

PARK CITY MUNICIPAL CORPORATION
PLANNING COMMISSION MEETING MINUTES
COUNCIL CHAMBERS
MARSAC MUNICIPAL BUILDING
FEBRUARY 22, 2012

COMMISSIONERS IN ATTENDANCE:

Vice Chair Julia Pettit, Brooke Hontz, Mick Savage, Adam Strachan, Jack Thomas, Nann Worel

EX OFFICIO:

Planning Director, Thomas Eddington; Francisco Astorga, Planner; Matt Evans, Planner; Polly Samuels McLean, Assistant City Attorney

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REGULAR MEETING

ROLL CALL

Vice Chair Pettit called the meeting to order at 5:30 p.m. and noted that all of the Commissioners were present except Charlie Wintzer, who was excused.

PUBLIC INPUT

There were no comments.

STAFF/COMMISSIONER COMMUNICATIONS AND DISCLOSURES

There were no communications or disclosures.

CONTINUATIONS – PUBLIC HEARING AND MOTION TO CONTINUE

1. 269 Daly Avenue Plat Amendment
(Application #PL-11-01232)

Vice-Chair Pettit opened the public hearing. There were no comments. Vice-Chair Pettit closed the public hearing.

MOTION: Commission Thomas moved to CONTINUE 269 Daly Avenue plat amendment to March 14, 2012. Commissioner Strachan seconded the motion.

VOTE: The motion passed unanimously.

2. Land Management Code- Amendments to Chapter 1, Chapter 10 and Chapter 15 for Special Exceptions (Application #PL-11-01418)

Vice-Chair Pettit opened the public hearing. There was no comment. Vice-Chair Pettit closed the public hearing.

MOTION: Commissioner Thomas moved to CONTINUE the LMC Amendments to Chapter 1, Chapter 10 and Chapter 15 to March 28, 2012. Commissioner Worel seconded the motion.

VOTE: The motion passed unanimously.

REGULAR AGENDA - DISCUSSION/PUBLIC HEARINGS/ POSSIBLE ACTION

1. 60 Sampson Avenue – Ratification of Findings for Conditional Use Permit (Application #PL-11-01369)

Assistant City Attorney McLean explained that this item was a ratification of findings for denial of a CUP to allow nightly rentals at 60 Sampson Avenue, based on a 3-2 split vote at the last meeting. Prior to ratification, the Commissioners who were present and voted at the last meeting needed to determine that the findings correctly reflected the basis for their vote. If the motion that carried was represented in the findings, the Commissioners should support the vote to ratify. Ms. McLean clarified that the decision requested this evening was not another vote on the decision to allow nightly rental at 60 Sampson Avenue. It was a vote to accept the findings that correctly reflect the vote of the majority of Planning Commissioners.

Planner Matt Evans corrected the first sentence of Finding of Fact #13 to read, "The Planning Commission finds that Criterion #4 (Emergency Vehicle Access) cannot be mitigated for the same reasons as found in Criterion #2". He noted that the sentence as written incorrectly stated Finding of Fact #2.

Planner Evans referred to Conclusions of Law #1, and deleted the word possibly from the language.

Commissioner Savage referred to Finding of Fact #14, which stated that there were only two parking spaces at the location. He noted that the Finding did not address whether or not the applicant would have been willing to stipulate to restricting the parking to no more than two vehicles if the house was rented. Commissioner Savage asked if that dialogue would only take place during the appeal process. He wanted it clear that the Planning Commission had not engaged in a discussion about willingness to mitigate that concern when it was expressed by the Planning Commission. Commissioner Savage recalled that when the Planning Commission first reviewed the application, the Planning Staff had indicated that there were no unmitigated impacts on many of the criteria that were not considered unmitigated impacts. He pointed out that there was no discussion on possibilities related to strategies for mitigation that would have allowed the CUP. Commissioner Savage asked if that could be addressed in the appeal process or if that discussion would occur at the Planning Commission level.

Assistant City Attorney McLean explained that an appeal of a conditional use permit goes to the City Council. It is a de novo appeal, which means that the City Council would re-evaluate the

conditional use permit and make their determination. Therefore, the City Council is able to evaluate each point in terms of whether or not each criteria was mitigated. Ms. McLean stated that the Findings should be based on the actual discussion that took place.

Commissioner Savage pointed out that Finding of Fact #14 was only one example. He could find similar discrepancies in other findings. Regarding Finding of Fact #14, he did not believe there was a complete discussion in terms of whether the applicant would or would not have been willing to take efforts to mitigate the parking concerns. If that could still occur in conjunction with the appeal process, Commissioner Savage was comfortable ratifying the Findings as written.

Vice-Chair Pettit stated that she was absent from the last meeting and was not part of the discussion. However, she recalled seeing a discussion in the Staff report about using the rental agreement as a mechanism for mitigation. Her interpretation from reading the minutes was that the Planning Commission discussed that element, and from the perspective of enforcement believed that a restriction in the rental agreement was not adequate mitigation.

MOTION: Commissioner Hontz moved to RATIFY the Findings of Fact and Conclusions of Law to deny the request for a conditional use permit for nightly rental at 60 Sampson Avenue according to the Findings of Fact and Conclusions of Law as amended. Commissioner Strachan seconded the motion.

VOTE: The motion passed 4-0-2. Commissioners Pettit and Worel abstained from the vote since they were absent from the February 8th meeting.

Findings of Fact – 60 Sampson Avenue

1. The property is located at 60 Sampson Avenue. The property is improved with a 3,800 square foot, four bedroom, five full-bath, single family house.
2. The subject property is located within the Historic Residential Low Density (JRL) zoning district.
3. The house at 60 Sampson Avenue is located on an approximately 6,500 square feet (.15 acres) lot. Minimum lot size in the HRL district is 3,570 square feet.
4. The historic portion of the home is 1,818 square feet and was constructed in 1909 with a 1,953 square foot addition completed in 2008. The house has 4 bedrooms.
5. Nightly rental uses are subject to a Conditional Use Permit in the HRL district.
6. Access to the subject property is off at Sampson Avenue with frontage onto King Road, both are public streets.
7. Sampson Avenue and King Road are very narrow roadways. The paved width of Sampson Avenue is 12 feet wide, which is not wide enough for two cars to pass each other. There is also no on-street parking available on Sampson Avenue. Testimony from residents

suggests that this street has had difficulty being accessed by emergency vehicles in the past.

8. There are no legally established nightly rentals on Sampson Avenue. The Finance Department has confirmed that there are no business licenses issued for Nightly Rentals on Sampson Avenue.
9. Requiring additional cars to park in China Bridge in the rental agreement does enforce such a requirement and the Landlord has no incentive to enforce such a condition.
10. There are three separate sets of stairs and over 250 stairs from China Bridge making it unlikely that nightly tenants would actually use China Bridge as an alternative parking area. There is no on street parking in the vicinity of the residence.
11. Trash is a problem with nightly rentals because tenants often leave on a Monday and the trash is put outside; however, the garbage pick-up isn't until Thursday. No mitigation for this impact has been proposed.
12. The Planning Commission finds that Criterion #2 (Traffic) of Section 15-2.1-2, LMC, cannot be mitigated because traffic on the roads leading to the applicant's property, and the street where the proposed nightly rental is located, are narrow roadways that may become subject to closure during a major storm event, such as snow or rain, and that renters may not be able to access the home because there are times when both King Road and Sampson Avenue are not passable by a automobile. One must drive on steep hills to access Sampson Avenue, and it is not possible for two cars to pass each other on the road.
13. The Planning Commission finds that Criterion #14 (Emergency Vehicle Access) cannot be mitigated for the same reasons as found in Criterion #2 that the roads leading to and from the proposed nightly rental are narrow roadways that may become impassable during major storm events, such as snow or rain, and that testimony from the public suggests that emergency vehicles tend to get stuck turning from Sampson Avenue during normal weather, making emergency vehicle access to the nightly rental subject to delay. The Planning Commission further finds that the night rental may increase the need for emergency vehicle access to the area, and that such an increase would burden the neighborhood because of the narrow roadways.
14. The Planning Commission finds that Criterion #5 (Location and amount of off-street parking) cannot be mitigated due to the fact that there are only two parking spaces at the proposed location for the nightly rental, and due to the fact that the existing home is 3,800 square feet, has four bedrooms, five bathrooms and sleeps an undetermined number of people and could potentially accommodate a large gathering of individuals, and there is no way for the City to enforce a maximum gathering of occupants for the nightly rental, and the fact that there is no on-street parking available at this location due to the fact that Sampson Avenue is in essence a 12-foot wide one-way road with no on-street parking near the proposed nightly rental, and that Kind Road has the same physical conditions as Sampson Avenue, causing a potentially dangerous situation for those trying to park near the home.

15. The Planning Commission finds that Criterion #6 (internal circulation system) cannot be mitigated due to the fact that both Kind Road and Sampson Avenue are narrow roadways which in essence function as one way streets, and that circulation in the area is usually difficult even if not complicated by frequent major storm events, and that the nightly rental could generate additional trash or additional service needs, and that those could potentially cause an increase of the level of traffic generated from outside of the area, and that the streets leading to and from the proposed Nightly Rental are local streets that are more than likely at a failing level of service because they do not meet current City Street Standards for asphalt width and snow storage.
16. The Planning Commission is concerned that Criterion #14 (Expected ownership and management of the property) would be difficult to mitigate due to the fact that there are no provisions in the LMC to require that a local property management company oversee the nightly rental. The owner of 60 Sampson Avenue, who's primary residence is in New York, would be an absentee landlord and would not be able to ensure that issues related to trash and loud parties at the home could be taken care of to the satisfaction of the neighbors or the City. The burden of dealing with issues related to trash, loud parties, and other issues related to Nightly Rentals, is unfairly shifted to the neighborhood and the City to handle.
17. The Planning Commission finds that the condition to require off-site parking during times when King Road or Sampson Avenue may become impassable during periods of heavy snow or other inclement weather, un-enforceable, and thus un-reasonable to impose.

Conclusions of Law – 60 Sampson Avenue

1. The proposed conditional use permit has conditions that cannot be mitigated, including those found in criterion #2, #4, #5, #6 and #14 of Section 15-2.1-2 of the Park City LMC.
2. The condition of approval to require off-site parking during heavy snow events or other inclement weather make King Road or Sampson Avenue impassible is un-enforceable by the City, and thus is an unreasonable condition of approval.

Order: The Conditional Use Permit for Nightly Rental at 60 Sampson Avenue is hereby denied for the reasons specified within the Findings of Fact and Conclusions of Law listed herein.

2. Ridgepoint at Deer Valley – Amendment of Record of Survey (Application #PL-11-01328)

Planner Evans reviewed the request to amend the Ridgepoint at Deer Valley record of survey as outlined in the Staff report. The amendment would convert what was originally labeled "balcony" to "limited common ownership". The request would also change the entryways of 26 of the 38 units to enclose their front porch areas shown as private ownership. Planner Evans noted that the amendment would increase the total square footage of private ownership by 926 square feet for a net result of 16-48 square feet of living space for 26 of the 38 units.

Planner Evans presented photos showing the existing entry for most of the units. He then reviewed photos of the proposed entries if the amendment was approved.

Planner Evans stated that the change from 926 square feet and the addition would not create any non-conformities or increase the units to a square footage that would require additional parking. The changes were nominal from the original construction. Planner Evans pointed out that some of the unit owners had already made the proposed changes and those owners would need to obtain building permits to make the changes legal. He clarified that the language change from "balcony" would only rename the decks to what they should have been called originally, which is limited common ownership. Planner Evans referred to areas in pink which identified the areas that would become incorporated into habitable living space. He noted that the Staff report included all the units that would be amended.

Commissioner Thomas clarified that the amendment would create a vestibule entry for 26 units. Planner Evans replied that this was correct.

Commissioner Savage understood that some of the units had already made the change, but it was done so without a permit or approval. Planner Evans answered yes, and pointed out that some of the units may have obtained permits in the past. Commissioner Savage asked if all the owners were required to change the entry or if it was up to each individual owner. Planner Evans stated that the plat amendment would allow owners to enclose the entry, but individual owners could choose whether or not to do it. The only difference would be private ownership with four walls or private ownership with two walls.

Vice-Chair Pettit asked if penalties are imposed when modifications are made illegally without permits or approval. She felt that some owners would be rewarded for their infraction if the plat amendment is approved. Vice-Chair Pettit was concerned about setting a precedent for the community.

Assistant City Attorney McLean stated that it was a question for the Building Department because she was unsure if fines or other penalties were assessed for working without a permit. Ms. McLean remarked that it is always a challenge when faced with the issue of granting forgiveness rather than permission. She understood that some of the units may have had building permits and the Staff signed off on them without realizing that it was not allowed at the time. In those cases, forgiveness was easier. However, she believed the Building Department had some type of ramification for those who did the work without a permit.

Vice-Chair Pettit opened the public hearing.

There was no comment.

Vice-Chair Pettit closed the public hearing.

MOTION: Commissioner Thomas moved to forward a POSITIVE recommendation to the City Council for the Ridgepoint at Deer Valley condominium plat consistent with the Findings of Fact,

Conclusions of Law and Conditions of Approval found in the draft ordinance. Commissioner Worel seconded the motion.

VOTE: The motion passed unanimously.

Findings of Fact – Ridgepoint at Deer Valley

1. The property is located at approximately Ridgepoint Lane at Woodland Drive.
2. The property is within the Residential Development (RD) District with Master Planned Development (MPD) Overlay, subject to the Deer Valley MPD.
3. The Plat Amendment allows a total of 926 square feet of “limited common space” to be converted to private ownership in 26 of the 38 units and would allow the front entry ways of each eligible unit to be enclosed.
4. The proposed amendment to the record of survey plat allows the area marked as “balcony” to be re-labeled as “limited common” area.
5. The Trustee of the Ridgepoint Homeowners Association have given unanimous consent to the proposed plat amendment.
6. The Homeowners association voted 91% affirmative to approve the proposed change with none of the affected owners voting not to amend.
7. The proposed plat amendment will not cause any nonconformities or noncompliance with the Residential Development (RD) Zone Designation or the Deer Valley MPD as there is no increase in the total number of units or the building footprint, setbacks, or building height.
8. Although the proposed amendment will increase the habitable living spaces for 26 of the 38 units, the amended plat will not require additional parking because none of the units will exceed 2,500 square feet, which is the maximum square footage allowed before the parking standard increased from two-spaces per unit to three-spaces per unit.

Conclusions of Law – Ridgepoint at Deer Valley

1. There is good cause for this Amendment to the Condominium Record of Survey Plat.
2. The Amendment to Record of Survey 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 Amendment to Record of Survey Plat.
4. Approval of the Amendment to Record of Survey 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 – Ridgepoint at Deer Valley

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. The approval of this plat amendment does not automatically permit the owners of Ridgepoint at Deer Valley the right to incorporate the newly revised private ownership areas as living space. Each individual owner shall be required to obtain the necessary Building Permits from the Building Department before any construction to enclose the entry areas can commence.
 4. Patio and deck areas shown as "limited common ownership" are not to be converted to living space, nor are additional structures, including new roof covers, etc. allowed within these areas. The limited common ownership of deck and patio space is specifically for the personal enjoyment of each individual owner directly in back of unit as shown on the amended plat, and subject to normal maintenance and repair as deemed appropriate by the Homeowners Association.
3. **1790 Bonanza Drive, Rail Central – Conditional Use Permit**
(Application #PL-11-01406)

Planner Francisco Astorga reviewed the application for a conditional use permit at 1790 Bonanza Drive, Rail Central. The applicant was proposing to attach 12 antennas to the side of the existing elevator shaft tower, which houses the mechanical equipment for the elevator; and to build some type of enclosure with a synthetic material that would hide the antennas from view. The proposed material mimics the appearance of any material and it allows the radio frequencies to travel without being disrupted. Planner Astorga noted that the applicants were also proposing to build a small 10' x 20' addition on the front to house additional equipment associated with the antennas.

The Staff spent a significant amount of time working with Don Shively, Mike Sweeney and Mark Fischer to achieve an appropriate design. The Staff requested that the Planning Commission conduct a public hearing and provide input this evening regarding the height.

Planner Astorga reviewed the exhibits attached to the Staff report showing the site and how the antennas would be installed. He stated that the proposal would increase the height an additional five feet above the existing height of the tower. Currently the tower is 38.5 feet and that would be increased to 43.9 feet. There were no height issues with the proposed addition in the front. Planner Astorga showed how the proposed height would relate to the height on the clock tower, which received an exception by the Planning Director in 2005. At that time, the LMC allowed up to

50% of the maximum height in the District for certain architectural features, per approval by the Planning Director.

Planner Astorga presented simulations that the applicant had prepared to indicate the expansion. He also presented the technical data showing the coverage AT&T would have in that area compared to the existing coverage.

Planner Astorga stated that Mr. Fischer would like to change the parking plan. The proposed plan allows for change without going into any open space. Mr. Fischer would like to add additional parking by changing the configuration of the existing 11 parking spaces. His plan would eliminate two of the existing eleven spaces, but the reconfiguration would add 8 spaces without affecting the current circulation pattern. Planner Astorga noted that the parking plan had been reviewed by the City Engineer, the Fire Marshall and the Building Department.

Mike Sweeney, representing the applicant, presented photos he had taken of current antennas for cell coverage around town. He noted that five different service providers have antennas throughout the City.

Commissioner Savage asked where the existing AT&T antennas were located. Don Shively, representing the applicant, identified the AT&T antennas, which included Quarry Mountain and Park Meadow Resort. He noted that the proposed location on Kearns Boulevard would meet the service demands in that area.

Mr. Sweeney reported that Sundance had asked AT&T to install three temporary antennas in order to handle the increased load of calls during Sundance and to minimize the number of dropped calls.

Commissioner Worel stated that page 32 of the Staff report indicated that the existing cellular sites were not at maximum capacity. Mr. Shively believed that was a typographic error by Staff because that is not the position of AT&T, as evidenced by the request for additional antennas during Sundance. The existing antennas are maxed out and AT&T was looking to provide additional services required by Smart Phones and iPhones.

Planner Astorga clarified that it was a typo when he wrote the report and he apologized for the error.

Commissioner Thomas indicated the stone veneer on the exterior of the building, and he assumed that would not affect the efficiency or operation of the antenna on the inside of the building. Mr. Sweeney explained that the antenna would be placed on the outside of the rock on the elevator shaft. AT&T took a mold of the shaft and they intend to duplicate the rock with a synthetic material. That material is a fiberglass and the signal would transmit through that material. Mr. Sweeney pointed out that the antenna would not be visible.

Commissioner Thomas pointed out that the process would create a synthetic rock, which is prohibited by Code. Mr. Shively stated that AT&T would prefer not to cover or hide the antennas because of the weight load and engineering issues. However, because the ordinance requires

antennas to be hidden, it is necessary to have some type of composite that would cover the antennas without interfering with the transmission. Commissioner Thomas suggested that AT&T use a material that does not look like rock and is allowed by Code. He thought a change in material and shift in elevation would help mitigate the visual impact of the mass and height. Commissioner Thomas struggled with the idea of a synthetic material made to look like stone.

Planner Astorga stated that the applicant chose the rock in an effort to move forward with the existing material. He understood that Commissioner Thomas was suggesting that the applicant look at a different material that would still meet the synthetic component for transmitting radio waves, but not mimic rock. They should look at vertical siding or a different material altogether. Commissioner Thomas referred to the elevation shown on the screen and suggested that changing the material for the last five feet would minimize the visual impact of the tower.

Mr. Shively commented on the ability to make the synthetic material look like brick with a mortar, and painted to match any color. It could also be made to look like stucco. Mr. Shively clarified that AT&T only followed the existing design of the tower, but they were willing to change the look if the Planning Commission preferred something different. Commissioner Thomas stated that was not trying to design the project, but he would favor a transition to stucco with a ledge and detail. It would be consistent with the Code and help the aesthetics.

Vice-Chair Pettit opened the public hearing.

Mary Cook stated that she liked the proposed design and her comments were directed to other issues. She lives in the Homestake Condominium, which is between an eighth and a half-mile away from this location. Ms. Cook was appalled to hear that there would be 12 transmitters in the tower. She wanted to know what studies were done that would assure nearby residents that they would not be affected by the electro-magnetic currents.

Mr. Shively replied that they were following the FCC guidelines.

Ms. Cook was not satisfied with the FCC guidelines. She wanted to know what information AT&T could provide to let the neighbors know what types of transmission would be taking place.

Vice-Chair Pettit informed Ms. Cook that the public hearing was her opportunity to make comments and express her concerns to the Planning Commission, and not to question the applicant. Based on her comments, the Planning Commission could ask further questions of the applicant.

Ms. Cook acknowledged that she should have raised the question several weeks ago when she became aware of the application. However, she initially thought it was a cell phone tower, which is a very different issue from 12 antennas with a much higher transmission. Ms. Cook thought it was important to consider the health impacts to the neighbors, as well as potential future residents, in terms of the amount of electro-magnetic wave energy that would be transmitted from the tower.

Ms. Cook stated that at one time she worked for a defense contractor and her position was to move within different departments and work with them on how to solve particular problems in their

department. She was exposed to a lot of information that most people would not hear about. A study was conducted on radio transmissions and following that study the company she worked for moved all their transmission equipment away from where people were positioned to work all day.

Ms. Cook requested information from AT&T on how much electro-magnetic energy would be generated from this tower. She noted that Homestake residents already experience interruption in their electronic equipment from the one temporary tower in the Yard that was supposed to be removed in May. Ms. Cook emphasized the importance of learning how this particular project would impact the human system.

Vice-Chair Pettit closed the public hearing.

Commissioner Worel asked if there was a potential for the cell phone signals to conflict with the power service if the Rocky Mountain Power Station was relocated to other proposed sites nearby. Mr. Shively answered no, and explained that it is common practice for the telecommunication industry to put communication sites and poles next to substations.

Commissioner Savage wanted to know why AT&T was using the back chimney instead of the clock tower. Mr. Shively replied that the effort was to keep all the antennas in one place so they would not have to split the co-axial cable that transmits the signals from the antenna down to the 10' x 20' shelter. Commissioner Savage pointed out that the clock tower was closer to the 10' x 20' shelter than the chimney. Mr. Shively agreed that it was closer, but they were following the Park City ordinance that required mitigating the visual impacts. For that reason, they felt a better solution would be to hide the antennas with a wall around the tower as opposed to filling out the clock tower.

Commissioner Savage asked if the structure of the clock tower would prohibit the ability to add the antennas to the clock tower. Mr. Shively stated that the antennas themselves are 8' x 12", plus the arm that enables them to adjust the signal. To enclose the clock tower would detract from its appearance. Commissioner Savage stated that if there is open space inside the clock tower and they could simulate the exterior to look however they want, he questioned why they could not build the antennas into the clock tower and make it look like the clock tower. Mr. Shively explained that the clock tower would be sufficient for the direction going up Bonanza Drive and into downtown Park City; however, without the elevated penthouse on the tower, it would drop the signal going down Kearns Boulevard to Highway 40. Commissioner Savage understood that the existence of the elevator shaft precluded the ability to use the clock tower as the antenna site. Mr. Shively replied that it would preclude the ability to accommodate all three sectors.

Commissioner Worel asked if the clock tower would block the signals from the elevator shaft, since the elevator would apparently block the clock tower. Planner Astorga replied that the antennas do not go west. They only go north, south and east. Mr. Shively stated that the system was intentionally designed not to look towards the clock tower. He explained that the design could not be done in reverse because the main goal is to provide coverage on Kearns Boulevard from the main road coming in. Accepting Mr. Shively's position at face value, Commissioner Savage agreed with Commissioner Thomas on achieving a design that would complement the appearance of the tower as opposed to building on what already exists. Mr. Shively reiterated his willingness to accept aesthetic input from the Staff and Planning Commission. The main goal for AT&T is to

provide service for the community and to work towards a design that meets the needs of the community.

Commissioner Thomas was comfortable asking the applicant to submit sketches to the Staff for review. He reiterated his preference to move away from the synthetic stone and to consider stucco or another material.

Vice-Chair Pettit requested additional information on electro-magnetic impacts. Criteria 12 requires the Planning Commission to evaluate noise, vibration, odors, fumes, or other mechanical factors that might affect people and property off-site. She noted that the Staff analysis identified no unmitigated impacts; however, not being an expert on the effects of electro-magnetic signals coming out of cell towers, she wanted to learn more about it to address the public comment this evening and to make a finding. Planner Astorga remarked that the Staff analysis was based on the applicant's submittal. Vice-Chair Pettit assumed this issue was raised all the time. Mr. Shively replied that it rarely comes up because under the 1996 Telecommunication Act by Congress, certain things cannot be excluded or precluded in any decision regarding a communication site. As long as they follow the FCC Guidelines and Operations, the obligation has been met. Mr. Shively stated that AT&T then works with communities to achieve an appropriate design for their community. He clarified that the design followed the ordinance and the application is conditioned on meeting the design criteria imposed by the Planning Commission. Vice-Chair Pettit thought the issue went beyond design criteria.

Assistant City Attorney McLean clarified that Vice-Chair Pettit was asking the applicant to provide the data behind meeting the FCC guidelines so any issue in question could be reviewed to make sure it meets the FCC requirements. Vice-Chair Pettit clarified that based on Criteria 12, it was important to make sure that the installation of the proposed antennas would not impact people off-site. The Planning Commission needs to evaluate the criteria and determine no unmitigated impacts. She was requesting additional information to help make that determination. Vice-Chair Pettit suggested that the applicant provide available data or information on health impacts to help the Planning Commission understand the strength of the frequencies emitted.

Planner Astorga stated that he concluded that there were no unmitigated impacts based on a statement from AT&T. There was no clear evidence to draw that conclusion.

Mr. Sweeney noted that there would be three antennas on three sides. He was unsure why the Staff report indicated 12 antennas. Mr. Sweeney did not believe this proposal was different from what other telecommunication providers have throughout the community. Commissioner Savage clarified that the Planning Commission was asking the applicant to provide quantitative data showing that the proposed system fits within the guidelines required by the FCC.

In response to an earlier comment by the applicant that Park City only allows enclosed antennas, Planner Astorga pointed out that the Code allows a free-standing antenna, a roof mounted antenna, a wall mounted antenna and the enclosed antenna. He wanted it clear that the applicant had requested an enclosed antenna.

Commissioner Savage understood that the height would increase by five feet, and he asked about an increase in the depth and width. Mr. Shively replied that it would be 3-1/2 feet x 4-1/2 feet. Commissioner Savage referred to an earlier comment about putting a cap on top of the stone, and noted that the expansion and the dimensionality of the cube would go all the way down the base of the cube. It would not be part of the natural stone. Mr. Shively replied that this was correct. Commissioner Savage stated that the applicant needed to come back with a different design that would allow them to use the synthetic material in a way that would complement the clock tower.

Commissioner Hontz concurred with Commissioners Thomas and Savage. She would like to see the synthetic material look different from the rock, as well as a difference from the bottom portion to the top portion. Commissioner Hontz also concurred with Vice-Chair Pettit on the request for additional information to evaluate health impacts. Commissioners Worel and Strachan agreed.

Vice-Chair Pettit asked about the height in conformance with Code. Planner Astorga stated that the height in the GC District is 35'. The Code allows an exception to 40' feet if the roof pitch is 4/12 or greater. The Code then allows an additional five feet for these types of antennas and so forth. Planner Astorga remarked that the issue is based on the sentence, "And similar structures may extend up to five feet above the highest point of the building". The Staff believes that the intention of the Code is the highest point of the roof, even though it was written as "the highest point of the building". The applicant argues that the antenna is a few feet below the highest point of the building. Planner Astorga wanted to make sure that the Staff, the Planning Director and the Planning Commission were all on the same page as far as interpretation of the Code. Planner Astorga stated that an argument could be made that the building is at 34.5 and not built to the highest roof pitch of 40 feet. That allows some leeway of going 40 feet plus 5 feet or staying at the existing ridge at 34.5" and 5 feet from that point. Planner Astorga remarked that the issue comes down to Code interpretation. Director Eddington clarified that the Staff interpretation has always been the height of the roof. He noted that the clock tower itself was an exception and they would not be able to build an exception on an exception.

Vice-Chair Pettit stated that if everyone agreed with measuring from the roof height, what LMC tool would allow the requested structure. Commissioner Hontz believed the applicant would need to request a variance. Vice-Chair Pettit understood that the clock tower was an exception that was granted administratively, because it fell under the church spire, bell tower and a light architectural feature that can extend an additional 50% of the height. Planner Astorga replied that this was correct. Vice-Chair Pettit questioned whether this proposal was a similar architectural feature that might qualify for a height exception that would be administrative versus coming back to the Planning Commission. It would not require a variance because the height exception would be within the purview of the Code. Director Eddington agreed that it could be looked at as a light architectural feature that could extend above the height of the roof.

Planner Astorga remarked that the Code also indicates that an elevator penthouse may extend 8 feet above the roof. However, in looking at the actual definition, it is the minimal area necessary to house the mechanical equipment for the elevator. It could be argued that if the "minimal" is already there, it could not be extended further because a functional elevator exists at that site.

Assistant City Attorney McLean asked if there was consensus among the Planning Commission that the chimney feature was a light architectural feature, subject to administrative approval. Commissioner Savage thought it would depend on the design.

Mr. Shively asked if the proposed site was acceptable as long as they provide documentation showing that that it was within the guidelines of the FCC regulations and meets the design criteria outlined in the Staff report.

Vice-Chair Pettit requested legal analysis on Mr. Shively's question regarding the FCC. Assistant City Attorney McLean stated that typically Federal Law would usurp Local Law. Vice-Chair Pettit thought the matter needed further consideration from the standpoint of health and safety in conjunction with location and proximity to residents. She realized that their hands may be tied by federal regulations, in which case, if the applicant would have complied with all the guidelines, it would be out of their purview. Ms. McLean offered to include information in the next Staff report to address that issue.

Vice-Chair Pettit questioned the similarity to a light architectural feature. Bell towers and church spires are icons that have some meaning to a community. She personally did not believe a chimney would fall in that same category. Commissioner Strachan agreed. Commissioner Thomas disagreed and explained his reasons from the perspective of an architect. He believes the chimney features becomes the anchor of the building. Commissioner Thomas remarked that in his opinion material and height were the issues.

Mr. Shively asked if fiberglass was a permissible material. Director Eddington replied that there is an exception for certain fiberglass materials, but only if a similar material has been used in that area. Mr. Shively referred to an earlier comment by Planner Astorga that the applicant made the decision to enclose the antennas, but enclosure was not required. He understood from that comment that he could put up his antennas if they were similar to other designs throughout the City. Planner Astorga replied that it would still need to meet the height requirements and it would require a conditional use permit.

Director Eddington summarized that Commissioner Thomas was suggesting that the applicant come back with a better designed feature with certain materials that would look appropriate in that space. Director Eddington stated that if the applicant comes back with a design that is truly an architectural feature, he could work with that and he assumed Commissioner Thomas could also.

MOTION: Commissioner Hontz moved to CONTINUE the CUP application for 1790 Bonanza Driver to March 14, 2012. Commissioner Thomas seconded the motion.

VOTE: The motion passed unanimously.

The Planning Commission adjourned the regular session and moved into work session. That discussion can be found in the Work Session Minutes dated February 22, 2012.

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The Park City Planning Commission meeting adjourned at 6:45 p.m.

Approved by Planning Commission: _____