

MINUTES

SNYDERVILLE BASIN PLANNING COMMISSION

REGULAR MEETING
TUESDAY, JUNE 23, 2020
Electronically, via Zoom

COMMISSIONERS PRESENT:

Ryan Dickey, *Chair*
Thomas Cooke
Joel Fine

Canice Harte
John Kucera
Crystal Simons
Malena Stevens

STAFF PRESENT:

Peter Barnes- *Planning & Zoning Administrator*
Jami Brackin- *County Attorney*
Ray Milliner- *Principal Planner*
Patrick Putt- *Community Development Director*
Jennifer Strader- *Senior Planner*
Blaine Thomas- *County Attorney*
Kirsten Whetstone- *County Planner*
Kathy Lewis- *Secretary*

An executive session was held at 2:35.

The regular meeting was called to order at 3:45 PM.

REGULAR SESSION

1. General Public Input

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

2. Continued Discussion and possible action regarding the Conditional Use Permit for a Bed and Breakfast Inn at 3770 N. Highway 224, Rural Residential (RR) zone, Parcel PP-102-A-3, Hoffvest LLC, Applicant- Ray Milliner, Principal Planner

Planner Milliner reminded the Commission three previous discussions have been held about the Colby School. The applicant has submitted another letter which was forwarded to the Commission. Staff's recommendation is unchanged. Staff recommends the Commission approve the application as outlined in the Staff Report.

Chair Dickey recognized Brook Hontz and Robert McConnell, who are representing the applicant. Ms. Hontz verified that the Commission received the current and previous letters sent to them. She added that they request the Commission continue to discuss the item and that a decision is made at this meeting. The conditions of approval are acceptable to the applicant. They would like to move forward with them as written.

Mr. McConnell is the attorney for the applicant. At the last meeting, he referred to several different legal findings. In the letter he sent to the Commission for this meeting, he supplied the citations of the law on which he is relying. **Chair Dickey** verified that each Commissioner received the letter which was included in the Staff Report.

COMMISSION COMMENTS AND QUESTIONS

Commissioner Cooke said he thinks this is still a matter of if the request meets the definition of a bed and breakfast as required by the Code. He referred to a letter received from Mr. McConnell dated June 4. **Commissioner Cooke** said the Code has a definition of a bed and breakfast. The operative term in that definition is “owner-occupied residence.” The Commission has reviewed the definition of the individual words. The words “owner” and “occupied” doesn’t need to be broken down because these words are a descriptor/modifier of the word “residence.”

Commissioner Cooke said in the June 4th letter, McConnell referred to the Development Code. **Commissioner Cooke** read the definition of a primary residence found in Section 1-12b-2 of the Summit County Code. One part of the language states:

“...the location where a domicile has been established. It is the principal place where one property owner, or inhabitant, actually lives for at least 183 days in each calendar year, as distinguished from the place of temporary sojourn.”

Commissioner Cooke said this proposal will create either a bed and breakfast, or a small hotel. One is allowed under a CUP, the other one isn’t. That is what the Commission has to decide. He personally, doesn’t think that burden has been met.

Commissioner Stevens said at the last meeting, they discussed a revocable ownership of either the land or the LLC. To her, that doesn't seem like an actual owner, but an employee. She would like to see something arrangement with an un-revocable interest. This would show that the person is an actual owner and not just an employee. What the applicant is proposing is more of an employee situation.

Commissioner Simons said she has reflected a lot about the last few meetings. She also took the time to reread the Staff Reports. She believes the definitions of owner-occupant are what the Commission has to stand on. She finds this as an appropriate location for a bed and breakfast. The applicant's intentions are compelling.

Commissioner Simons said the Commission's concern is the definition of owner-occupied residence. As proposed, what that relationship looks like seems to be more commercial than residential-occupied. She is leaning towards agreeing with the Staff Report, but putting the onus on the applicant to meet the condition by demonstrating this is occupied as outlined in the definitions.

Commissioner Simons said she can think of two ways this could be done. One is they can make the owner-occupied resident a partner in the LLC. Another way would be to give the resident a vested ownership of the land. She believes there is a path forward for the applicant.

Commissioner Harte said to him, the problem has always been the threshold question. He has no concerns that the applicant will do a good job. With his understanding of the plain language of owner-occupied, he finds the applicant does not meet the criteria. He said if he made a bed and breakfast in his house, he doesn't think there would be a question about it being a bed and breakfast. He could get a loan, based on his residency. He doesn't see anything that indicates the threshold issue has been met.

Commissioner Fine said he agrees with what the previous Commissioners have said. He feels certain the applicant would do a great job, but he doesn't believe the definition of owner-occupied has been met.

Commissioner Kucera said he also is supportive of the use at the site. He doesn't think the plain language interpretation of owner-occupied has been met. The idea of a revocable ownership implies a contract that is commercial in nature. Items such as a caretaker, seems more like an employee than an owner.

Chair Dickey agreed that this is an appropriate place for a bed and breakfast. He has full confidence of the applicant's ability. This begs the question of, "Why not find a way to approve it?" He said the precedence would apply to all locations in the Rural Residential zone.

Chair Dickey said he also considered Mr. McConnell's argument carefully. He doesn't believe the intent of the Code has been met if there is a paid manager who has a revocable and conditional interest in the property. He attended the meetings when the Code was reviewed. What the applicant is suggesting seems absurd and unreasonable based on the intent of the use.

Mr. McConnell said the definition of the word "residence", found in the Summit County Code has a provision that indicates that it is the principle place where the property owner, or inhabitant, actually lives for at least 183 days in each calendar year. The applicant said they will have a full-time manager to occupy this facility as their primary residence. The language of the Code ties to an inhabitant, not an owner or an owner with an irrevocable interest. He said ownership is always revocable. For example, an owner can sell the property.

Mr. McConnell said he gave the Commission the statutory construction arguments for their consideration. He added there are houses in the surrounding areas that are

owned by an LLC that are being rented out as an Airbnb. An owner isn't occupying those homes. Given that, he thinks it is absurd to require owner-occupancy for a bed and breakfast.

Mr. McConnell said he gave the Commission a copy of the Provo City ordinance. They were very specific about what they wanted to say. That ordinance requires a person, who owns at least 50% of the property and who occupies it as a primary residence, is considered as the owner-occupant. In his June 4th letter he demonstrated that they have met the requirements of owner-occupancy. There are two proposed conditions that relate to an LLC having ownership. These conditions were listed in the letter.

Mr. McConnell said that even though **Chair Dickey** was there when the Code was revisited, and he may understand the intent, the committee didn't do a very good job articulating what the intent was.

Chair Dickey clarified that what he is talking about is an unconditional interest, or an interest without conditions attached, such as found in an employment contract. He believes there is a fundamental difference between having a paid manager and renting property to one party. If there is someone who is renting out multiple rooms to different parties, that would be in violation of the Code.

Commissioner Cooke said none of the businesses with nightly rentals have been granted a CUP that runs with the land. It is not the Planning Commission's job to police nightly rentals. Mr. McConnell said he is trying to point out there are several homes being rented out as an Airbnb that are owned by LLC.

Chair Dickey asked Attorney Brackin if it is an allowed use for someone to rent out multiple rooms of their house to different, unconnected parties. She said that nightly rentals anticipate the property being rented to a single party. The owners of the Colby School could do that now, without coming before the Commission. Attorney Brackin

said there are a couple of components that make a difference between what is being proposed and a nightly rental. One is that individual rooms are being rented out to different parties. If someone wished to okay that, she speculated that use would need a CUP. Additionally, there is a food component with a bed and breakfast.

Attorney Brackin said the term “owner-occupied residence” is a familiar term. It comes from the real estate industry. For Summit County, this has been interpreted as primarily a residence and it is occupied by the owner. In the Silver Moose case, which the Commission has discussed, the Summit County legislative body deemed that having a caretaker scenario does not qualify as being owner-occupied. There are cases where this has been upheld on appeal by the Summit County Council.

Chair Dickey said he would like the Commission to come to a decision at this meeting.

- **MOTION**

Commissioner Simons made a positive motion to approve the CUP application per the findings of facts, conclusion of law, and conditions of approval as found in the Staff Report with a modification to Condition of Approval #1. It should read as:

“Prior to the issue of a business license, the applicant shall demonstrate that the Bed and Breakfast Inn will be an owner-occupied residence per the definition found in Title 1-3-2 of the Summit County Code.”

The motion was seconded by Commissioner Fine.

DISCUSSION ON THE MOTION:

Commissioner Harte asked Attorney Brackin what the process is, now that a motion has been made and seconded, if a Commissioner would like to add to or modify any of the conditions. Attorney Brackin answered that if there is a Commissioner who would like to amend the motion, they can ask the motion-maker if they would accept a modification to the conditions. It would be up to the person

who made the motion, and the person who seconded it, to accept or reject the suggested amendments. She said another way is to make an alternate motion.

Commissioner Simons asked if anyone has amendments to the motion, particularly to Condition of Approval #1. **Chair Dickey** responded that he is against the motion. He doesn't believe the condition of owner-occupied residence has been met. Because of this, the application has not reached the point to consider the conditions.

Commissioner Harte agreed. He doesn't think this application has met the threshold issue. If it had met the requirement of owner-occupied, the conditions would be easy to figure out. Because the applicant has not met the threshold question, he doesn't have any comments on the conditions.

Commissioner Stevens said she has a similar belief. Because the ownership interest is tied to employment, it creates more of a lease-hold interest. It doesn't meet the qualifications or the intent of a bed and breakfast.

Commissioner Fine said he thinks that **Commissioner Simons** made a good motion. He thinks the applicant deserves an up or down vote. Even though he seconded the motion, he is against it.

Commissioner Simons noted that her motion contains an amendment to condition #1 from the way it is written in the Staff Report. Her amendment would say,

"Prior to the issue of a business license, the applicant shall demonstrate that the Bed and Breakfast Inn will be an owner-occupied residence per the definitions found in Title 1-3-2 of the Summit County Code."

Commissioner Simons said she finds the Staff Report comprehensive. It puts the onus on the applicant to prove residency in order to obtain a business license. The entity

that grants the business license will have to make sure the applicant meets the bar of an owner-occupied residence per the definition. This gives the applicant a path forward.

Attorney Brackin said the Code that **Commissioner Simons** referred to in the motion (1-3-2) is from the General Summit County Code definition, not the Snyderville Basin Planning Code definitions. The Snyderville Basin Code is found in a different section. **Commissioner Simons** said based on the Staff Report and the way she interpreted it, she is purposely referring to the County Code. She is not proposing to amend the definitions of any Code, but rather to ensure that the intent of owner-occupied meets the threshold of what they have been discussing.

Commissioner Stevens asked that with the amount of discussion and the confusion surrounding an owner-occupied residence does amending condition #1 help to achieve what the Commission would like to see. Is this adding any additional conditions?

Commissioner Harte said he doesn't believe the applicant has met the threshold where the Commission would start applying conditions. He doesn't think the proposed amendment to Condition #1 helps the application meet the required standard.

Chair Dickey said the applicant has described the manner in which the building will be occupied. What they described does not meet the threshold of owner-occupied residence. He would be approving an application which does not meet the standard, with the condition that they change occupancy when they come to the County for a business license. This would be punting to the County to make that determination. It seems to him, that the Commission has the information needed to make the decision at this time. **Commissioner Harte** said there has been good clarity about how the business is intended to be operated.

Chair Dickey said there is a motion on the floor. He called for roll-call vote. He asked the Commission indicate yea or nay.

Commissioner Stevens- Nay

Commissioner Cooke- Nay

Commissioner Simons- Yea

Commissioner Harte- Nay

Commissioner Fine- Nay

Commissioner Kucera-Nay

Chair Dickey-Nay

- **MOTION FAILED (6-1)**

Commissioner Harte asked Attorney Brackin if a member of the Commission can make another motion. She answered that the Chair can entertain an alternate motion.

Commissioner Harte made the motion to deny the Conditional Use Permit based on the Commission's finding that it has not met the threshold issue of an owner-occupied residence. Commissioner Cooke seconded the motion.

Commissioner Stevens asked **Commissioner Harte** if the reason for his motion of denial will be articulated as a finding of fact that the application does not meet the requirements of the Code. **Commissioner Harte** said that is correct. **Chair Dickey** asked **Commissioner Harte** to repeat the motion.

Commissioner Harte repeated the motion to deny the Conditional Use Permit based on the Commission's finding that it has not met the threshold issue of an owner-occupied residence. Commissioner Cooke seconded the motion. Attorney Brackin noted this is a requirement of the Code. **Commissioner Harte** agreed that is the threshold issue they are trying to answer.

DISCUSSION ON THE MOTION

Brook Hontz suggested the Commission add wording to the motion to add clarity. The previous motion included the wording in the findings of fact of "owner-occupied residence." This was listed as a requirement to meet the threshold.

Ms. Hontz said she is confused. Is the Commission now saying that someone has to live in the house for 183 days? Does the ownership have to be defined in a certain way that the Planning Commission desires to see, other than what is defined in the current Code? Are there other issues at stake that they don't understand? She needs clarity to understand what it is meant by the threshold issue of owner-occupancy.

Attorney Brackin asked **Commissioner Harte** if she can articulate the answer to Ms. Hontz's question. He can then tell her if her suggestion is not what he intended the motion to be. **Commissioner Harte** said her help is appreciated. Attorney Brackin said the basis for a motion of denial is based on the following:

FINDINGS OF FACT

1. The Summit County Development Code requires a Bed and Breakfast Inn to be an owner-occupied residence.
2. The applicant has proposed that the residence is occupied, not by the owner, but by an employee.
3. The Commission cannot make the finding that the requirement, found in the Development Code, of an owner-occupied business has been met; therefore, the application does not meet all of the Code requirements.

CONCLUSIONS OF LAW

1. Based upon the findings, the applicant has not met the Code provisions for a Bed and Breakfast Inn in a Rural Residential Zone.

Ms. Hontz said she recently sent two letters sent to Summit County. In these letters, the applicant made it implicitly clear that there would be an ownership opportunity. It would not be an employee living there. She said that as applicants, they asked the Planning Commission to let them know if this information was going to be required as a condition of approval.

Ms. Hontz said that she thinks condition of approval #1 and #3 are essentially the same. They have not indicated how they would meet that standard. They have only said they would meet the standard as stated in the Code. In previous letters, they have asked the Commission to let them know if the information will be required to receive approval. They requested that information to be put in the conditions of approval.

Commissioner Harte, who made the motion for denial, said he would like to add some clarity. He said that the onus is on the applicant to prove that the Bed and Breakfast will be owner-occupied. The Planning Commission does not define what that proof needs to be. His understanding of what their attorney, Robert McConnell, stated at a recent meeting is that the ownership interest of the employee will be removed if the employee is terminated for just cause. He believes that constitutes an employee relationship. It is not owner-occupied.

Commissioner Harte said the owner-occupied issue needs to be satisfied before they get into mitigating the impacts. He said that Attorney Brackin accurately articulated the Findings of Fact and Conclusions of Law as he sees them. Attorney Brackin asked **Commissioner Harte** if he would consider a fourth Findings of Fact, which would be that the ownership interest has to be more than a contractual interest. **Commissioner Harte** said while he would be happy to have that on record and discuss it, he doesn't think it needs to be in the Findings of Fact. He doesn't think they have gotten to the point where it needs to be added.

Commissioner Stevens asked **Commissioner Harte** if he would consider adding that an ownership that is tied to employment is not sufficient to breach the owner-occupied threshold. She said that for her, it comes down to how ownership has been defined. Because the employee can be fired and lose their ownership rights, this is more of a lease-hold interest. This is the issue that seems to be making the Commission feel uncomfortable.

Commissioner Harte said he doesn't have questions about if the applicant would do a good job running a Bed and Breakfast. He knows that a Bed and Breakfast is allowed in a CUP. The threshold that has to be met is if there is an owner-occupied residence. He finds that standard has not been satisfied.

Commissioner Harte said if the applicants had shown that this was going to be owner-occupied, the Commission could easily evaluate the conditions. The Commission has asked for this information several times. The best answer they received was that the onsite management would receive an interest of some type in business. It was also made clear that if the employee decided to leave, or was terminated, that interest could be revoked. To him, that does not meet the standards of owner-occupied.

Chair Dickey said Mr. McConnell has stated that if the conditions of approval as included in the Staff Report, are included in a motion of approval, he would appeal the decision. Mr. McConnell acknowledged they are fine with most of the conditions. The exception is condition #1. Depending on how the condition is worded, they will appeal.

Mr. McConnell said they have indicated how the owner-occupancy requirement will be met. He said the Commission is tying owner-occupancy to a residency requirement. In effect, this is not allowing an LLC to be an owner-occupant. It must be an individual. He said the Summit County definition of ownership allows a lessee; however, the Commission won't let their employee be a lessee because that would be a contractual agreement. If that is the case, anyone who lives in an apartment would not be able to establish residency because they only have a contractual interest.

Chair Dickey said in his last letter there were two statements about ownership. One was ownership of the land and the other was ownership of the business. When Ms. Hontz was presenting these options to the Commission, Mr. McConnell indicated he objects to both options. He will appeal if either option is chosen.

Mr. McConnell said the Commission wants them to come with information about ownership. In a letter, they indicated that the employee/manager will have an undivided interest in the property, or they will be given a membership interest in the LLC. It wasn't articulated by the Planning Commission what this interest needs to be, so it was identified as 1% to 10%. He admitted that if the application was approved on those standards, he will most likely appeal.

Chair Dickey said what he objects to is a conditional ownership that would end when employment is terminated. Mr. McConnell says the condition allows ownership it to be a lessee. Attorney Brackin stated a motion has been made. This is not the time to be making these arguments. Mr. McConnell agreed.

Chair Dickey called for a roll call vote. **Commissioner Simons** asked for the motion to be repeated. Attorney Brackin said that she believes **Commissioner Harte** would like to make a motion to deny the Conditional Use Permit based upon the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. The definition of a Bed and Breakfast in the Snyderville Basin Development Code requires the home being used is an owner-occupied residence.
2. An owner-occupied residency is a condition precedent in a conditional use permit. It is a requirement that must be met before approval of a Conditional Use Permit can be given.
3. The applicant has not met the threshold about how an LLC, as an entity, will occupy the building as a residence.
4. The ownership interest, as proposed by the applicant, is not sufficient to meet the criteria of an owner-occupied resident.

CONCLUSIONS OF LAW

1. Because the threshold question has not been met, it does not meet the requirements of the Snyderville Basin Development Code and therefore, must be denied.

Attorney Brackin said she thinks she articulated what **Commissioner Harte** wanted to have said. **Commissioner Harte** agreed. This is absolutely what he would like to say. **Commissioner Cooke** said he will second the motion.

Commissioner Simons said, that for the record, she agrees with the findings of fact #1 and #2 as articulated in this motion, in that the definition requires that it will be an owner-occupied residence. She added she thinks the applicant could demonstrate, through a well articulated motion, how an LLC can meet the owner-occupied requirement.

Chair Dickey called for a roll call vote on the motion.

Commissioner Stevens- Yea

Commissioner Fine- Yea

Commissioner Simons-Nay

Commissioner Cooke- Aye

Commissioner Harte – Yea

Chair Dickey-Aye

Commissioner Kucera- Yea

- **MOTION CARRIED (6-1)**

Mr. McConnell asked if the denial will be put into a written form, including the findings of fact and conclusions of law. Attorney Brackin said it will be in the minutes. A copy of the audio recording will be available. Information was given on how to access the recording.

3. **Public hearing and possible action regarding amendments to the Silver Creek village Development Agreement for Parcel SCVC-2-80, located at 1473 Dogwood Court, Matt Lowe, Applicant- *Jennifer Strader, Senior Planner***

Planner Strader said this application was reviewed by the Planning Commission at three previous meetings, as well as a site visit. Since that time, the applicant submitted a request to have a final decision on the amendments within 45 days. The final land use authority for this application is the County Council. They are scheduled to hear this next week in order to meet that deadline. Staff requests that the Planning Commission move this application forward at this meeting.

Planner Strader reminded the Commission that the amendments are for Parcel 22.1. The subdivision plat shows this parcel as Lot 80. The request includes a height increase from 32' to 45'. The previously reviewed amendments included language that would allow the height to be measured from a modified grade. The applicants are no longer pursuing that amendment. The height will be measured per the existing Code.

The applicants are requesting an amendment to the subdivision plat to remove the maximum lot size of 4,000 square feet. They further request to have a unit mix of 52.6% affordable units. Planner Strader noted there are not a specific number of units indicated.

At the last Commission meeting, the applicant was asked to submit a draft site plan, a map to show the affordable housing distribution, and a site design narrative. All three of these items were submitted. Because the majority of the Staff Report has remained the same throughout the various meetings, Planner Strader will only focus on the new information and observations from Staff.

Planner Strader said the first request to allow a 45' height limit and to remove the maximum lot size of 4,000 square feet. She said the applicant told Staff this is needed to allow Mountainlands to reuse existing plans found on another lot in the Silver Creek Village Center. They noted there are other parcels within the development with the VR3 designation that have a 45' height limit. The applicants believe the height allowed for Parcel 22.1 was an oversight when the parcel standards were written.

Planner Strader said while the other VR3 parcels within the subdivision allow a height up to 45', they have differing standards. A site map was shared and Planner Strader pointed to the other parcels in question. She said these parcels have different setbacks and lot sizes. Staff has consistently stated the intent of the Village Center is to have the higher density development and the taller buildings located in the interior of the project. The density will become less intense as it grows towards the edges of the development. Staff does not agree that the height allowance on Parcel 22.1 was a simple oversight.

The subdivision plat for this lot has a note that the use of the parcel is designated to be townhomes. The height is limited to 32 feet. The maximum lot size is 4,000 square feet. If the amendments are approved, the plat will need to be amended. It is unclear if the height exception is being requested for the market rate structures, the affordable housing units, or both.

Planner Strader said regarding the lot size limitation, Staff was informed yesterday that the plan is to subdivide Parcel 22.1 so that each affordable building will sit on its own lot. Staff understood that the parcel was to be developed as one lot, which included both the market-rate and the affordable buildings. The submitted draft site plan does not show any interior property lines. Between the site plan and the information received yesterday, Staff is unclear what the plan is to develop the site.

Planner Strader said the third amendment is to allow the percentage of 52.6% affordable units. Staff's analysis of this request has been focused on how a large percentage of the affordable units would impact the integration. How would that affect the mix of unit types and various sizes? The applicant has provided a map of the integration of affordable housing. It simply states that each future development will provide the minimum of 25% affordable units until the total obligation of 330 units has been met.

Planner Strader said with the information she received yesterday, Staff has many more questions. Are the buildings still being proposed to be 45' in height? Will the site be developed as one project? This is important because the Development Agreement states that each development must provide 25% affordable units. If the market-rate units are a single development on a single lot, they would be required to provide 25% of those units to be affordable.

Planner Strader said the applicant has stated there will be a workforce housing agreement that will address the affordable units. Although that is a requirement, it cannot supersede the requirements of the Development Agreement. An exemption cannot be granted to the workforce housing obligation.

Planner Strader said another concern is that if Mountainlands is only building the affordable units and someone else is building the market rate units, how can the County be assured that a 24-unit affordable housing building isn't going to be constructed alone in the middle of the Village Center for an undetermined time with no transit service to that cul-de-sac.

Planner Strader shared the site plan that had been submitted by the applicant. After a review of the site plan, Staff found that it doesn't comply with the required setbacks. She showed where the plan is out of compliance. Staff is not sure how the parking and the circulation is going to work. She told the Commission that this is a conceptual plan. It will not be approved as part of the amendments. The official site plan will be specific about the number of units, which is 114 units, with 60 affordable units.

Planner Strader said Staff doesn't normally schedule items to come before the Planning Commission when there are outstanding questions. Due to the 45 day request, they had no choice. Because of the unanswered questions, Staff can only recommend denial to the amendment requests. This is the reason there are no findings of facts with the Staff Report. The facts are not clear at this time.

APPLICANT'S PRESENTATION

Wade Budge said he is the attorney representing Matt Lowe, who is also attending this zoom meeting. Scott Loomis from Mountainlands is also in attendance. He can answer any questions about the request.

Mr. Budge said at their last meeting they indicated in order to obtain LIHTC affordable housing, they need to meet certain deadlines. Those deadlines are fast approaching so they are in a time crunch and therefore they are requesting a decision be made at this meeting. They would love to have a positive recommendation, but mostly they want to have the Commission's comments.

Mr. Budge said he would like to address a couple of points made by Planner Strader. He said they are not coming to the Commission with a specific site plan. What has been submitted is to show what the site can accommodate. The height request is for both the market-rate and the affordable housing. That exception will accommodate better uses on the site. When and if they get an approval, they will put together a compliant site plan. They will return to the Commission after a review by the DRC and Staff.

Mr. Budge said they believe this height is consistent for this type of use. If they want to have a LIHTC building, they need to meet the density count, which means multiple stories will be needed. They think that the property next to the sewer plant will be an ideal setting for a taller building. Whether or not this was an oversight, the fact is they are seeking a height exception.

Mr. Budge said they think Exhibit G does a better job than Staff gave them credit for. The exhibit shows how they are dispersing the affordable housing units throughout the project. He shared a slide that showed the 64 Mountainlands condos in the VR3 area. He said 32 of these units currently are under construction. The three Habitat for Humanity projects are also denoted. The rest of the units will be dispersed.

Mr. Budge said there isn't a requirement that every third or fourth door are required to be affordable. The language in the Development Agreement states that "The affordable housing units shall be generally located throughout the project and integrated within the community." He thinks this means that all of the affordable housing units will not be put in one specific place. To interpret that differently is stretching the way cities and counties can apply State regulations.

Mr. Budge said they feel very confident they can meet the items that Planner Strader has identified. At this time, they are trying to create a "cube of air" so they can apply for a specific type of affordable housing project that will serve this community well. He thanked the Planning Commission for their time and consideration.

Commissioner Harte asked Mr. Budge to redefine what they are specifically asking for. Mr. Budge said they are seeking a positive recommendation for a one-page amendment to the Development Agreement. The amendments will allow the increase of height for the parcel. To avoid future confrontations with Staff, they removed the request to allow 52.6% of affordable housing units.

Commissioner Stevens said because there are no findings of fact, that either way they decide, the Commission will need to articulate what the findings of fact are. Attorney Brackin said if they recommend either approval or denial, they will need to articulate their reasons they made the recommendation.

Commissioner Stevens said in previous discussions, they have talked about fill. She asked if fill is still part of the picture. Mr. Lowe said at one time, they were going to measure from the rehabilitated grade; that is no longer the intent. They now plan to measure according to the Code. There are places that may need up to six feet of fill dirt. This is the reason behind the height limit request. This request now includes the fill, it is not in addition to it.

Commissioner Simons asked how many units in total are being proposed on this parcel. Planner Strader said they are requesting 114 total units, including 60 affordable units. That is where the 52.6% comes from. **Commissioner Simons** asked how many affordable housing units already exist. She was told there are 128 units in the works, in addition to these 60. **Commissioner Simons** calculated there are 142 out of the required 330 affordable housing units remaining to be built throughout the development. She asked if the other affordable housing units be dispersed throughout the subdivision. Mr. Lowe said under the Development Agreement, they cannot have less than 25% in their series of applications.

Commissioner Stevens figured the breakdown of affordable unit types. There are 80 apartments/condos and 24 townhomes. This project would be an additional 60 apartments. Moving forward, they would be looking at additional townhomes and single family homes.

Commissioner Harte said at an earlier meeting, the Commission approved apartment buildings. After the approval was given, the developer switched these to condos. The Commission should take into consideration what was approved, but what was not actually built.

The public hearing was opened. There were no comments and the public hearing was closed.

COMMISSION COMMENTS AND QUESTIONS

Commissioner Kucera said the request for a height adjustment seems to be very financial in nature. Building a 45' structure on the edges of the subdivision is contrary to the stated intent of putting the taller buildings in the center of the project. It would be challenging to be in support the request. He doesn't think the height allowed on the site is an oversight. The townhomes were identified to be placed there.

Commissioner Kucera asked Mr. Budge if there is anything that prohibits the 52.6% affordable housing units in this area. Mr. Budge responded that request was to avoid future misunderstandings with Staff. **Commissioner Kucera** said he doesn't have a problem with that number of units being located at this location.

Commissioner Cooke said he has less of a problem about the affordable housing percentage as a standalone amendment. They have always gone by minimum standards. He is unsure why a higher percentage would need to be mandated on a parcel by parcel basis.

Commissioner Cooke said He understands the challenge of that parcel after visiting it. He can see the need for some fill dirt. However, he believes the feathering on the parcel was intentional. He thinks the parcel standards relative to the height and the maximum parcel size was to encourage a certain type of VR3.

Commissioner Cooke said he understands that the sketch plan is not the final site plan, but he can't get over what he is seeing in terms of the trail, which is a community benefit. The setback shown is less than 2 feet. The trail is intended to be 8' with a 10' Basin Rec easement on each side. He wonders how that could even be proposed. In some places there are dumpsters 2' away from the trail. The idea of the trail was to be a greenway, but there is a sea of parking lot next to it.

Mr. Budge said the trail is already there. All of those rights will be respected. The current site plan is to only show they will have market rate and affordable housing buildings located on the same parcel. **Commissioner Cooke** said he feels the intentions of the Development Agreement are clear. This falls short of meeting those intentions. **Commissioner Fine** said he doesn't think the Commission is seeing the true picture of what it will look like. He is concerned because things have changed quite a bit. He doesn't know what to believe. He doesn't like what has been presented. He doesn't like the setbacks and the condos being proposed instead of townhomes.

Commissioner Harte said it is rare that Staff gives a negative recommendation. This raises a red flag, even though they may be able to work out some of the things in this meeting. It indicates there is something wrong. For him, the height exception isn't a big deal because of the location and topography of the lot. It wouldn't look like a large towering building.

Commissioner Harte said because he was on the committee that worked out the Development Agreement, he knows they desired to have the affordable housing spread throughout the development. When thinking about the big picture, he wonders if they are sticking to the intent of a diverse community. As a Commission, they decided to allow a block of apartments, which went against the goal of integration. Soon the approval was given the Commission learned, through the grapevine, that all of the apartments were going to be built as condominiums. It is difficult when the Commission is told one thing, but something else happens.

Commissioner Harte said whenever large blocks of affordable housing are allowed it draws down the number of affordable housing units for the project. That will impact the integration rate of affordable housing units in a negative way. For him, integration is the most important issue.

Commissioner Harte asked if the three amendments requested at the beginning of the meeting remains the same at this point. Have some of those requests have been adjusted? He asked Planner Strader if she feels any more comfort with this request after hearing from Mr. Budge.

Planner Strader answered that Staff is confused about what is really being requested. What she is being told from Matt Lowe is different than what she is hearing from Mountainlands. She knows what the three requests are; however, with the information she has received over the last couple of days there are unanswered questions.

Commissioner Harte asked Mr. Budge if he will explain some of the questions. Mr. Budge responded that the building itself will be 36'. Because of the needed fill, it will be 45' from the existing grade. They have already constricted themselves as to the units they want to place on the site; therefore, they have removed that variable. The confusion of the part of Staff comes from the things they will address if the application is approved. This will be things such as setbacks. He said they will not degrade the community benefits.

Mr. Budge said this is a simple request. They are looking for an exception to height and an exception to the 4,000 square feet maximum lot size. They would like to have all the uses on the same parcel. They are looking for approval for the proposed mix. There will be a number of things they will address through the site plan and approval process. To say all these confusing items are acting as a bar preventing the Commission to give a positive recommendation, is putting the cart before the horse.

Planner Strader said she would like to clarify. She just heard him say that all of these uses will be put on one parcel. This was her understanding, but yesterday she was told that Mountainlands would like to subdivide the parcel. They want to have their building on its own parcel.

Mr. Budge said that is correct. During the development process, the plat will show the locations of the affordable housing. This plat will be brought to the Commission. Mountainlands need to plat the development in a way to meet the LIHTC requirements as well as the financing requirements. What won't work is a 4,000 square feet lot. Mr. Budge said these details do not have to be ironed out in order to ask the legislative body to exercise their discretion to decide if they want this product type on this parcel. Will the County Council be willing to amend the three restrictions that will prevent this product type on this parcel?

Commissioner Cooke recalled a statement that this is an ideal location to put affordable housing. He thinks the ideal use for this parcel is what was contemplated, meaning smaller townhomes. Mr. Budge said the point being made was that this location is ideal relative to the buffering of the height. The height could be accommodated next to the present use. He said a height exception could be allowed because of a rise in elevation.

Mr. Budge said there will be both affordable and market-rate housing. The building will be so nice that people will want to live there. He said there was a February meeting with the Commission before the COVID pandemic. That is the reason to have a decision at this meeting. There is a deadline to apply for a LIHTC project. The developers will make sure they are not sequestering a corner of the project to be affordable.

Commissioner Cooke said he respects the fact they are trying to cut costs and reuse plans for the project; however, these requests feels contrary to the idea of building projects that fit the land. He could see there may be a way to forward a positive recommendation for the height and the 4,000 square-foot lot exceptions. His sticky point is the 52.6% of affordable housing units. He said although Summit County has a need for all types of affordable housing units, for him, this is where the application erodes. The Planning Commission has already made accommodations.

Commissioner Harte asked if they can forward a positive recommendation on one or two of the requests, but not all three. Planner Strader said it is her understanding the Commission can forward a different recommendation for the different requests.

Commissioner Harte said his inclination is to forward a positive recommendation for the height limit and the maximum lot size, but not the 52.6% of affordable housing. It would work directly against the integration of affordable housing.

Commissioner Harte said a larger building isn't necessarily a negative to him. It would be behind a sloping hill. If the sewer treatment plant was not there, but a house was, he

would be strongly against additional height because it would impede someone's view. He does not want to see one large building of affordable housing. That would be exactly the opposite of the Development Agreement.

Commissioner Harte said it felt like a switch and bait when the Commission-approved apartments were changed to condos. The Commission went against what they normally allow because they acknowledged that apartments are usually in a big block. Later, they heard through the grapevine that the apartments were turned into condominiums. Now there will be a giant block of affordable housing condos.

Mr. Loomis said they all agree they need a mix of for-rent and for-sale affordable housing units. He said there are only a couple of places in the development that allows higher density units. When they came in with the earlier proposal, they thought what they proposed would work; however, the construction costs went up about \$50 a square foot. Economically, that made the project no longer feasible, but condominiums would be possible on a for-sale basis.

Mr. Loomis said they previously requested to have 40 apartments on the adjoining parcel, rather than the 34 townhomes. This request was approved. They applied for low-income housing tax credits on the 40 units. That request was not approved. He explained they will never receive LIHTC approval on any project larger than 24 units. They were able to obtain other financing for 40 condominiums.

Mr. Loomis emphasized Summit County needs apartments. He agreed there is a need for rented apartments more than there is for for-sale units. They are asking the Commission to tell them what percentage they want before they go to the expense and trouble of a site plan. They can apply for tax credit again this September.

Commissioner Harte said they had the same conversation at the meeting when the apartments were approved, but then not built. What is to say this will be any different?

Commissioner Harte asked Mr. Lowe if he has considered an increase of affordable housing units so they can maintain the required integration. He said this request is to amend the Development Agreement. When they get to the County Council, it will be in the County Council's purview to allow exceptions.

Mr. Budge said when he looks at Exhibit G, he sees remarkable integration. He and Summit County Attorney Dave Thomas drafted the terms of the Development Agreement. He is now hearing this project doesn't have enough integration. He will take those comments into account and have more discussions with Staff.

Mr. Budge said he sees a clear mix of units where the density is intense. There will be detached affordable housing units throughout the development. He said the Development Agreement has nothing in it that restricts more than what is being asked.

Commissioner Harte said integration has come up in many of the meetings. This has been in the works for quite awhile. He doesn't think there should be confusion about what the Commission has been thinking. Mr. Wade said they tried to demonstrate integration with Exhibit G. They are happy to have input on how it could be improved.

Commissioner Simons said, taking the slope into consideration, she respects the need for height. However, buildings should be designed to fit the site. To get the best affordable or market-rate housing on this site more consideration is needed. She understands the desire to save money, but the outcome should create the best result. The request for height and fill seems to go together.

Commissioner Simons said she thinks the lot size request and the building type go hand-in-hand. Statements made by both Mr. Budge and Mr. Loomis seem to emphasize that. If the building type were to change, the parcel adjustment may not be needed.

Commissioner Simons said she asked some questions in February's meeting about the phasing of the project. She is unclear on how the site will be developed? Will the affordable housing be put in first? Or will it be the other way around? She is concerned they don't know how the development will be phased. This lot is at the edge of the development.

Commissioner Stevens noted they last met in February. Now there is a sudden deadline. It would be hard to say that she would agree to the height exemption because a different design could be used. She isn't convinced that the request for an amendment is warranted. It will not achieve what was intended in the Development Agreement.

Commissioner Stevens said appreciates the comments made by **Commissioner Simons**. She appreciates the attention to the site and designing a building that will fit it. There will be an impact for the community. She also appreciates the applicant's desire to build the units in an efficient way. The affordable stacked flat buildings that were front loaded have been a benefit to the community.

She doesn't have much of an issue with the height. She appreciates the clarification about how the height will be measured. Moving forward, it will be helpful to indicate that the height will be measured from the current grade.

Commissioner Stevens believes the Commission should give direction for integration, particularly if they consider removing the 4,000 square feet requirement along with the percentage adjustment for affordable housing. If it won't work out to have stacked flat market-rate and affordable housing units within each building, it seems contrived for the Commission to approve any of this. She asked Mr. Loomis to clarify if it is possible to have both market-rate and affordable housing in the same building.

Mr. Loomis said if the goal is to get 50% AMI or below, the only way to do that is with tax credits. The investors who purchase the tax credits wanted the market-rate units

removed from the equation. Why would anybody want to live in a market-rate unit located within an affordable housing building, especially if they can rent elsewhere and receive many more amenities?

Mr. Loomis said the only way for this to get 50% AMI or below, a requirement for rental units, is to receive tax credits. That means the project has to be 25 units or less. They intend to build 24 affordable housing units with an average of about 42% AMI.

Commissioner Stevens said even with the potential to reuse the existing site plan, will there still be an issue for the funding and integration? She said that a follow-up question is why the funding for 50% wasn't and below used for the previous project?

Mr. Loomis said they applied for it. They thought 34 apartments at 60% AMI would work because it wouldn't require tax credits. They found that it didn't work because the construction costs were so high. They can build 40 units (that are substituted for the 34 townhomes) at 60% AMI because construction costs have gone down. He explained the different types of financing that is needed. Right now, the market-rate and affordable housing can't be co-mingled.

Commissioner Stevens said that ultimately the changes and amendments to the Development Agreement are to accommodate the smaller 24-unit buildings. They will be separated from the market-rate buildings, but will be integrated in the sense that the two types of buildings will be next to each other.

Mr. Loomis said they can apply to get tax credits for one 24-unit. A year later, they can apply for another tax credit. **Commissioner Stevens** thanked Mr. Loomis. It is good to understand the requirements needed for affordable housing. She has less of an issue about the percentage, depending on how the units will be integrated.

Chair Dickey said he recognizes how difficult a conceptual site plan is to create. Whenever something is submitted, there are always some issues. He added that is

difficult to think about the amendment to the Development Agreement without seeing a specific project. He said anything that would fit into the new constraints could be built.

Chair Dickey said he also has questions about the phasing of the project. If the project takes years to complete, he doesn't want to have the affordable housing unit sitting alone at the edge of the development. He thinks that defies the Commission's integration goals. It would be undesirable. He would like to tie the market-rate and the affordable housing together. He would like to have an application to go along with the requested changes. He objects to approving any of the amendments today.

Commissioner Stevens asked Attorney Brackin how the Commission should proceed. Does the Commission need to articulate the findings of fact? Attorney Brackin said if the motion is to approve or deny reasons for that decision should be articulated. It can be based upon the conversation at this meeting. .

Attorney Brackin listed some of the things the Commission discussed at this meeting that could be used as reasons why the Commission might give a negative recommendation. **Chair Dickey** added they also have a four-point standard on page 4 of the Staff Report that must be met. A negative motion could tie back to these standards.

Commissioner Cooke asked if this Commission is a scenario of a well-intentioned project, but in the wrong place. Are there other options in Silver Creek Village where it may fit better? He is looking for an opportunity for this valuable project to work.

Commissioner Harte said if this is moved to a different location, it would still lack integration. Because affordable apartments are needed, the Commission already made accommodations, which turned into something they didn't approve. This is the same conversation they already had. Wherever this is built, affordable housing will be concentrated into one large building.

Commissioner Cooke said they are contemplating significant amendments to parcel standards. All the members of the Commission seem to have concerns. He said the Development Agreement did allow for larger buildings. He recommended the applicant seek to match a site plan and a project that would, hypothetically, be allowed.

Commissioner Simons said from an urban design perspective, the location really matters. The Development Agreement clearly articulates the intent for the integration throughout the project. It was intended to have the taller and denser multi-family buildings in the central part of the development. To have a tall and dense building on the edge of the development doesn't make sense. The applicant has stated this building was designed for a different site.

Commissioner Cooke said that transit services have not come to Silver Creek Village. It will eventually get there, but not in the back corner of the development. Transit needs to be intertwined with this type of structure. If it is intertwined, then he would be more likely to look at this in a positive light.

Mr. Loomis said they have looked at all of the other sites within the development. There are no other parcels that would allow higher density. He said that Parcel 22.1 qualifies to have a transit stop. Mr. Budge said eventually there will be transit.

Commissioner Simons asked about the remaining high density parcels. Mr. Lowe said those parcels have been sold. The buyers have already submitted a sketch plan to the Planning Department. Their intent is to have a fully integrated condo project. Twenty-five percent of the units will be affordable. **Commissioner Simons** said she is still concerned about the site topography connected to this building design.

Commissioner Stevens said she believes the Commission is not at a place where they feel comfortable to approve these amendments. She personally feels rushed and has outstanding questions.

- **MOTION**

Commissioner Stevens made a motion to forward a negative recommendation to the County Council in light of the outstanding issues and the Commission discussion and comments expressed at this meeting. Commissioner Kucera seconded the motion.

The motion was discussed. It was said that this seems like the right vote to take procedurally, but it has an undesired outcome. There is time for the applicant to clear up some of the questions before they go before the County Council. A roll call vote was taken.

- **MOTION CARRIED (7-0)**

4. Public hearing and discussion regarding amendments to the Summit Research Park Development Agreement on land use, housing, amenities and site plan; located in the Community Commercial (CC) zone, Parcels PCTC 401-AM, PCTC 404-AM, and PCTC-5B-AM, Dakota Pacific Real Estate, Applicant- *Kirsten Whetstone, AICP, County Planner*

Planner Whetstone said she is joined tonight by Jeff Gochnour and his team. Jeff Jones is from the Summit County housing department. He has a short presentation on the affordable housing requirements for this proposal.

Planner Whetstone said this agenda item is a request to amend the Summit Research Park Development Agreement. It was approved in 2008 by the County Commission. The agreement allowed the property owner to develop 1.25 million square feet of research use as described in the agreement.

The current applicant is requesting a mix used development to replace the previously agreed upon uses. There will be no increase in density. The property consists of 50.53 acres. It is located on the west side of Highway 224. The application consists of the

property owned by the developer. The Summit County lands, adjacent to this property, are not included.

Planner Whetstone said the background and history, as well as notes about the previous meetings can be found in the Staff Report. Tonight's meeting is to receive public input on the proposal. Staff is requesting that no formal action be taken at this meeting. Following the conclusion of the public hearing, Staff recommends the public hearing is continued to the next meeting on July 28th. She said there have been a large number of emails received with public comment. These will be forwarded to the Commission as they come in.

Jeff Jones said he was asked by Planner Whetstone to walk the Commission through the requirements for affordable housing. Mr. Jones shared his screen for a presentation about how the AUE figures were derived. He said he created an Excel spreadsheet that can be used by the Commission for future projects. It contains the step-by-step information on how to go through the process.

Mr. Jones said the project is consistent with the Snyderville Basin Development Code. The number of affordable housing units being proposed is 256. This exceeds the number of required units of 168. The proposed number of affordable housing unit equivalents (232.1) exceeds the required number of affordable housing unit equivalents of 229.9. The applicant is willing to permanently deed restrict an additional 50 units for attainable (or middle income) housing. That will be for those earning between 80% and 120% AMI. The restricted deed caps the appreciation of the structure to 3% per year. This action will keep those units affordable through the life of the home. He concluded his presentation and the Commission said they had no questions.

APPLICANT'S PRESENTATION

Jeff Gochnour clarified some of the figures given by Mr. Jones. There have been some questions about the impact of the 78 required units for office, retail, and hotel density.

He said that nine are related to the hotel, seven to the retail, and 62 to the office. This is correlation to the number of employees that are generated through those uses. Mr. Gochnour introduced his team. There are his colleagues from MIG, which is a planning group: Chris Beynon and Mark Delatory. Jim Charlier is their transportation planner.

Mr. Gochnour said there has been community engagement. In previous meetings, a comparison was made between the existing entitlement and what they have proposed. A summary of the housing program and an overall summary were given.

Mr. Gochnour shared a slide of the project site. Including the Skull Candy building, there are 60 acres. 51 acres are undeveloped. This property is adjacent to retail uses, property that is owned by Summit County, and dedicated open space. He said the development will not encroach into the open space.

PROJECT HISTORY:

- The project was approved in December 2008 by the County Commission
- It was approved for 1.3 million square feet for a research park
- Since the approval, two buildings have been built. These are the Visitors Center (30,000 square feet) and Skull Candy (45,000 square feet).
- In addition to that the Liberty Peak Apartments with 152 workforce housing units along with the necessary roads and infrastructure were developed.
- There was not a lot of flexibility given on how research was defined. This made it difficult for the past property owners. Additionally, the project was approved during a difficult economic time. When that hardship ended, a lot of research work and offices located in southern Salt Lake County and northern Utah County.
- His group purchased the property in December of 2018
- They propose a mixed-use plan. They think this plan responds to community needs. It reflects the Kimball Junction, Snyderville Basin, and Summit County strategies and vision for the site.

A slide was shared of the existing approved site plan. It has 1.3 million square feet of allowed density. He pointed to the Liberty Peak apartments. He explained these apartments do not count towards the allotted square feet. They are in addition to. He said that plan has a lot of surface parking. Other features were pointed out.

Mr. Gochnour said their plan is different. He shared a screen with their site plan. There is 1.3 million square feet for development. The workforce housing units they propose to build will not count against the total square feet.

Mr. Gochnour said they will have a mix of uses. The development is intended to be very pedestrian friendly. The placement of the buildings creates more open space than the previous plan. He said there will be 306 workforce housing units with 256 are 80% AMI and below. That leaves 50 units that will serve the middle income with attainable housing. He pointed to the following to give the public understand of the locations:

- Multi-family apartments
- Townhomes
- The proposed hotel
- An 80 unit for-sale condo project
- Retail units
- Office units

Mr. Gochnour said the development is designed to be community oriented. They will have plazas, a possible community garden, and a place for live music and performances. They will reserve space for potential civic buildings and potentially for an expanded transit facility. They hope to attract people to park at the center and then take transit to where they are going. They intend to have local service and dining. This will not be the big chains. Office uses are integrated within the project. The hotel is planned to be a unique full-service boutique hotel.

Mr. Gochnour said as things develop, there may be the opportunity to have other connections above or even below Highway 224. Other features of the project were described. The development will be a beautiful and memorable entryway for the Snyderville Basin and Park City.

Mr. Gochnour explained the reasoning behind their original thought of including properties own by Summit County. If the properties were combined, a significant transit center could be created. They have since decided to concentrate on the property they control at this time. They will develop it in a way that will retain the possibility of an updated transit center. Additionally, the right-of-way for expansion of the gondola will be maintained.

Mr. Gochnour said that community engagement has been tricky during the COVID19 pandemic. They have engaged the public in three different ways: focus groups, a web site with 314 survey responses, and two virtual open houses. They have been talking with different businesses.

Some of the feedback themes they received were shared. People want walkable communities with open space. The mixed-use concept is preferred over the current entitlement. People liked that this development provides more workforce housing.

Mr. Gochnour said the most common concern was about adding more traffic to already overcrowded highway. Another concern is if there too much housing and not enough retail and office? Will overcrowding of the schools occur? Some amenities and benefits were suggested by the public. These included providing housing for senior citizens, prioritizing housing for county residents, and not allowing short term rentals for secondary homes. A trail connection to the Wal-Mart Shopping Center was requested. He read quotes from some messages they received.

Mr. Gochnour showed slides that compared the plan they are proposing to the existing entitlement. The slides showed the commonalities, the differences, and the locations. A slide of the traffic comparisons showed the differences of the two plans. One result showed the difference between the peak driving times. Their plan has the traffic at 40% less during peak time generations. There were slides showing the different statistics.

Parking comparisons were presented. Mr. Gochnour pointed to the planned parking and parking structures of the original project. The planned and preserved open space was shown and plazas were identified. Other slides with comparisons were shared. The benefits of the Dakota Pacific project were pointed out.

Mr. Gochnour showed slides giving the unit type mix of the different properties. There will be a mix of units in all buildings. He said their company will control the management. Management will be onsite. That is one of the benefits they will provide. They want to supply the key items being requested by the public. The design will be sustainable and energy efficient. Slides demonstrated how this will be achieved. This ended Mr. Gochnour's presentation.

The public hearing was opened.

Bob Richer said he is a former Summit County Commissioner. During his tenure he helped to put the Research Park together. He listed the open space that was preserved because of this transaction. There were other benefits that came from this project. One of which was the elimination of some of the density.

Mr. Richer reported attending all six of the work sessions with the intent to consider the information provided as if he was still a decision maker. He offered his analysis of the project. He disagrees with the allowed square footage being presented. The Commission should check the calculations.

Mr. Richer said the people of Park City and the Snyderville Basin have said they are against accelerated growth. He is concerned about the traffic. He is against the approval of this application and listed his concerns. This may be the most significant project to come before this Planning Commission.

Kathy Mears said she was on the Basin Open Space Advisory Council. She was involved, in an advisory way, with the acquisition of the land for \$25 million. She believes the developers design is great for a growing urban area, but that is not what the Snyderville Basin is about. Part of the reason this large amount of money was spent was to remove some 600-800 potential homes, preserving open space, and to beautify the entry to the Snyderville Basin. This plan is inappropriate for this location.

Ms. Mears said she found it offensive that some of the people they surveyed were from Salt Lake City. She has found no one from the Basin that believes this project will be a community benefit. One reason is because everybody will get into their car and drive, adding to the existing congestion. She listed the upcoming affordable housing units that will be constructed in the near future. She said that approving this project will be an insult to the community.

Debbie Scoggan said she was a member of several Summit County commissions and committees. She actively fights against sprawl. She feels insulted that the developers take a vulnerable point of the community, such as affordable housing, so that this development will be considered. They developers don't have the right to make a profit by creating unwanted traffic and congestion. This community has worked tirelessly to prevent the type of growth being proposed. There are no overriding benefits. She is opposed.

Gordie Mills said the previous speakers have ignored a couple of important facts. Utah is growing and will continue to grow. The same is true for Summit County. This project will provide a transit system that will help to reduce traffic congestion over

time. He commended Dakota Pacific for paying attention to the Kimball Junction Master Plan. He has seen evidence that the developers have listened.

Mr. Mills said the walkable concept creates a great place to live for seniors. There is a housing need in Summit County for that demographic. He was disappointed that the major transit hub in their early proposal has been deleted. He reported that connectivity was a major goal in the Kimball Junction master plan. The proposed link to Wal-Mart will help to achieve that goal.

Colin DeFord said he is not protesting the density because this property has density attached to it. He said this may be the last opportunity the residents have for Kimball Junction. The Commission should strive and demand an excellent project. He encouraged the developers to do better and plan better. The residents will have to live with this for many years. They should give the residents something that will be a place that they want to go and not a place they want to avoid. The needs of the surrounding communities should be considered and addressed in their plan.

Preston Hall said he is the owner of Mountain Top Physical Therapy, which is located in the Visitor Center building. As the Commission knows, there has been very tight usage allowed in the Teach Center. That has affected property values and the ability to bring tenants to the area. If Dakota Pacific is able to have a wider range of usage, he hopes that will apply those uses to this building as well.

Todd Hauber said he is the Park City School District business administrator. The school board asked him to report some of their concerns. He understands that under the Development Code the impacts to school districts are not to be considered. He said the projected 1,100 units will send approximately 500 students to their schools. The school district would have appreciated being part of their conversations. The Board agrees with many of the concerns expressed.

Tim Anker said he is a commercial real estate broker located in Park City. He lives in the Silver Creek area. He said there are several things he likes about the project. He likes the direction it is taking.

Mr. Anker said he is concerned about economic diversity. He believes the community is better served the economic diversity can be broadened. He noted that currently, Dakota Pacific is proposing far less office space than is entitled in this project. Losing the restrictions that were placed on the Tech Park would allow very good businesses with high paying jobs to provide economic diversity to the area.

Mr. Anker gave the example of a project on the other side of Highway 224 (Cottonwood Partners at New Park). This development did not have the handicap of research and technology. This project was built and fully occupied in a matter of a few years. He believes that downsizing the office space entitled in this project seems to be appropriate for the market if the restrictions that currently exist are deleted.

Mr. Anker said there is problem in the Snyderville Basin to have housing that employees can afford. He thinks that less commercial space and more affordable and attainable housing is a step in the right direction. He believes that economic diversity is a compelling public interest.

Sally Elliott said she served with Bob Richer and Ken Woolstenhulme on the County Commission. The entire Commission agreed they needed some opportunity at this location for economic diversity. She said this is the last opportunity they have to promote high-end economic diversity in western Summit County. She said that as the community warms and the snow is lost economic diversity becomes very important. She agrees with much that has been said. This site should be preserved for some other type of employment than the skiing and tourism industry. She asked the Planning Commission to please deny this project.

Aaron Sandler said he went to some of the initial meetings. He saw the developers plan and was very impressed. He said the developers knew what the development rights were when they bought this land. He doesn't think the Commission should give an approval as it currently stands. Approving a change for this piece of land is a very important decision. He thinks the residents deserve better than what is being proposed. He encouraged the Commission to give a negative recommendation.

Cynthia Baxter said she and her husband are part-time residents of Kimball Junction. The most disagreeable element of life in Kimball Junction is the traffic congestion. This project will add to the congestion in ways that the Tech Center never would. She believes the impact to the traffic will be huge.

Ms. Baxter asked what will be seen from Interstate 80 if this project is developed. Is parking planned to be along the Interstate? Will the open space be tucked behind the project? The Tech Center would have given the community a longer period of time to work on congestion. She requested a negative recommendation.

Mary Smith said this is an important decision. She agrees with the comments of concern expressed in the meeting. She asked the Commission to consider the highest and best use for this piece of land. Slow growth is in alignment with their community values. The Commission should consider the impacts on traffic, the schools, and the air quality.

Susan Adams said she agrees with the previous comments made. She is against.

Chair Dickey said the public hearing will remain open until the July 28th meeting.

Attorney Brackin said noticing will not be required. **Commissioner Harte** said because this project is so important he wonders if there a way to ensure the public is aware of the upcoming meeting. Planner Whetstone said the County will publish the meeting in the newspaper and on the website. Attorney Brackin said the law does not require

another round of postcards to be sent. If the meeting is continued to a date certain all of the regular noticing will occur, with the exception of the postcards. Sending those will depend on the Planning Staff and what the applicant wants to do.

MOTION

Commissioner Cooke made a motion to continue the public hearing to a date certain of July 28th. Commissioner Fine seconded the motion. All voted in approval.

- **MOTION CARRIED (7-0)**

Chair Dickey said he would like the Commission to respond to some of the questions and comments expressed at the public hearing. He asked Planner Whetstone how is the square footage is calculated. She responded that information is found in the Development Agreement, which was sent to the Commission at the beginning of this process. She will be happy to resend it.

Chair Dickey asked about the uses of the structures that have been built. Will these uses be changed if the project is approved? Planner Whetstone said she will need to investigate that answer. Currently, those structures are subject to the Development Agreement. They are not part of this application. **Commissioner Cooke** said it would seem unfair to require the existing restrictions to be maintained.

Chair Dickey asked Attorney Brackin about the Commission's right to consider school impacts. Attorney Brackin responded that legally, school impacts cannot be part of any deliberation. The State Legislature took that ability away from all counties.

Commissioner Stevens asked Attorney Brackin if involving the school district in discussions can be considered for future application. Attorney Brackin said that would be broaching the line too much; however, the developer and the school district can get together on their own without the County being involved.

Chair Dickey asked Mr. Gochnour what the mechanism would be to ensure the rent on affordable housing will not convert to a market-rate rent in the future. Additionally, what is the strategy to prioritize the affordable housing to people who live or work in Summit County? Mr. Gochnour said the affordable rents are deed restricted and is based on the AMI. There are formulas from HUD on how to figure the rent amount. These figures change depending on the number of people in the household and the current AMI. He said the agreement is recorded and attached to the property.

Mr. Gochnour said they will give priority to those who live or work in Summit County. If someone is commuting to Park City from Salt Lake City, they will be included on the priority list. Mr. Jones added that many of these agreements have a waterfall provision which prioritizes. He said the County has more problems finding qualified buyers than finding renters.

Chair Dickey referred to the public concern about the view of the development from different vantage points, such as I-80. The person making that comment requested to see a 3D model of the project. Mr. Gochnour said a 3D model is underway.

Chair Dickey gave Mr. Gochnour time to respond to the public comments. Mr. Gochnour said he would like to stress that this project will be phased. They will not build 1,100 residential units at the beginning of the project. Most likely, the construction would be over a 5 to 10-year time span.

Mr. Gochnour said a statement was made that there will be 700 employees at the hotel. That is not accurate. He said they went through the County's process to determine the number of employees that will be generated. There is also a misperception that the employees of the development will use the entire employee housing. That is also not true. Based on Summit County's formula, 78 of the units will be occupied by employees.

Mr. Gochnour said there was an earlier conversation about the amount of retail of the development. The Commission was concerned if there will be enough? He said they believe they will provide enough for the people who reside within their project. They can grab a cup of coffee or get a bite to eat.

Mr. Gochnour said one of their objectives is not to cannibalize the retailers that are on the eastern side of Highway 224. They believe their residents will help those retailers survive and thrive. It is intentional on their part to not add a lot of retail to the development that would be competitors.

COMMISSION COMMENTS AND QUESTIONS

Commissioner Fine asked about the parking for the hotel. How many stories will it have? How many rooms? Mr. Gochnour said the hotel will be self-parked. The parking will be located beneath the hotel. They anticipate four or five stories with 130 rooms.

Commissioner Fine asked what kind of retail will be at the hotel. Mr. Gochnour said they envision some little restaurants and coffee shops. There may be some clothing stores. The retail will be limited. On the side that fronts the plaza, they are thinking about having some kind of entertainment retail; something similar to a climbing gym.

Commissioner Fine said he is always leery about the accuracy of traffic studies. He asked if they truly believe the traffic study is as accurate. Mr. Charlier answered. He thinks skepticism about traffic studies is a good idea. He is usually skeptical too; however, he managed this traffic study and guided the consultant running the numbers. He believes this study gives an accurate representation of the traffic that will be generated by this development.

Mr. Charlier said the technical factors are well in hand. They have been working with these for decades. They know when the numbers are too conservative or too liberal.

Most accuracy problems with traffic studies lie with the large commercial projects, not with residential.

Mr. Charlier listed the things that were done to ensure that this traffic study will be conservative. He said they did not take credit for any future increases in transit mode share, or the way people move about the community in ways other than driving. They could have taken credit for this, but he wants this study to be conservative in its findings. He said that since the traffic study was completed, there has been an acceleration in the things they have been talking about. They were also very conservative on internal capture. These are the trips to local commercial destinations that don't require driving.

Mr. Charlier said another conservative step they took was to use the trip generation rate for multi-family housing units. He said their units will be smaller than most units used on the national database. In his opinion, they are slightly overestimating the trip generation potential of this project. He has been doing this for forty-five years and he doesn't want to have the actual data come in radically different than what was forecast.

Commissioner Fine asked what Mr. Charlier believes the average number of cars will be for the different sized units. Mr. Charlier said they are trying to balance the two sides of the coin. This is not having enough parking and having too much parking. He said this project doesn't have any place to overflow due to what it is and what it is surrounded by. He explained the figures and methods used to obtain the calculations. They believe their project will be well below the overall average of two cars per unit.

Commissioner Fine said the traffic is a huge concern for him. He asked if the developers have thought outside of the box concerning how to minimize traffic. Mr. Charlier answered that has been their focus from the beginning; how to minimize the traffic and the car culture of today. They are working closely with Summit County.

Mr. Charlier said there is a major plan being developed about the future of Highway 224. This is not something they have any control over. They would like to see the BRT system go in. It would create a higher quality of life for the people who will live in the Snyderville Basin and it will have a positive impact on the climate. As developers, they would also love to see the gondola expanded.

Mr. Charlier said his experience is when there is walkability and bike-ability the traffic is significantly reduced. They will be looking at adding a walking path to Wal-Mart. He believes there is no development that could be built at this location with less impact to the traffic.

Commissioner Cooke recalled that the Commission previously looked at a plan with more density. He thinks they need to be extra diligent in their review of what is being proposed. They need to fully understand what the numbers are.

Commissioner Cooke said there was a comment made by the public that affordable housing is used to pack more density into a development. The Commission needs to have a complete understanding of what they are getting and what is wanted. Summit County wants to have enough housing to provide for those who live and work here. Accelerate growth is not the object. The Commission needs to carefully look at the needs and what is being supplied.

Commissioner Kucera said he echoes a lot of the concerns expressed by the public. One of the things he is focusing on is the Kimball Junction master plan. Some of the elements of the master plan are to have a sense of arrival, that the entry to the Snyderville Basin should have a big impact. He would like to see more towards that goal, while being mindful of height. The 3D model will help to visualize that better.

Commissioner Fine said connectivity is important. Right now the connectivity seems to be inwardly focused. He also wants to see an improvement of traffic flow even during off-peak hours. This should be an excellent town center and a place that people

will want to go to. He doesn't want an isolated housing area without outside connectivity.

Commissioner Stevens said she agrees with **Commissioner Kucera** that the visual aspect is an important factor to be considered along with how people will interact within the development. She said the Commission has received a lot of comments about traffic concerns. She made a request that at the next meeting Caroline Rodriguez, regional transportation planning director for Summit County traffic, give a presentation with additional insight about the traffic.

Commissioner Stevens said it is critical they don't rush through this project. They need to thoroughly consider all aspects of the project and take into account the public's feedback, such as how will this development contribute to economic diversity. She requested the applicant to provide a better articulated statement of their countervailing public interest. When this was presented initially, it seemed they were proposing to supply significantly more affordable housing than is currently being proposed. What was being proposed at that time was exciting to her. Now, that feeling is different.

Commissioner Stevens asked the applicants to explain if LIHTC funding is not available for the affordable housing below 50%, what would be the alternative financing. She would also like to hear their thoughts about moving the open space to the front of the project. She would appreciate having a discussion on the phasing of the project.

Commissioner Simons said based on the public's comments she thinks the Commission needs to consider this very carefully. She doesn't believe the Tech Park, as currently approved, is the best use for the property today, nor does she think this is the best proposal. The Commission has seen this project adapt and change. It can potentially improve even further. She misses some of the earlier amenities that were dropped, such as the civic and commercial aspects. Without those they end up having a more insular neighborhood.

Commissioner Simons said that connectivity to the adjacent neighborhoods is critical. She commends and encourages the developer to continue to refer to the Kimball Junction master plan and the objectives found there. She looks forward to hearing from the applicants in July.

Commissioner Harte said the current entitlements allow for the Tech Park which in its best state would bring economic diversity to the area. He was on the Kimball Junction master plan committee. It was made up of a mix of people. It was easy for the group to come to an agreement of what is not liked in Kimball Junction. Things they like were also identified. Even with this diverse group, there was consensus about the things that are and are not working.

Commissioner Harte said he understands there will be connectivity within their project, but he doesn't see a lot of connectivity outside of the development. Some of the features in the original proposal have been removed. Unfortunately that has resulted, to some degree, in a loss of what the Kimball Junction master plan was focused on. The committee wanted to have a sense of community.

Commissioner Harte said when he looks at the current proposal it looks like a very nice housing project with a hotel at one end and an office building at the other. He agrees with Colin DeFord who spoke at the public hearing. This project seems to be very insular. It is not a mixed-use project. It no longer brings a sense of community to Kimball Junction. The current plan is falling short of achieving the goals of the Kimball Junction master plan.

With the current project design, he has a hard time looking past the impacts to the traffic. He questions when some of the amenities, such as BRT, will come. When would there be a transit center that will give people the ability to easily get on the bus. At this

point, it is challenging to see a way forward. He doesn't agree that this design will reduce traffic.

Chair Dickey said he has been excited about the Kimball Junction master plan. He also worries that a disaster scenario could take place. That would be if the road, the intersection, or the traffic congestion is not fixed. If the first thing that is done is to add a lot of density on the west side of Highway 224, it would only make things worse.

Chair Dickey said if there is a reduction of public benefits and the things that will get the public excited, it begins to feel like the disaster scenario that he fears. At the next meeting, he wants to have a greater discussion about traffic and about the countervailing public interest. It should be something that would get the community on board with the project. He thanked the applicants for the hard work.

5. Approval Of Minutes

February 11, 2020

Commissioner Cooke made a motion to approve the minutes as written.

Commissioner Simons seconded the motion. All voted in approval.

- **MOTION CARRIED (7-0)**

DRC UPDATES

Commissioner Cooke said a DRC meeting was held. The discussion centered about single family homes.

COMMISSION ITEMS

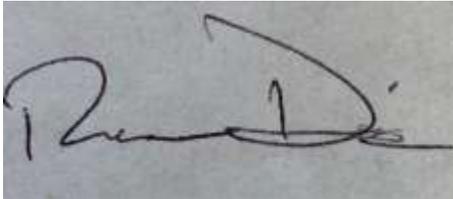
A discussion about starting times took place.

DIRECTOR ITEMS

The upcoming agenda items were reviewed.

ADJOURN

At 9:55 p.m., the meeting was adjourned.

A handwritten signature in black ink, appearing to read "P. D.", written on a light-colored background.

Approval Signature