

January 28, 2009

VIA E-MAIL AND U.S. MAIL

Ms. Katie Cattan
Park City Planning Department
1255 Iron Horse Drive
P.O. Box 1480
Park City, Utah 84060

Re: Planning Commission Review of Sweeney Master Plan

Dear Katie:

I am writing on behalf of MPE, Inc. (the “**Developer**”), regarding the conditional use permit application made in connection with the approved large scale master plan commonly known as the Sweeney Master Plan (“**Master Plan**”) located within the municipal boundaries of Park City, Utah (the “**City**”).

By way of background, we submitted an application for the Master Plan on May 21, 1985. The City’s planning staff (the “**Staff**”) prepared a staff report dated December 19, 1985, which was later revised and approved by the City’s Planning Commission (the “**Planning Commission**”) and the City Council (the “**1985 Staff Report Revised**”). As approved, the Master Plan set forth certain approvals and development parameters, including, among other things, location, access, required set backs, maximum density, and maximum height restrictions. In addition, the Master Plan imposed certain requirements upon the Developer, including the Developer’s dedication of real property and easements to the City, the Developer’s creation of hiking trails for the public, preservation of open space (which consists of 97% of the Developer’s hillside property), and other requirements set forth in the Master Plan. Lastly, the Master Plan provided that projects within each development parcel shall be subject to additional review in connection with conditional use or subdivision review.

Since the approval of the Master Plan, we have worked diligently, and continue to work diligently, to bring to fruition the development as approved in the Master Plan. The City has consistently taken the position that we have met our obligations under the Master Plan. Recently, certain communications with the Staff and the Planning Commission have called into question the City’s intent to perform on the contract that is the Master Plan (recognized as such by, among others, former City Attorney Jim Carter) in connection with review and approval of the development of a portion of the property subject to the Master Plan, commonly referred to as “Treasure,” which consists mainly of the Creole and Midstation sites (the “**Development**”). Our concerns are raised in connection with the following issues.

As anticipated by the Master Plan, starting in approximately 2002 we have worked with the City with respect to the Development, and in 2004 we submitted a conditional use permit application

(the “**Application**”) in connection therewith. As you know, there have been many discussions between the Developer and the Staff, and also discussions with the Planning Commission regarding the Application. In fact, the last meeting marked our 24th meeting with the Planning Commission, in addition to more than 175 meetings held with the Staff, to review and discuss the Application. Beginning in 2002, the Staff has provided us with guidance and additional requirements geared towards meeting the conditions of approval for the Development set forth in the Master Plan. Those guidelines and requirements are summarized in a Staff Report prepared by Planning Director Patrick J. Putt dated April 12, 2006 (the “**2006 Staff Report**”). As directed by the Staff, we have invested significant resources (over \$2,000,000.00 since 2002 alone) and have spent the past 6 years working to come into full compliance with the conditions of the Master Plan and make all submittals required by the Staff. The plans currently submitted by Developer do in fact comply with the requirements of the Master Plan and the City.

We are concerned that the Application is not being reviewed in accordance with applicable law, based upon comments of the Planning Commission during the January 7, 2009 Planning Commission meeting. It appears as if the Planning Commission wants to ignore the approvals set forth in the Master Plan and instead create new conditions of approval.

The Planning Commission’s role is to confirm or deny that the Application complies with the Master Plan, and if the Application does comply, it must be approved. In the event the Planning Commission believes that the Application does not comply with the conditions of the Master Plan, then the Planning Commission shall so find in order to deny the Application. In addition, as set forth in the Park City Land Management Code (“**LMC**”), the Planning Commission shall approve any application for a conditional use permit if “reasonable conditions are proposed, or can be imposed, to mitigate the reasonably anticipated detrimental effects of the proposed Use in accordance with applicable standards.” See LMC § 15-1-10 at ¶ 3. We submit that the Planning Commission, through the direction of the Staff since 2002 and as evidenced by the 2006 Staff Report, has already in fact proposed reasonable conditions to mitigate any reasonably anticipated detrimental effects of the Development, and the current plans reflect our efforts to meet such conditions. This is particularly true in light of Finding 10 of the Master Plan that states, “The site planning standards as set forth in Section 10.9(g) of the Land Management Code have either been satisfied at this stage of review or practical solutions can be reasonably achieved at the time of conditional use review/approval” (per Finding 10 of the 1985 Staff Report Revised and the 2006 Staff Report).

While we are willing to consider tweaking the existing plans as necessary to further mitigate reasonable concerns raised by the Planning Commission, it should be made clear to the Planning Commission that the Developer has spent an extraordinary amount of time and resources towards meeting the prior requirements and has in fact met those requirements. The review process is not intended to be open-ended, nor is it a forum for the Planning Commission to continually require material changes to our plans relating to the Development. The Developer has responded in good faith to all prior requirements of the Planning Commission, and we expect that the current Planning Commission will abide by the direction imposed by its predecessors and will not impose additional material changes at this late stage in the review process. Over the course of the next few work sessions with the Planning Commission, we will demonstrate that the

Application complies with the Master Plan and applicable code and ordinances and therefore must be approved by the Planning Commission. In the reasonably near future, we intend to formally ask the Planning Commission to vote on the Application. This process simply cannot go on forever.

Please let me address more specifically some of the Planning Commission's most recent comments and concerns.

Regarding the height allowances, as I stated in the meeting, there is not a material discrepancy between the maximum height restrictions in the 1985 Staff Report Revised and the approved Master Plan, and under the State of Utah's vesting principals existing code would apply only so far as it is not inconsistent with the Master Plan. The exhibit (Sheet 22) to the Master Plan approval clearly sets forth the maximum height restrictions for the Development. We are entitled to rely on the approvals that are vested under the Master Plan. In addition, the 2006 Staff Report notes that the Staff will conduct a follow-up review of the proposed building heights for conformance with the limitations set forth in the Master Plan. The height limits reflected in the current plan are consistent with the Master Plan and therefore are not subject to further revision.

Regarding additional traffic studies, in 2003 (with updates in 2005 and 2008) the Developer retained Project Engineering Consultants, Inc. ("PEC") to perform certain traffic studies, the scope of which were determined in consultation with former City Engineer Eric DeHaan, that found that traffic impacts of the Development should be minimal and should not cause significant changes to vehicular delay or level of service on the existing street system. As a peer review of the PEC study, in 2005 the City hired Fehr & Peers to act as the City's consultant, who affirmed the conclusions of the PEC study and, in addition, found that the proposed Development is consistent with general guidelines provided in the City's Transportation Element of the General Plan and Land Management Code. To the extent there are any other possible detrimental impacts of the Development, the current plans include reasonable mitigation plans to address any such concerns, including a proposed sidewalk, two travel lanes, and a parking lane along Lowell Avenue. Based upon the traffic reports and additional mitigation plans, no additional traffic studies or modifications are necessary or required, and it would be unreasonable for the Planning Commission to require further studies or modifications.

Regarding setbacks, the approved Master Plan set forth the governing setback requirements. The Master Plan found specifically that "the proposed setbacks will provide adequate separation and buffering" between the Development and surrounding land uses (per Finding 7 of the 1985 Staff Report Revised and the 2006 Staff Report). Despite the adequacy of the original setbacks, to further accommodate the City, we have provided for additional setbacks based upon suggestions of the Planning Commission. The setbacks proposed in the current Application are by far greater than would have been required under the zoning in existence at the time of the initial master plan application, are greater by a factor of 5 to 10 times than what has been required of neighboring developments, and clearly mitigate any reasonable concern of a detrimental effect of the Development. It is inappropriate, and frankly, unlawful, for the Planning Commission to impose additional setbacks.

Regarding parking, we have provided all of the additional information requested by Staff regarding the proposed parking plans. Our goal is to provide parking in a user friendly garage system, as would be commensurate with other projects of this caliber, while also encouraging a walkable community through proposed improvements in the Development, to a degree that clearly exceeds any other project in the City. We believe that the parking plans as submitted comply with the applicable parking requirements and exceed what is required by the Master Plan. One Planning Commissioner in particular expressed a desire to reduce the amount of on-site parking. We want to make it clear in this regard that ultimately the project as-built may have less parking than currently shown on the drawings due to the application of the Americans With Disabilities Act and the accommodation of the mechanical requirements in the final design. Further reducing the available on-site parking as suggested will run the risk of forcing parking from the Development onto adjacent City streets, contrary to the intent of the Master Plan. We feel strongly it is in the best interests of the City and for the Development to provide adequate parking as proposed in the Application. The Developer is not willing to further diminish the amount of parking contemplated by the Application.

Regarding employee housing, we recognize the need for employee housing and propose to provide employee housing on-site and also a cash contribution for additional off-site employee housing consistent with the terms of our letter to Phyllis Roberson, the City's Community and Public Affairs Manager, dated December 12, 2008, a copy of which is enclosed. We believe the next step should be a meeting with the housing authority to discuss its perspective on employee housing. In any case, we will need some clarification of density calculations as discussed below in order to finalize employee housing contributions. Following the input of the housing authority, we will consider modifications to the Development plans to include on-site employee housing in a manner reflecting the Planning Commission's comments and concerns.

In our efforts to meet all requirements of the City, we have relied upon certain representations made to us by the Staff in connection with the following issues. In the event that there is a discrepancy between our understanding of any of these points and the City's, we expect that you or the City Attorney will address the issue right away. Based upon the Staff's representation, we understand that the density of the Development will be calculated pursuant to the City's current code, which is one unit equivalent equals 2000 net square feet. In addition, we have been told that the square footage dedicated to hotel conference meeting space and ancillary uses does not count in the determination of unit equivalents for calculating the density allowed in the Development. Moreover, we understand that, regarding the impact of employee housing on a project's density allowance, the City will not include the square footage of on-site employee housing in the determination of unit equivalents for calculating the density allowed in the Development. We have been told this is the City's current practice in similar developments and is consistent with the relevant City code.

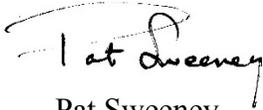
We value the good working relationship we have had with the City and want it to be positive and productive. We have in good faith complied with the City's requirements and are entitled to rely on our vested rights and we are unwilling to accept direction, which is inconsistent with those rights. We do not intend to spend several more years and several more millions of dollars attempting to appease demands that are wholly inconsistent with our rights. In an effort to

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facilitate our relationship, as offered in the Planning Commission meeting, I will provide certain information aimed at addressing the comments and concerns of the Planning Commission, including the provision of 12 CD copies of the application materials for distribution to those that may be interested. In addition, if desirable, we can provide a workshop for the Planning Commission for help in accessing and using the CD information. We anticipate that this workshop would be open to the public in a work session meeting format. In revising the plans, we will make some additional clarifications that will be helpful to the Planning Commission's review and responsive to their comments.

We look forward to continue working with you towards the approval of the Application, and trust that we are nearing the end of the review process. To facilitate the process, we respectfully request a meeting with you and the City Attorney where we could discuss the issues raised in this letter. In addition, we request a meeting with the housing authority as soon as possible to discuss employee housing. We appreciate that these meetings have been tentatively scheduled. Please feel free to contact me at your earliest convenience with any other comments or questions.

Sincerely,
MPE, Inc.



Pat Sweeney,
President

Enclosure

cc: Mr. Tom Bakaly, City Manager
Mark Harrington, Esq., City Attorney
Polly Samuels McLean, Esq., Assistant City Attorney
Mr. Thomas Eddington, City Planning Director
Ms. Elizabeth Rad
Craig Smith, Esq.
Geoffrey Mangum, Esq.
Randy Dryer, Esq.
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