body at the meeting. You should always get a copy of the agenda in advance so that you have an idea of what time the matter will be heard and how the item is scheduled, work session v. public hearing v. action.

B. Staff Report.

Almost every meeting item has a staff report prepared by a member of the City staff. These reports discuss the background of an application, standard of review, discussion issues, and options for action including proposed findings, conclusions and conditions of approval. Most reports are available a few days before the meeting and a citizen cannot be truly prepared for a public hearing on a matter unless he or she has read the staff report beforehand.

C. GRAMA.

State law ensures public access to records via the Government Records Access and Management Act ("GRAMA"). In addition to the staff report, there may be other City records that will aid your analysis of a project, such as engineer reports or building files, and these records can be obtained by filing a GRAMA request. The forms are available at the Legal Department and usually require a response within ten business days and the City may charge for the cost of copying/producing records. There are exemptions for some types of records, and release of some records may require the permission of the owner of those records.

D. Site Visit/Photos.

It is extremely important to know the site that is subject to the discussion and there is no better way to accomplish this than by going to the property. You should typically view the property for adjoining public right of way unless you have permission to go on the Applicant's property. Photos for use at the hearing are often helpful but should be specific to a point and used judiciously. Meeting the applicant or city staff on-site prior to the hearing might result in a solution that resolves your concern.

E. Meet the Applicant Outside the Regulatory Process and In Advance of the Public Hearing.

Local governments, like judges, rarely make everyone happy. Once applied for, land use approvals are governed by fairly strict review criteria. When possible, you should always try to talk to the Applicant prior to the formal public hearing. Hearings can be formal and defensive, and a meeting in advance may give you an opportunity to understand the Applicant's goals and limitations, determine mutual interest, and find win-win solutions up-front.

F. Pay attention to and participate in zoning amendments.

The most important thing you can do is understand what your zoning currently permits and the criteria by which the local board or commission must review an application against. Even Conditional Uses are permitted if their adverse impacts can be mitigated. Such permits are NOT discretionary. Whenever you see a general plan, zoning or land management code amendment, you should actively investigate and participate in that process because such an amendment may dictate a result later in an actual development application. Engage your community leaders to ensure zoning and planning is consistent with your expectations prior to facing a neighbor's application.



SECTION VI. SUCCESSFUL CONDUCT AT A PUBLIC HEARING

- Know Standards and Direct Comments to Findings of Fact/ Conclusions of Law (FF/C)
- Don't Be Adversarial- Address the Board or Commission; Not the Applicant
- Do Not Repeat
- Do Not Debate
- Never Threaten Litigation
- Have Bullet List Prepared
- Know Your Audience
- Know If Your Audience Knows You
- Use Lawyers at Own Risk – Technical, Persuasive Spokesperson, Problem Solver, Not Blustery Advocate in a Suit
- Respect the Difficulty of the Decision Maker Dealing with Competing Interests
- Do Not Say What You Do Not Know
- Petitions Generally Only Relevant in Legislative Matter; Mob Rule No Effect; Clamor Rule No Effect
- Ask Questions if You Don't Have Direct Evidence
- Be Aware of Time Taken
- Present Facts Not Fiction
- Civility Equals Power
- Do Not Allege Staff Conspiracy or That the Board or Commission Already Made Up Their Minds
- Use Children at Own Risk- most effective when show actual knowledge or interest; least effective when used for guilt or as political ploy

- If the Board or Commission Finds Against You, It Doesn't Mean No One Listened To You. Reasonable People Can Disagree. You Should Be Given A Fair Opportunity and the Board or Commission Should Given the Respect For Their Service and Responsibility For Making Hard Decisions (absent evidence of improper conduct). Being Respectful Will Only Enhance Your Credibility.



SECTION VII. LAND USE APPEALS

A. Final Action.

Once a reviewing body votes on a matter and adopts findings and conclusions of law, the action is final and may be appealed to the next level. The appellate body will vary depending on the type of action, but it is usually the Board of Adjustment except CUP and MPD appeals are heard by the City Council. Certain appeals may be heard by an independent appeal panel. See LMC Section 15-1-18 for more information.

B. Deadline.

Most appeals have to be filed within a certain number of days, usually ten, or they are precluded. If you wish to challenge a matter, make sure you check the appeal deadline in the code or with the City Attorney immediately after the approval so you do not lose your opportunity to appeal.

C. Standing.

The LMC typically limits standing of land use appeals to anyone who testified at the public hearing or submitted written comment, the owner of any property within three hundred feet (300') of the subject site, and city official or board or commission with jurisdiction over the matter, and the owner of the subject property.

D. Process.

Most appeals are quasi-judicial and formal in nature. Usually, the City Attorney will establish procedures with the appellant prior to the hearing. Appeal hearings are typically NOT public hearings and only the official parties have the right to address the reviewing body. The body's final vote and adoption of findings and conclusions of law is final appellate action, appealable to Court.

E. Takings: Property Rights Ombudsman.

If you believe the local government approval/denial constitutes a taking of your property, you may request a local review from the Takings Appeal Board (see LMC 15-1-19) or the Office of the Property Rights Ombudsman. The Utah Office of the Property Rights Ombudsman is within the Department of Commerce for the State of Utah, and is a non-partisan, neutral state office and

is charged with advising government officials and citizens with respect to takings issues and helps resolve disputes and problems between property owners and Utah governmental entities. The attorneys in the Office of the Ombudsman take no sides in a dispute, and advocate for fairness and compliance with state and local laws and ordinances. It can help determine whether state government actions are fair and reasonable. It can investigate and recommend solutions if a government action may violate private property rights or otherwise involve land use regulation by either the state or local government. Prior to appealing to court, a citizen can request mediation, formal arbitration or an advisory opinion through the office of the Property Rights Ombudsman. For more information, go to: <http://propertyrights.utah.gov/>

A request pending with the office of the Property Rights Ombudsman may toll or postpone the deadline for judicial appeal (see below).

Mailing Address:

Office of the Property Rights Ombudsman
State of Utah Department of Commerce
P.O. Box 146702
Salt Lake City, UT 84114-6702

Office Location:

Heber M. Wells Building, 2nd Floor
160 East 300 South
Salt Lake City, Utah

Phone: (801) 530-6391

Toll-free in Utah: 1-877-882-4662

Fax: (801) 530-6338

Email: propertyrights@utah.gov

F. Judicial Appeal.

Appeals usually cannot be made unless the person exhausted their right to appeal within the City process (call “exhaustion of administrative remedies”). The appeal must be filed within thirty days of the final action within the City. The requirements and standard of review is set forth in Utah Code Section 10-9a-801.



SECTION VIII. KNOW THE PLAYERS

See Attached Appendix "A"



SECTION IX. REFERENCES

Summit County Commissioners/Elected Officials www.co.summit.ut.us

Park City Historical Society and Museum Webpage www.parkcityhistory.org

Utah League of Cities and Towns (ULCT) Webpage www.ulct.org

Utah Chapter of the American Planning Association (APA) Webpage www.planning.org

Park City Municipal Corporation (PCMC) Webpage www.parkcity.org

Summit County Library Webpage www.summit.lib.ut.us

City Council	
<p>Andy Beerman 310 Park Avenue P O Box 1570 Park City, Utah 84060 Cell: 435-731-8366 Email: andy.beerman@parkcity.org Term: 1/12-1/16 Liaison: COSAC</p>	<p>Cindy Matsumoto 2816 Silver Cloud Drive P O Box 4647 Park City, Utah 84060 Cell: 435-901-8085 Email: cindy.matsumoto@parkcity.org Term: 1/14-1/18</p>
<p>Dick Peek 750 River Birch Court Park City, Utah 84060 Business: 435-649-7325 Cell: 435-901-3011 Home: 435-649-7325 Email: richard.peek@parkcity.org Term: 1/12-1/16 Liaison: Board of Adjustment, Historic Preservation Board</p>	<p>Liza Simpson 510 Main Street Apt B P O Box 1468 Park City, Utah 84060 Cell: 435-729-0652 Email: liza@parkcity.org Term: 1/12-1/16</p>
<p>Tim Henney PO Box 3927 Park City UT, 84060 Cell: 435-640-4583 Email: tim.henney@parkcity.org Term: 1/14-1/18 Liaison: Parks & Recreation Board</p>	<p>Mayor Jack Thomas 445 Marsac Avenue Park City, Utah 84060 Office: 435-615-5010 Cell: 435-640-9689 Email: jack@parkcity.org Term: 1/14-1/18</p>
<p>City Manager Diane Foster 1992 Chipmunk Way Wanship, UT 84017 Work: 435-615-5151 Cell: 435-901-2802 Home: 435-901-2802 Email: diane.foster@parkcity.org</p>	

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