COMMISSIONERS PRESENT:

Ryan Dickey, Chair
Thomas Cooke
Joel Fine

STAFF PRESENT:

Peter Barnes– Planning & Zoning Administrator
Amir Caus - County Planner
Ray Milliner - Principal Planner
Canice Harte
John Kucera
Crystal Simons
Malena Stevens
Patrick Putt - Community Development Director
Jami Brackin - County Attorney
Kathy Lewis - Secretary

The meeting was called to order at 4:30 PM.

REGULAR SESSION

1. General Public Input

   The public hearing was opened. No comments were made and the public hearing was closed.

2. Public hearing and possible action regarding a Bed and Breakfast Inn, in the Rural Residential (RR) zone. The proposal maintains the same footprint of the existing main Colby Structure, located at 3779 Highway 224, Parcel PP-102-A-3, Brooke Hontz, Applicant- Ray Milliner, Principal Planner

   Planner Milliner said the application before the Commission is a Conditional Use Permit for a bed and breakfast at the Colby School. A vicinity map was shown with the general overview of the property. The applicant is proposing to use the Colby School property as a bed and breakfast.

   Planner Milliner reminded the Commission that a bed and breakfast is defined as “an owner-occupied use with eight rooms or less. The Commission reviewed the
application on March 10, 2020. At that meeting, the Commission asked Staff to work on the following three items:

1. There is an existing LIP for a palates studio on the site. Can an application be processed?
2. What will satisfy the requirements of owner/occupied?
3. Conditions of approval should be created in anticipation of events and outdoor activities

Planner Milliner said Staff discussed the first issue with the Attorney’s Department. Staff was told there is nothing in the Code that prohibits multiple uses on a site; therefore, the CUP application can move forward.

Planner Milliner said the second issue of owner-occupied has been sufficiently covered by a condition of approval. This condition requires that, prior to the issuance of a business license, the applicant must demonstrate the person who will reside at the building will have an ownership interest.

Planner Milliner said the third issue is in regard to possible events. In a discussion he had with the applicant, he was told the applicant is not requesting an event center. Because of this, the applicant believes the placement of conditions on the property centering on events would be inappropriate. Staff believes that conditions could be added to help diminish some of the concerns of the neighborhood. Staff is requesting the Commission have a discussion if that would be an appropriate action. He said that Staff recommends the Commission conduct a public hearing and approve the project as outlined in the Staff Report.

**APPLICANT’S PRESENTATION**

Brooke Hontz, representing the applicant, said they are prepared with exhibits and information. They are happy to respond to the comments and questions that may come
up at the meeting. They appreciate the work that Staff has done. She introduced Robert McConnell, attorney for Hoffvest Planning. He may have comments at some time during the meeting.

The public hearing was opened.

Andy Levy said the neighbors surrounding the structure welcomes a bed and breakfast, if it follows what the neighbors expect and what the County Council clearly asked for. He was among those that appealed the previous ruling. He attended the County Council’s meeting on the appeal. They were clear about having multiple uses on the property.

Mr. Wrona is the attorney representing the neighborhood, but was unable to attend this meeting. He submitted a legal brief to the Commission. Mr. Levy said he doesn’t believe this application meets the standards the County Council was looking for.

Kathy Sonzini said she sent a letter to the Commission earlier in the day. Looking at the Staff Report, she was perplexed by some of the applicant’s statements in response to the CUP criteria. She said the General Plan was adopted in 2015 to address the vested uses on this site.

Ms. Sonzini said the applicant made a statement that the goals for the Canyons include facilities to promote a year-round resort. That statement makes her question if the applicant plans on this being a bed and breakfast or a year-round resort. Does the applicant understand that the County Council deemed all previous uses abandoned? There are no vested uses.

Ms. Sonzini asked if the Commission is willing to alter the General Plan to allow uses specific to this parcel. If that is being done, what is the motivation of the Planning Commission? If the applicants are not planning on holding events, then the
regulations she proposed in her letter should not be a concern to the applicants. The regulations would ultimately protect all of the adjoining neighborhoods now and into the future if there were another owner.

Ms. Sonzini said under criteria #5 (compatibility) the applicants cite the previous Colby School uses. These uses are not permitted under the current Code. This language suggests to her that the applicant intends to hold large events. Does the applicant want the Commission to believe the neighborhood has gotten used to this type of activity?

Ms. Sonzini said she lived in Park West Village during the Colby School time. The neighborhood was negatively impacted by the events that were held there. It was tolerated because during the day, there was less than 100 students and faculty at the site. There was no one there at night, holidays, or during the summer. The mitigation of events is a protection measure for the neighborhood.

Ms. Sonzini said as far as the LIP that is currently in place, she understands that there can be more than one permit granted. She asked if all of the land uses going forward must conform to the current land uses. The current LIP does not conform.

Jess Voss said she sent a letter during the morning and wondered if the Commission had read it. She has a second home near the Colby School. She was told by Staff that loopholes can always be found in the Code. She was encouraged to focus on the intent of the Code. Being told this, she started thinking about how important the intention of a project is. The intention should be consistently applied. It should not be disregarded when it is not convenient for a property owner.

Ms. Voss said she is in favor of having a bed and breakfast at the location, but not events. If events were held elsewhere, she would not be concerned that the commercial aspect would be pushing the intentions of the Code. She struggles with
the co-existing non-conforming use of the palates studio. She believes the fact that the applicant is not removing the LIP shows they want to use the property for any commercial use that can.

Ms. Voss said the tourism industry has changed since the early 1990s when the Snowed Inn existed. Tourist needs have changed, as has the surrounding neighborhood needs. The fulltime residency around the property has also changed. She thinks this property should be looked at the same as if someone were applying for a bed and breakfast in a second home.

Ms. Voss said Staff has said because the Code doesn’t prohibit multiple permits, it is allowed. She believes it is the Planning Commission’s job to decide if multiple permits are allowed. If there is a loophole, the Commission can decide what should be allowed or denied. Because so many of the surrounding neighbors have concerns, she hopes the Commission will be conservative when clear regulations are not given.

_The public hearing was closed._

_Chair Dickey_ asked Attorney Brackin if there is already a non-conforming use on the property, can the Planning Commission allow another use to be applied. Attorney Brackin said that question presumes the current use is a non-conforming use. As Staff has said, there is nothing that prohibits more than one use on a single parcel. The Utah State Code, which Summit County is bound by, states if something is not prohibited, it is deemed to be allowed. Even though the neighbors feel differently, she isn’t convinced the palates studio is non-conforming. That is a determination that would need to be made by Director Putt.

_Commissioner Cooke_ said the County Council had trouble with the scenario of two uses on one piece of land (one being a non-conforming use and the other one is an
allowed use), if the uses created a natural expansion of either one. He asked Attorney Brackin to help the Commission to understand.

Attorney Brackin answered that there is language in the Development Code about the expansion of a legal non-conforming use that use. It would first need to be decided if there is non-conforming use. The Code has language that private athletic facilities are an LIP in a residential zone. Because the final determination has not been made, it is not something the Commission should concern themselves with.

**Commissioner Stevens** asked the applicants to discuss their plans for events. Ms. Hontz said they are only applying for a bed and breakfast with eight rooms and the provision of a meal being provided. It is not the intention of the business plan to host events; therefore, to prohibit events would not be appropriate. The bed and breakfast should have the ability to be successful. That success may include having certain types of events appropriate on the site. It is imperative the Commission follow the Development Code and process the application as submitted.

Ms. Hontz said their attorney, Robert McConnell, sent a letter which addresses the condition that limits hours of activities. His suggested language is “when relevant, the applicant will apply for a special event permit.” This would replace the listed hours. A special event permit addresses parking, noise, hours, and all the concerns that the neighbors have. Because of this, a finding about special events is not needed.

**COMMISSION COMMENTS AND QUESTIONS**

**Commissioner Stevens** said she understands Attorney Brackin to be saying that the Commission can’t force an applicant to extinguish an existing entitlement in order to exercise the allowed uses. She asked Attorney Brackin about a statement made by Mr. Joe Wrona. He said that a building needs to be converted to a dwelling.

Attorney Brackin said for the purpose of a CUP, the property is zoned residential with a single-family home. The owners of the building have the right to ask for a small bed and
breakfast. There is no conversion that needs to happen. The Commission should think of this as any other home. She added that accessory buildings are allowed in this zone. **Commissioner Stevens** said she feels inclined at this time to establish conditions surrounding events. It is important to protect the neighborhood. Attorney Brackin said it is clear that the neighbors are concerned about events. She quoted from Utah State law that if the County doesn’t have a provision in the CUP process that would prohibit gatherings, they cannot prohibit them. The County cannot impose conditions not found in the Code.

Attorney Brackin said special events are allowed in the Code with a permit. The Commission can require this permit, if an event is held. The Commission can also limit the number of people allowed at a gathering before a special event permit is triggered.

**Commissioner Stevens** said after listening to Attorney Brackin, she would be in favor of adding a condition requiring a special event permit, should any sort of event occur. Attorney Brackin said a special event permit regulates the noise, traffic, parking, and dictates the permitted hours.

**Chair Dickey** asked what would trigger the special event permit. Attorney Brackin responded that anyone can have an event at their house. A permit would be required when the impacts of an event extend beyond the boundaries of the property. **Chair Dickey** asked if this requirement can be based on the number of people. Attorney Brackin said that one alternative, but any number they set could be claimed as arbitrary and capricious. She recommends that all events are required to have a permit.

**Commissioner Simons** asked would it be acceptable to the applicant if the Commission required every event held there to have a special event permit. Attorney Robert McConnell said they would agree to obtain a special event permit, pursuant as to what is required for the permit found in the Summit County Code. He would be cautious
about agreeing to “any” event. That could be construed as six people talking on the back lawn.

Ms. Hontz said they will file for a special event permit as it is outlined in the Code. She said there are activities, such as a backyard barbecue, that would not constitute having a special event. **Commissioner Simons** said she is comfortable with articulating that a special event is required if it goes beyond the typical use of an eight room bed and breakfast.

**Commissioner Simons** said the developer is allowed 94 parking spaces. That number seems like an overabundance of parking spaces. She asked Planner Milliner to address that issue. Planner Milliner said that was a number Staff inserted because of the number of spaces already there. This number can be removed if the Commission would like. Ms. Hontz suggested the Commission may want to mandate the minimum spaces.

**Commissioner Simons** said she is comfortable with a minimum being stated. Because 94 parking spaces were indicated, it caused her to question the intent. Such a large number of spaces would not be needed, unless the applicant intends on holding events.

**Commissioner Simons** asked if the County requires every event to be permitted in the surrounding area. This seems like a slippery precedence to set. She is somewhat uncomfortable with adding a requirement that all events must be permitted. The Commission needs to find a balance of rights.

**Commissioner Harte** said as he looks at the Staff Report, one of the key pieces is the definition of owner-occupant. He read the definition from the Staff Report. He referred to Mr. McConnell’s letter when he was speaking about owner-occupancy. He noted that when the County Council reviewed the previous application, it was stated that Utah courts require Summit County to apply plain meaning of Summit County’s land use regulations when reviewing applications. The words “plain meaning” caught his
Commissioner Harte asked if this application meets the standard of “plain meaning” of an owner-occupied bed and breakfast.

Commissioner Harte said before he gets to any conditions, he thinks the Commission should determine if this application meets the requirement of the “plain meaning” of an owner-occupied bed and breakfast. If the Commission says “no, it doesn’t,” the Conditional Use Permit should not move forward. If the answer is that it does, they will continue to the next phase. The answer to that question is where things get complex.

Commissioner Harte said his version of the “plain meaning” definition is there is someone who lives and resides in a house. That person decides to convert it to a bed and breakfast. It would be an allowed use wherever a CUP or LIP is allowed. He has not yet seen or heard something that meets that standard. If the applicant can get past that hurdle, then the Commission should look at conditions.

Commissioner Fine said he is leaning towards approval. He agrees with what the other Commissioners have said. For him, the question is what the applicant brings to the table. He noted that a special event application can be rejected. That fact helps him not to feel worried about granting approval.

Commissioner Cooke said his thoughts fall into three buckets under land use, along with the definition of a bed and breakfast in the Code. The “plain meaning” interpretation should be a consideration. If that threshold can be cleared, they can move to a discussion about the mitigation of impacts.

Commissioner Cooke said the previous application does not apply to this one. This application is discussing the RR zone and the allowed uses in that zone. A bed and breakfast as described by the Development Code is an allowed use. This is a new application for an allowed use. Based on what is being presented, this seems like a reasonable application.
Commissioner Cooke said a pig farm in the RR zone is an allowed use. A Conditional Use Permit would not be required. It is worth noting what is currently allowed in today’s Code. Some of the things would be a cemetery, a group home, and a commercial horse boarding facility. He said the value of looking at the past is that this structure was built to be a bed and breakfast. It seems that they can use the past to decide if this is an appropriate use for the property.

Commissioner Cooke said he doesn’t believe it matters when they think of what events happen at a bed and breakfast. What is important is the plain language interpretation of what the Development Code says. The Development Code is specific about the number of rooms and this application conforms to the given number. The food and beverage would only be available to those staying at the bed and breakfast. That means it would not be a restaurant.

Commissioner Cooke said the Development Code doesn’t indicate if a bed and breakfast can or cannot have events. One of the requirements is that it must be a residence. He thinks that barrier has been cleared. The County Council’s decision is that it is a Victorian home.

Commissioner Cooke said the question to him, is how they get passed the barrier of the bed and breakfast being owner occupied. He doesn’t think it is the job of the Commission to decide what legally constitutes an ownership stake when there is a LLC. At the last meeting, the Commission made it clear they wanted to have information about how this hurdle is cleared. He doesn’t believe that has been met. Chair Dickey said he thinks the Commission wants to tackle the question of owner-occupancy. Once that is settled they can come back to the mitigation measures.

Commissioner Kucera said the letters from the different lawyers and the neighbors indicate there is a fair amount of legal complexity with this application. It has been pointed out that Staff believes the application has met the required conditions. He
asked Attorney Brackin to address the subject. Does she believe the applicant has met
the status of owner-occupied? He would like to have her guidance.

Attorney Brackin said she has read the letter received by the applicant’s attorney. It is
correct that this needs to be a residence. The question is asked who will reside at this
residence. Under the perimeters of a bed and breakfast, the person who resides there
needs to be the owner. In this case the owner is an LLC.

Attorney Brackin said the term “owner” is defined in the Code. A “person” is defined as
an individual or a company, such as an LLC. If a structure is owned by an LLC, that does
not negate the owner-occupancy requirement. Usually there are silent and general
partners. The Code requires that someone in the LLC must live there. That person
should be the representative of the company and the resident. If so, the conditions of
the Code will have been met.

The applicant is requesting that information is provided when the business license is
applied for, and not at this time. This is also the recommendation that Staff made. It
has been discussed that the Planning Commission can require that information prior to
approval, which is often the case. Attorney Brackin said there is no amount of
ownership percentage that is required. When that information is presented, it will be
up to the Planning Commission to decide if it meets the requirements.

**Commissioner Kucera** said he would like to hear from the other Commissioners when
they want this information to be given. He asked what the difference is between a bed
and breakfast and an Airbnb with eight rooms. Attorney Brackin said one difference is
instead of eight different parties renting out individual rooms, with an Airbnb, there
would be one party renting out the whole and sharing the use. With this application,
meal service will be provided. That is not included with an Airbnb.

Attorney Brackin said if someone with an eight bedroom house wanted to have an
Airbnb, a business license and transient room tax is required. That type of use would
not require a conditional use permit. If someone with an eight bedroom house wanted to rent each room separately, the County would consider that a hotel. It would not be allowed in the neighborhood. It would be allowed, if a group of people wanted to rent it as a group.

Commissioner Kucera asked Attorney Brackin to explain the difference between the intent of the law and the letter of the law. Attorney Brackin said State statute says that an application must be approved if it meets all conditions required in the Code and can mitigate all impacts. Only if there is an overwhelming countervailing interest and it is iterated in the record, can the Commission deny the application. The questions for the Commission to consider are if this application meets the Code. Are the conditions appropriate to mitigate the impacts? If the answer is yes, the Commission must approve.

Commissioner Kucera said although he has heard differing opinions, he is inclined to follow the advice of the Commission’s legal counsel. This is also the recommendation of the Planning Staff. That leads him to the next step, which is establishing conditions. The fact that there would be an LIP and a CUP on a single parcel should be considered.

Commissioner Kucera asked Attorney Brackin to explain the process of applying for a special event permit. Attorney Brackin answered there is nothing mentioned about the frequency. An event can be held nightly, if there is a special event permit attached to each one. A special event permit kicks in when the scope of the event impacts things such as noise, parking, or extends beyond the 9:00 p.m. cutoff time. Other items are included in the permit, such as things that don’t normally occur at a bed and breakfast.

Commissioner Kucera asked if there is a way to either remove a CUP or to enforce it. Attorney Brackin said if there is evidence that the conditions of approval are not being met, the County would have to give due process. This would begin with notifying the owner-occupant. They would be given the opportunity to explain why their permit
shouldn’t be revoked. **Commissioner Kucera** said he is supportive that this application meets the required standards of approval. He will support conditions that will mitigate any negative impacts.

**Chair Dickey** added because events do occur at a bed and breakfast, he would like to establish a number limiting those who can attend the event. Attorney Brackin said if a number is set, it should be based on something rational, such as the number of people that could be staying at the building. It should not be an arbitrary number.

**Chair Dickey** said the Commission needs to decide if this application constitutes a bed and breakfast, or a small hotel. Based on the description found in this application, he thinks it fits the description of a small hotel, rather than a bed and breakfast. A small hotel is not an allowed use.

**Chair Dickey** said he would like to have more specific detail about the ownership-occupancy issue. To hire someone to manage the site and give that person a share in the LLC, doesn’t meet the spirit of the Code. The difference between a small hotel and a bed and breakfast is the owner-operator. A small hotel can have eight rooms.

**Chair Dickey** said a possible description of an owner-operator might be someone who lives full-time on the property and owns no less than 50% of the property. Even if the property is owned by an LLC, this would be in line with what was meant. It wouldn’t be just someone with a share in the LLC. He would like to see this type of condition added.

**Commissioner Stevens** said she likes the option of not approving the application until the Commission is given the information about who the owner-occupant will be. That would help her feel more comfortable. It will help to visualize what this would actually look like. **Chair Dickey** asked if each time the owner-occupant changes, would this have to come back to the Commission for approval.
**Commissioner Harte** said this comes back to the term of “plain meaning”. If someone owns a house that becomes a bed and breakfast and if the owner of the house moves away, that bed and breakfast ceases to exist. He said that is a defining characteristic. A person, who has a percentage of ownership, doesn’t meet that standard. It doesn’t meet the plain meaning of an owner-occupied bed and breakfast. He doesn’t oppose the idea of a bed and breakfast, but it needs to meet this standard to be approved.

**Chair Dickey** said while he respects Staff, he doesn’t like the idea of letting Staff decide if it meets the standards when the business license is issued. That is the job of the Planning Commission. The Commission needs more details.

**Commissioner Simons** said Attorney Brackin has stated that ownership does not require a certain percentage of shares. Is this conversation about requiring a percentage? Attorney Brackin said in an LLC, there aren’t shares, but a partnership. In theory, a partner can be considered an owner.

Attorney Brackin said a good point was brought up about the difference between a small hotel and a bed and breakfast. The reason a B&B needs to be occupied by the owner, was based on the belief that an owner would have enough interest to make sure the operations occurred appropriately. A question for the Commission to consider is how much interest instills a desire for the owner-occupant to really care what happens.

**Commissioner Simons** wondered if the Planning Commission has the authority to determine what that percentage should be. Attorney Brackin said because it is a criterion for the bed and breakfast to be owner occupied, the Commission has the right to ask for that information before approval. **Commissioner Simons** said she supports understanding who that person is prior to approval.

**Commissioner Kucera** said while he agrees with the concepts and ideas being discussed, what he hears from Staff and Attorney Brackin is that the applicant meets the
definition of owner-occupied. He asked Attorney Brackin if he has missed something. She said at this time, that answer is unknown. The question is if the Commission wants to see that information prior to approval to verify if they meet the condition. A condition can also be made this can be determined by Staff before they begin business. This is what the applicants are requesting. The Commission can take either route. 

Chair Dickey responded because there isn’t a legal definition of owner-occupied, it is up to the Commission to make that call. Without having the details of the ownership, this looks like a small hotel to him.

Commissioner Harte read language that he referred to earlier. “Utah courts require Summit County to review land use applications by applying the plain meaning of the Summit County’s land use regulations.” He thinks this allows the Commission to apply the plain meaning of owner-occupied. This creates the opportunity for the Commission to have a conversation about what owner-occupied means.

Robert McConnell, the applicant’s attorney responded. He read the Staff’s citation of the Silver Moose bed and breakfast, he was hoping for some clarity. He said the Commission refers to different terms while discussing this application. That is because the Summit County Code doesn’t have a definition.

Mr. McConnell said the County has to be careful when regulating the ownership of a property. The Planning Commission is charged with regulating the use of land. If the Planning Commission is going to dictate percentage of ownership, he will challenge that constitutionally. One of the problems that Summit County has is that the Rural Residential zone allows a wide variety of uses. This makes it difficult to say that an application will run afoul of the uses in the neighborhood.

Mr. McConnell said the Commission is asking for information that the Code doesn’t specify. The Code is ambiguous about what owner-occupant means. Whatever the Commission decides, he requested they make it clear. This will allow the applicant to
either comply or challenge. If a proof of ownership is required, they will provide it. The Commission needs to be careful about specifying ownership. This is not done with any of the other uses in this zone.

Mr. McConnell said with respect to special events, they want to comply with the County Code. If additional conditions are applied, they need to consider why the condition would be needed with this application, but not to other allowed uses.

Mr. McConnell said with respect to multiple permits, he believes the Commission cannot prohibit a second permit. He said that neighbors cannot regulate a neighbor’s property. Summit County can regulate the use of land. That is authorized the State Statute. It needs to be regulated in accordance to the health, safety, and welfare. It needs to be regulated in accordance with the ordinances they submitted under and the County’s Land Use Development and Management Act.

Attorney Brackin said it is up to the applicant to show what the ownership is. Will it be an undivided interest in the land as tenants in common, or will it be a general manager with equity interest in the LLC. This information has not been provided. It is up to the applicant to show which one option they will take.

Mr. McConnell said if Staff’s recommendation is adopted that the resident has an ownership in the property, the LLC will convey to the owner-occupant an undivided interest. He is now hearing an alternative, that the resident caretaker/manager can have an equity interest in the LLC. That would be a preferable option. He will need to check with his client on the ultimate answer.

Attorney Brackin said she thinks that either of those will work. This is the threshold the applicant must meet. Mr. McConnell said he will commit that they will do one of the options. They will meet the requirement.
Chair Dickey said one of the conditions in the Staff Report describes ownership. The language from the Staff Report was read by Mr. McConnell. He said that even with this language, he isn’t sure what Summit County’s requirement is. His preferred option is that the resident manager should have a membership interest in the LLC.

Chair Dickey said he would like to take a straw poll of where how the Commissioners feel about the language found in the Staff Report. If the majority of the Commission is comfortable with the language, they can move on to conditions. He asked each of the Commissioners to respond.

- **Commissioner Fine** said he is comfortable with what is proposed in the Staff Report. The more specific they can get, the better off they will be.
- **Commissioner Cooke** said he feels strongly that they should see how the applicants propose to meet the ownership standards before a finding is made.
- **Commissioner Harte** said he wants to understand the ownership before he would be comfortable making a finding.
- **Commissioner Kucera** asked if the ownership is certified on an annual basis. How will it be enforced? He would like to see what the applicants propose. Attorney Brackin responded that in the future if the applicant is no longer the actual owner, there would be an enforcement action. A business license is needed yearly and all associated entities give an annual approval.
- **Commissioner Stevens** said she would like to know the specific individual who owns and is operating the bed and breakfast prior to approval.
- **Commissioner Simons** said the comments made by Mr. McConnell make it clear that the applicant considers this person as a staff member. That means turnover is possible. She would like to hear the applicant’s intention prior to approval.

Ms. Hontz said there are some things the owner would like to do to the building and the site prior to application for a business license. In order to do so, they must have the
Conditional Use Permit. The building is taxed as a commercial structure. For commercial upgrades to a residential building can take place, the CUP must be in place. The protection the Planning Commission seeks will be there at the business licensing. She added that the CUP can be revoked any time after due process has taken place. If the conditions are not met, it can be revoked. As applicants, they think it is appropriate to make that known at the time of business licensing. If that is required at this time, the building will never come to life.

Commissioner Cooke asked Ms. Hontz if they can give an outline to the Commission in the form of a memo of understanding of what the intention is for ownership. The Commission doesn’t need to see the paperwork at this time. They would like to understand what direction the applicants want to take. The letter from Mr. McConnell doesn’t indicate any ownership stake. The Commission would like to have something that indicates the way the ownership will be established.

Ms. Hontz said the County has not been clear in their expectations. They will be happy to indicate if the person will have shared ownership in the LLC or in the land. That could be done by changing the language of Condition #1 to say if the ownership is in the property or in the LLC. They cannot give the name of a specific individual, but they can state the property will be owned by the LLC. The manager who is taking care of the property will have a specified percentage of interest. That information can be provided to the Commission.

Attorney Brackin said the choices before the Planning Commission are:

1. To approve with the conditions as proposed by Staff.
2. They can continue until they get the information they want regarding ownership.
3. They can find they don’t have enough information to say the building is owner occupied. That finding would be the basis for denial.
Mr. McConnell said if this is going to be continued, it would be helpful to know what the County considers as the requisite percentage of interest. **Commissioner Stevens** said she wants to know what their vested interest would be in the community.

**Commissioner Simons** said she thinks that someone who lives on site would have a neighborly relationship with those living nearby. She also respects the applicants desire to have the CUP so that funding for the project can be obtained. If they are going to continue, they need to define for the applicants what will meet the bar.

**Chair Dickey** said it seems the support for the language, as written, is not there. There is a segment of the Commission that wants to know the ownership structure. What does it mean when the applicant states they will have an owner-occupant to manage the property? There seems to be a differing opinion on when that information needs to be given. Is it before approval or before business licensing? Thus is why he thinks that a continuance is appropriate. With the absence about ownership information, this seems to be a small hotel.

Mr. McConnell asked what the outcome was with the Silver Moose Bed and Breakfast. Did they lose their permit? Attorney Brackin said they refused to convey any interest to the LLC operator; therefore, they lost their permit and were shut down. Mr. McConnell said that means there is no precedence for the amount of ownership.

**Chair Dickey** said that he believes 50% fulfills the intent of the definition. **Commissioner Cooke** said he respectfully disagrees with that. He thinks that someone with some “skin in the game” should actually lives there. It shouldn’t be a management company that is operating the bed and breakfast. He hasn’t decided what the amount of ownership should be, but it would be a lot lower than 50%. **Chair Dickey** said that brings the issue back to more information is needed about the owner-occupant before the Commission can get to a vote.
Ms. Hontz responded that she believes the applicant could come back several different times with percentages that may appeal to one Commissioner, but not another. The preference for the applicant is for the Commission to come up with a number that they can either agree to, or come back with a condition that gives a number.

Chair Dickey answered that there is a group of Commissioners that don’t think a percentage is the right approach to measure owner-operator. If they come back with a description of the ownership, that may satisfy those Commissioners. He doesn’t think the Commission is able to give a number at this time. He hopes that at the next meeting, the Commission could get to a number.

Attorney Brackin said it is incumbent upon the applicant to demonstrate how they meet the owner-occupied standard. The Commission needs that so they can make a finding. Ms. Hontz responded they will have an owner-occupant. That is the condition that is required and that is the condition they will meet. She thinks the first condition does what it needs to do in saying there will be an owner-occupant on the property. It will be an ownership interest that has been deeded. It won’t just be a lease-hold interest. She is unsure of how another discussion will help.

Attorney Brackin said if there is a deeded interest, it would establish tenants in common. That would make that person equal co-owners to the current owner. That would not require a threshold percentage. Percentage comes into play if they choose the option of giving an interest in the LLC. Mr. McConnell said they will like to specify the percentage of ownership.

**Motion**

*Commissioner Cooke made a motion to continue the review of this application to the next available date to allow the applicant to present more information about the ownership prior to voting on the CUP.* Commissioner Fine seconded the motion. 
*All voted in approval.*
• **MOTION CARRIED (6-1)** Commissioner Kucera voted nay.

Ms. Hontz verified that the public hearing will not be opened at the next meeting unless the application substantially changes. She requested to have verification of what information the Planning Commission is looking for at the next meeting. Is it strictly to have more information about the ownership structure? Attorney Brackin said the Commission has not gone through the conditions of approval. **Commissioner Harte** said what the Commission is saying is that this threshold issue is something that must be satisfied before the Commission can move on to the conditions.

A five minute break was taken.

**WORK SESSION**

1. **Discussion** regarding the amendments to the Canyons Development Agreement to allow for maintenance facilities and amenity structures at the Colony, Kelly Simons representing Colony HOA and John O’Connell representing iron Mountain Associates Applicant– Amir Caus, AICP, County Planner

Planner Caus said the request is for 135,000 square feet of non-residential density in the Colony area. It would include lodge facilities, gymnasium, restaurants, and some maintenance facilities. The Development Agreement has language that implies the only allowed uses are residential. The types of uses being proposed are generally confined to the resort core. Staff would like to have direction from the Planning Commission. The applicants would like to present their case and explain what they want. If the application moves forward, Staff has more concerns to discuss. This work session is to ensure the ground is suitable for development and that critical lands are being avoided.

**APPLICANT’S PRESENTATION**

John O’Connell is representing Iron Mountain Associates and Kelly Simons is representing the Colony HOA. Mr. O’Connell said a history of the development was sent
shortly before the meeting began. It has more information than will be given at the meeting. He listed some of the buildings that have been constructed since the Colony was developed over 20 years ago. All of the structures were built under the CUP or LIP process. All appropriate building permits were obtained. Most of the parcels have plat notes that specify the use. There are a handful of properties that can be built on. One of these is a shared maintenance facility. This will be shared with Vail and the HOA. This was identified on a plat note.

Mr. O’Connell said the County questions their ability to build anything but residential units. He said the SPA constantly refers to the Code. The Code allows a number of uses in their zoning. One use that is not listed is the ability to have restaurants, but Vail has that use within the Colony. They are asking for an exception to allow the HOA be allowed to be a restaurant operator.

Mr. O’Connell said they have shown very clear ties from the SPA to the Development Code. They have tried to get additional uses such as a helicopter landing pad on one of the lots, but that wasn’t allowed in the Code; therefore, that use was removed. They have made sure that everything in this application is clarified and all entities are on the same page about the additional uses.

Mr. O’Connell said they are not asking for 135,000 square feet of additional development. More than half of this square footage has already been developed. What they are requesting, if for the components of the development that are necessary. This includes a building to store maintenance equipment.

Kelly Simons from the HOA spoke next. She said that over the last five years there has been an increase in the request for amenities. The HOA has been looking at how that could happen. What they are proposing is very similar to what is seen in the Sun Peak neighborhood. Several services are taken care of in-house instead of being outsourced.
This includes the 20 miles of roads within the development and a very expensive fire mitigation program. They believe having this in-house is reducing traffic impact.

Ms. Simons said there is a letter of support from Park City Resort for their application. She explained the amenities would not be for public use. It would be for homeowners only. Vail has stated they are not interested in operating a restaurant or any of the amenities in the Colony. Instead of returning to the Commission multiple times, they are asking for things they believe will be needed in the future.

Ms. Simons said they have slides of the 11 parcels in which they are requesting for development to take place. These can be shown to the Commission and the requested development explained. Commissioner Harte asked they begin with the vicinity map to orient the Commission on the Colony. Additionally, that an explanation is given of what the parcel is like today and how things would change. Where are the proposed activities going to take place? The slides were shown along with an explanation of the proposals.

Chair Dickey asked if there established building envelopes. Will those be altered? Mr. O'Connell said within the Colony parcels there are a handful of parcels with building envelopes. Most of the parcels have setbacks. Residential parcels have building areas, but these are not defined as tightly as a building envelope. The post office would have setbacks from the property line. There will be no other restrictions. The parcels do not have building envelopes and there are no intentions to add any.

Commissioner Stevens asked what is meant when they are talking about expanding but staying within the same footprint. Is this simply adhering to the setbacks? Ms. Simons said the current structure is one story. They believe they would have the ability build vertically.
**Commissioner Harte** asked Planner Caus if they are opening the Development Agreement and potentially adding density. Is that the bigger question the Commission should be considering? Planner Caus said there are two questions to be answered. The first is if the Planning Commission agrees with the applicants that these buildings are allowed uses, or would this would be a major amendment. The second question is the amount of density being requested.

**Commissioner Harte** said if the Commission agreed to open up the Development Agreement, then new density would have to comply with current zoning ordinances. Would affordable housing come into play? Planner Caus said that potentially it would.

**Commissioner Fine** asked if the converting the yurt is under consideration. Ms. Simons said yes, that is part of the request.

**Commissioner Harte** asked his fellow Commissioners how they feel about amending the Development Agreement. **Commissioner Stevens** said she pulled up an email the applicant sent prior to the meeting. The attachment they sent is from 1998 Canyons Amendment. She asked Planner Caus if that is still relevant because the Canyons agreement was amended in 2018. Planner Caus answered that some parts were not amended and those parts carried over.

Attorney Brackin said there were some approvals given in 1998. The Grand Summit Lodge, the Colony, and other developments were approved. This was called a “mini Specially Planned Area.” In 1999, the comprehensive SPA was developed. Some provisions changed with the 2018 amendment, but there were no changes for this parcel. A number of parcels were allocated and were designated to single family homes.

Attorney Brackin explained as part of the agreement, the applicant was required to accept TDRs, or incentive density transfers. She said there were some parcels outside of the SPA boundaries. Summit County acquired those. They were to be designated as
open space. The density that would have been on those parcels was transferred to the Colony. This is how they ended up with the 274 lots, which is their base density.

Attorney Brackin said the SPA is very specific. Only the uses and density on the land use and zoning chart (shown in Exhibit B) are allowed. If a property owner is going to increase the density, or the intensity of the use, a substantial amendment is required to the SPA. The 2018 amendment shifted some of the densities in the resort core. The Colony was impacted by the amendment.

**Commissioner Harte** asked if the density in the Colony were increased, would that come out of the total density allocated in the 2018 SPA amendment. Attorney Brackin said the only way to transfer density under the SPA is if it is under the same ownership. The density in the resort core is not under the same ownership as the Colony or the HOA, who is making this application. Under the original SPA matrix, the only way to obtain increased density is to provide substantial community benefits.

**Commissioner Harte** said it seems reasonable for the HOA to request certain amenities, such as a club house. It is his understanding if the Commission were to grant this request it would be adding density. This would be a legislative act and the County Council would be the ultimate decision maker. He noted this would require certain things, such as affordable housing and showing good cause. He thinks the proposed uses are appropriate for the Colony, but the applicants need to realize this would require an amendment to the SPA.

Planner Caus said the applicants are approaching this as a SPA amendment. The Planning Commission would be the recommending body. The applicant’s take on this seems to be that they are entitled to have these facilities. Staff’s preliminary findings are there is nothing to indicate that is allowed. Staff has been objective and tried to find the appropriate process. He looked to see if there will be any community benefits tied to the request? Because this is a Development Agreement, there is a lot more flexibility.
Commissioner Harte said he will take his cues from the Planning Department, Staff and the Legal Department on if this constitutes a Development Agreement amendment.

Commissioner Fine asked why it took so long for this amendment to be brought forward. There seems to be a great need. He asked how many acres will be impacted. Planner Caus answered it is not expected to be a lot of disturbance. It will be approximately 135,000 square feet.

Chair Dickey said he will be looking at affordable housing. Do they have plans on how they think this will be met? Ms. Simons said there are two parcels where they think that obligation could be satisfied. More research needs to be done.

Chair Dickey said there are two things the applicants need to satisfy. One is the affordable housing requirement. To give any new density, a countervailing public interest must be shown. He said that Policy 2.3 states new density cannot be granted unless there is a compelling countervailing public interest. This is usually more than just affordable housing.

Ted Barnes, attorney for the applicant, referred to the 274 base lots that Attorney Brackin spoke about. He said the density in the Colony is defined differently than other areas in the SPA. John McConnell’s material will show there is a pattern of treating ancillary structures and services as not being residential density. They are not requesting to have more people living on the mountain. The residential density will not change.

Mr. Barnes under the strict definition, there wouldn’t be a gate house, sales offices, pump houses, or other needed and necessary structures. They will get to the point in the application where they will talk the definition of density, but right now they are asking for the Commission’s reaction. Should they proceed? A lot of these structures were indicated on the plat. The plats were signed. Buildings were constructed and
maintained. These buildings did not count against density. He would like to know the ground rules before they move forward. He wants the Commission to know that the density may or may not be impacted by the things they are asking for.

Attorney Brackin said this has been an ongoing discussion between herself and Mr. Barnes. She said the Canyons SPA is very specific. The only uses that are allowed in any of the development areas are those listed on the land use and zoning chart. Mr. Barnes is suggesting that the uses allowed on the land use and zoning chart are residential, but they can also access the Code to the allowed uses found there.

Attorney Brackin said that is not how the Canyons SPA works. The only uses that are allowed are found in the land use and zoning chart. An applicant can’t pick what features they like from the Canyons SPA and then pick from the current Code.

Attorney Brackin said there is a list of pre-existing buildings the applicant would like the Commission to consider. This list is misleading. She gave the example of the gatehouse. It was approved with the original development because a gate was approved with the original development. It was anticipated that a gatehouse would be needed. The sales office was also approved with the original approval. It was intended for this building to be the post office.

Attorney Brackin said that storage buildings were approved as an LIP by prior Planning Directors without understanding the Canyons SPA. They should not have been approved. That doesn’t mean that they are entitled to more. Utility structures have been built. These were allowed under the original SPA agreement.

Attorney Brackin said the restaurants, the yurts, and the bathrooms at the trailhead are not associated with the Colony. They are resort amenities which are specifically allowed to service the resort. They do not count as density because of specific
conditions outlined in the Specially Planned Area. Additionally, they are operated by Vail, not the Colony.

Attorney Brackin said the County believes this application requires a substantial amendment because they are increasing the density and the use is being changed from residential to something ancillary and other than. This proposal is also increasing the intensity of the use.

Mr. Barnes said they are not opposed to pursuing an amendment. He believes that each of the uses mentioned do not count against density. Vail can increase density on a commercial basis for the public. They are asking to do this privately for their members. They are not trying to increase the burden on the mountain. At this meeting, they are only asking for direction from the Planning Commission. If Vail sought to these amenities, they wouldn’t be required to come before the Commission.

Commissioner Cooke said the SPA is essentially the Code for land use and density. If an amendment is sought, the Commission would be compelled to look at good cause and affordable housing.

Commissioner Kucera asked what percentage of the 135,000 square feet has already been built. What is the rough estimate of what they are proposing? Planner Caus said on the last page of the Staff Report, the applicant provided information that may answer that question. The current and the proposed square footage were shown. He will have more concrete figures for the next meeting.

Mr. Barnes said they were asked by Staff to propose a maximum. He doesn’t think they will come close to using the proposed square footage. Currently, they don’t have plans for each site. Mr. Barnes said the Colony is responsible for about 25 miles of road. Without facilities to house the needed equipment, it all has to come up through the Canyons. They think taking care of this in-house is providing a benefit. His estimate of
what has already been built of the 135,000 square feet is in excess of 50%. Some of what they are proposing would be new construction. Much of it would be expansions of existing buildings.

**Commissioner Kucera** said it may be helpful for the applicant to point out the benefits they are proposing. Having the equipment closer to the source seems reasonable. They may want to flesh that.

**Commissioner Stevens** said it makes sense for the residents of the Colony to want additional amenities; however, the Commission needs to be careful to meet the thresholds that are established in the current General Plan.

Planner Caus said it has been very nice working with the applicant. He thinks the Commission has given him and the applicant what they need to proceed from this point. Some of their requests make sense, such as removing big trucks off County roads. Staff’s main question is how they get there. Attorney Brackin said not all substantial amendments are as big as the one they did a few years ago.

**Commissioner Stevens** asked if major amendments to the Canyons SPA are common. Attorney Brackin said they have had several amendments over the years. Some of them were initiated by the Master Developer and sometimes individual property owners. If the use or intensity is being changed, the amendment process is required.

**DRC UPDATES (None)**

**COMMISSION ITEMS**

**Commissioner Kucera** asked if there is a list of the capitalized words. If there is a list, can the Commission have access to it? If there isn’t a list can they start one? It would be helpful when the Commission is reviewing items that seem ambiguous. It would give as
much clarity in the Code as possible. He noted he is talking more about the Colby School project than the last item.

**Commissioner Cooke** said they went through a review process when they reviewed the Rural Residential, Mountain Remote, and Hillside Stewardship zones. The definition of a bed and breakfast seemed clear at the time. When people are in the process, they are doing the best they can.

**Commissioner Cooke** said the review was a year-long process. It seemed unlikely they would catch everything. He recommended each Commissioner make a list of thing to be worked on. The next time a review occurs, they will be ready to give direction.

**Commissioner Kucera** said he thinks the review that took place seems to have cleared up a lot of items. He is referring to the legal side of things. When legal interpretations come up in an application, it is outside his expertise. Director Putt said there is a section in the Code of definitions. He can make sure it is resent to the Commission. If there is any ambiguity on what is being stated, the next time they review the definitions, they can re-visit it.

Director Putt read the definitions that are pertinent to the Colby School project. He said the plain language on that seems fairly clear. They can always clean up language as they go along. Attorney Brackin said if they want to create a separate definition of “owner-occupied” specifically to a Bed and Breakfast, this can be done, but it wouldn’t be pertinent to the Colby application.

**Commissioner Fine** asked Director Putt and Attorney Brackin if there is a definition that needs to be worked on. Director Putt said he doesn’t think they necessarily need to change the definition, unless it is the Commission’s desire to do so. Planner Strader and Planner Milliner are working on some Code Amendments that will be coming before the Commission. Attorney Brackin said there is always a list of things they need to tweak.
Chair Dickey responded that two defined words put together doesn’t always mean the sum of the individual words. Director Putt responded Staff can give their opinion to the Commission, but it is up to the Commission to administer the Code. If there is a definition the Commission thinks is imprecise, they can come up with another definition. That is why there are seven Commissioners and not one.

**DIRECTOR ITEMS**

The upcoming agenda items were reviewed.

**ADJOURN**

At 7:55 p.m., the meeting was adjourned.

Approval Signature