



R. McConnell Group PLLC

VIA EMAIL

Chair Christin Van Dine
and Members of the Park City Planning Commission
Park City Municipal Corporation,
445 Marsac Avenue, Park City, Utah 84060

August 19, 2026

*Re: Five-Acre Site—Applications PL-26-06914, PL-26-06915, PL-26-06917, and PL-26-06920;
hearing of August 26, 2026*

Dear Chair Van Dine and Members of the Commission:

We represent two businesses on the edges of the Five-Acre Site. Emily Burney owns and operates Auntie Em's Baked Goods at 1351 Kearns Boulevard, Suite 150, in The Emporium, which adjoins the west edge of the Site. Mack Tilling owns and operates Mack's Finest Gelato at 1890 Bonanza Drive in Park City Plaza, across Bonanza Drive on the east. This letter is their written comment on all four applications. Please include it in the packet for the August 26 hearing and in the record for each. On this record the Commission cannot make the findings the Land Management Code requires.

Ms. Burney's interest is direct. The applicant says "[t]he western property line is the only boundary directly adjacent to neighboring private development." It calls The Emporium "a small retail center along the North half of the west edge of the site." That is Ms. Burney's building. Her storefront faces Kearns Boulevard. Building One is four stories and 65 feet. It is "[s]et back 40 feet from the west property line." That is thirty feet above the district limit. Staff says Building One "may generate the greatest off-site impacts within the development." The City's own analysis puts the worst of those impacts on her and other businesses in The Emporium. Construction makes it worse. The plan excavates nearly the whole parcel for a 280-space garage below grade. Haul routes, lane closures, dust from soils the City has confirmed are contaminated, and construction parking land on the adjacent businesses in a way they do not land on the community at large.

Similarly, Mr. Tilling is on the east side. The staff report lists the adjacent land uses to the east as "Prospector Square, Park City Plaza," and its own table identifies Park City Plaza as parcel PSA-45-RE-A at 1890 Bonanza Drive. That is his building. The report names two of the intersections his customers use—Munchkin Road at Bonanza Drive and Prospector Avenue at Bonanza Drive—among those where the traffic study "projects continued deterioration of levels of service." He is open into the evening, which is the peak the study measures.

We do not ask the Commission to decide whether Park City needs housing. It does. We ask it to apply the Code as written, on a record that contains what the Code requires. This record does not.

Background on the Property

Park City bought these parcels in July 2017. The City bought this ground for an arts and culture district. It paid with a dedicated municipal transient room tax—a tax on visitors, levied for that purpose. The Sundance Institute and the Kimball Art Center were the announced anchors.

Neither anchor remains. The Kimball Art Center will build in Kimball Junction. The Sundance Film Festival is leaving Utah. What is proposed on that ground now is seven buildings, 185,512 square feet, 106 rental apartments, and a 280-space underground garage. The staff report measures the buildings at 54.5 to 65 feet. The district limit is 35.

That history bears on a finding the Commission must make.

The Commission must find that the project “provides amenities to the community so that there is no net loss of community amenities.” LMC § 15-6-6(G). The community was promised an arts district paid for by a visitor tax. It is not getting one.

Height Exception Requested

Section 15-1-2 of the Code states its purposes plainly:

“To protect and enhance the vitality of the City’s resort-based economy, the overall quality of life, the Historic character, and unique mountain town community,” “[t]o protect and preserve peace and good order, comfort, convenience, and aesthetics of the City,” “[t]o allow Development in a manner that encourages the preservation of environmentally sensitive lands, Historic Structures, the integrity of Historic Districts, and the unique urban scale of original Park City,” “[t]o provide for well-planned commercial and residential centers, safe and efficient traffic and pedestrian circulation,” and “[t]o protect or promote moderate income housing.”

Two of those purposes matter here. The Code names the “unique urban scale of original Park City.” It names the “aesthetics of the City.” The Code also says it “is designed, enacted, restated and reorganized to implement the goals and policies of the Park City General Plan.”

The rule is 35 feet from Existing Grade. LMC § 15-2.18-4. Five more feet are allowed for a gable pitched at 4:12 or steeper, or for screened mechanical equipment. § 15-2.18-4(A)(1), (3). Forty feet is the ceiling. The staff report concedes the applicant proposes “a maximum Building Height ranging from 54.5 feet to 65 feet above Existing Grade.” Some exceptions run thirty feet above the rule. The reduced alternatives are no better, and the staff report states them two ways. The narrative says both the flat-roof and the 4:12 options range “from 46.5 to 55 feet above Existing Grade.” The per-building tables put Building One at 56 feet under each. That is a 21-foot exception.

The exception request has grown. On June 24 the staff report said the applicant proposed “18 feet 6 inches of additional Building Height from Existing Grade for a maximum proposed Building Height of 53 feet 6 inches.” Buildings One, Two, and Three were 53 feet 6 inches, 43 feet, and 45 feet 6 inches. On August 12 they are 65, 54.5, and 58 feet. Both reports measure from Existing Grade. The August report says so in its own footnote. On July 8 Commissioner Frontero asked the applicant for options that would lower the height. The Chair agreed.

Ironically, the tallest buildings sit where the Code protects views the most. Buildings Two and Three front Kearns Boulevard inside the hundred-foot Frontage Protection Zone. Building Two is 54.5 feet, a 19.5-foot exception. Building Three is 58 feet, a 23-foot exception. That zone exists “to preserve

Park City's scenic view corridors" and to "preserve and enhance the rural resort character of Park City's entry corridor." LMC § 15-2.20-1(A), (B). The project directly threatens this character and these views.

The City's Own Precedent

Staff summarized the Rail Central project at the Commission's request. Same district. 1.85 acres at 1790 Bonanza Drive.

In 2002, the Commission approved that master planned development. It held roughly 65,000 square feet of commercial and 48,000 square feet of residential. Staff reports that "[n]o additional building height was approved." In 2003, the applicant asked for thirteen more feet. It wanted a clock tower. The Planning Director approved that increase under a narrow exception for "[c]hurch spires, bell towers, and like architectural features." LMC § 15-2.18-4(A)(4). That exception forbids "Habitable Space above the Zone Height," and by its own terms it "requires approval by the Planning Director." It is not a master planned development height exception.

So the precedent in this district is no height exception, and thirteen feet for an empty clock tower. But this request is up to thirty feet of habitable building. We know of no General Commercial approval in Park City that comes close.

The Height Adds Floor Space

The Code allows extra height for one reason. It forbids it for another. Extra height may be granted when it "provides desired architectural variation." It may not be granted if it "result[s] in increased square footage or Building volume over what would be allowed under the zone-required Building Height and Density." LMC § 15-6-5(F)(1). Height for architecture, yes. Height for floor space, no.

The applicant must prove which one this is. "The Applicant must request a Site-specific determination and shall bear the burden of proof to the Planning Commission that the necessary findings for an increase in Building Height can be made." § 15-6-5(F). The City is "bound by the terms and standards of applicable land use regulations and shall comply with mandatory provisions of those regulations." Utah Code Ann. § 10-20-902(2); *see Springville Citizens for a Better Cmty. v. City of Springville*, 1999 UT 25, 979 P.2d 332.

The applicant has answered the question in a way that dooms its application. At the July 8 hearing its representative said that at 35 feet the design "will cut off a portion of the third floor of the affordable units." "[T]here would be a floor lost on Buildings 2 and 3." "[T]his would result in a reduction of 16 to 19 units, which would take the project below the total number of units needed for this to be an affordable project that can be financed with LIHTC." Commissioner Shand then "pointed out that the number of units is tied to the proposed massing." The extra height is not producing architectural variation. It is producing sixteen to nineteen apartments. That is floor space. The criterion forbids it.

The applicant's written answer is a percentage. It says the district would allow 482,078 square feet here. The project uses 185,512. So the project is at "38% of the allowed density." That answer has two problems.

First, it answers the wrong question. The criterion asks whether the extra height adds floor space. The applicant answers that the project is smaller than the biggest building the site could hold. Those are different questions. On the applicant's backwards version, any project under the theoretical maximum passes, and the criterion means nothing. The right comparison is this project against this project at 35 and 40 feet, building by building. It is not in the record. The Commission has asked for it. The June 24 minutes

record that Commissioner Day “noted that the Meeting Materials Packet included a lot of information about the footprint, but he did not see information about the mathematics behind the volume,” and “requested that some of the numbers behind the volume be shared.”

Second, the 482,078 figure is not what the staff report says it is. The report says the number came from the thirty-foot frontage setback, the twenty-five-foot perimeter setback, the 35-foot height limit, and thirty percent open space. The applicant’s own sheet prints the math: 229,561 square feet of site area, times 0.7 for open space, times three stories. No setback is subtracted. The number assumes the applicant could build to the property line on every side. It cannot.

The number has also moved. The June 24 staff report gave 499,450 square feet. The applicant’s June 29 narrative called it “an approximate building envelope of 499,450 cubic feet.” The sheet that narrative cites gives 482,078 square feet and 5,624,245 cubic feet. The August 12 report gives 482,078 square feet and calls it a “Building volume.” Square feet measure area, not volume. Commissioner Beal caught this on June 24. He “pointed out that there are slightly different numbers in the Staff Report compared to what is included in the Exhibit,” and “asked that the correct numbers be provided so there is consistency in the materials that are being reviewed.” They have not been.

The Shadow Finding Cannot Be Made

Ms. Burney and Mr. Tilling are the neighbors the second criterion describes. The Commission must find that buildings “have been positioned to minimize visual impacts on adjacent Structures.” It must find that problems “caused by shadows, loss of solar Access, and loss of air circulation have been mitigated as determined by the Site specific analysis.” § 15-6-5(F)(2). On the only property line with a private neighbor, the applicant’s basis is a claim about her building. It says “[t]he Emporium has a small ten-foot-wide side yard along the edge of the site with no employee or public access.” From that it concludes there are “no potential problems caused by shadows, loss of solar access, and loss of air circulation.” Nothing in the record supports that claim but the applicant’s own say-so. It is a claim about the edge of a building the applicant does not own or occupy.

The applicant also appears to have the wrong building. Staff asked it directly what the landscape buffer along the west property line would consist of. The applicant answered: “The landscape buffer will be five feet in width,” and added that “the adjacent building is the back of an industrial property with no pedestrian access and only one small window at ground level opening onto a small fenced outside storage area against the building.” That description fits Compark Plaza, which the applicant’s own narrative places on the south half of the west edge. The Emporium is on the north half. In the next answer the applicant acknowledges as much: “There are existing trees along the edge of the Emporium that straddle the property line which we will endeavor to maintain.” The finding under the second criterion rests on a description of a different building.

Describing the Solar/Shadow Study, staff writes: “The property to the west will experience shadows during the Winter Solstice through most of the morning; however, by noon, these shadows clear neighboring Properties.” The property to the west is the Emporium. The applicant’s response, printed just below, says there are “no impacts from shadows, loss of solar access, and loss of air circulation.” Both cannot be true. The criterion does not ask when shadows clear. It asks whether the problem was mitigated. A winter morning in shadow is the problem. Noon is not the fix. The study is three sheets—the equinoxes, the summer solstice, and the winter solstice—each at 9:00 a.m., noon, and 5:00 p.m. The winter sheet notes the sun is behind the mountain by about 3:00 p.m.

The east side is treated with even less care. The applicant's narrative describes everything across Bonanza Drive as "commercial properties and surface parking to the east," and concludes that "there are no impacts from shadows, loss of solar access, and loss of air circulation." Staff's own reading of the study is narrower: "The parking lots east of Bonanza Drive will experience shadows during the Spring and Fall Equinoxes at 5:00 PM." Park City Plaza is not a parking lot. It is where Mr. Tilling works, and five o'clock is the middle of his business day. Direct light is not incidental to him. He originally leased a different space in the same building and moved to his present space in part because it receives more direct light. His storefront now looks across that parking lot to the hills, and the buildings proposed along this edge of the Site stand between the two. The criterion asks the Commission to find that Buildings "have been positioned to minimize visual impacts on adjacent Structures." Nothing in the record shows that anyone asked.

The Open Space Finding Cannot Be Made

The fifth criterion requires that the added height "results in more than the minimum Open Space required and results in Open Space that is publicly accessible." § 15-6-5(F)(5). Staff's table says: "The Applicant is required to provide 30% Open Space. The Applicant proposes approximately 60% of the Site to be publicly accessible Open Space." The applicant's own narrative says something else. It says General Commercial "is an excepted [sic] from the 60% open space requirement and that the commission may reduce the open space to 30% for redevelopment projects." It then says the open space it proposes is "not required." That reads § 15-6-5(D)(1) correctly. The General Commercial district is excepted from the sixty percent standard. It also defeats the fifth criterion. If no minimum applies, there is no minimum for the height to exceed, and the finding fails as arithmetic. If the thirty percent figure applies instead, § 15-6-5(D) allows that reduction only "in exchange for project enhancements in excess of those otherwise required by the Land Management Code." The open space is then the price of the reduced requirement. It cannot also be the price of thirty feet of height. The Commission should not spend the same benefit twice.

The Council Did Not Adopt This Height

In February 2024 the City published a Land Management Code Amendments Report. Its own consultants prepared it. It proposed a table in § 15-6.1-8 setting maximum heights for affordable master planned developments by tier. In the General Commercial district those were 35, 45, 55, and 65 feet. Those are close to the numbers now requested. The Council never adopted it. Chapter 15-6.1 has been amended by Ordinances 2021-10, 2021-18, 2022-16, and 2025-11. No ordinance amended it in 2024. Section 15-6.1-8(A) still allows 45 feet, and only with a ten-foot setback on all perimeter façade planes. There is no tier and no table in the Code.

Utah law reserves this choice to the Council. "Only a legislative body, as the body authorized to weigh policy considerations, may enact a land use regulation." It must do so by ordinance. Utah Code Ann. § 10-20-501. This Commission's decision "is an administrative act." § 10-20-901(3). A land use authority "shall apply the plain language of land use regulations." § 10-20-901(1). The applicant gets the ordinance in effect when its applications were complete. It is bound by that ordinance too. LMC § 15-1-17(A); Utah Code Ann. § 10-20-902(1). What it does not get is the benefit of a table the Council never enacted. If § 15-6-5(F) already allowed 55 or 65 feet on an affordability rationale, the City's consultants would have had no reason to draft that table.

The City's housing obligations do not change this. State law requires Park City to promote moderate income housing. Utah Code Ann. §§ 10-20-403, 10-21-201. The City meets those obligations through its general plan and through ordinances the Council enacts. They do not let an administrative body set aside the ordinance the Council adopted. And they do not displace § 10-20-902(2).

One more provision applies because the City owns this land. The general plan is “an advisory guide for land use decisions.” Utah Code Ann. § 10-20-406. That is so only “[e]xcept as provided in Section 10-20-407.” Section 10-20-407 says a “publicly owned building or structure,” and “a street, park, or other public way, ground, place, or space,” “may not be constructed or authorized unless the public property conforms to the current general plan.” Park City owns this site. Whether the buildings will be publicly owned turns on the ground lease. That lease is not in the record.

Parking Math Problems

Staff’s table totals 208 required off-street spaces. The applicant’s own analysis puts the requirement at 210. The Commission should settle which number governs before it finds compliance with anything. On either figure the applicant proposes 280 in the garage. Either way that is at least seventy spaces more than the Code requires, about a third again. Staff “recommends careful consideration due to the location of the Site at the intersection of Kearns Boulevard and Bonanza Drive.” Section 15-3-7(A) explains why. The Commission “may reduce this initial parking requirement to prevent excessive parking and paving.” The Code’s worry here is too much parking, not too little. The project is justified on transit and trip reduction. Staff reports that the traffic study “projects continued deterioration of levels of service at key intersections in the vicinity of the project.” The finding that the project “addresses and mitigates traffic” has to reconcile those facts. § 15-6-6(P).

The applicant’s own parking analysis does not say the parking works. It puts the City requirement at 210 stalls and ITE demand at 362, states that “a supply of 399 stalls should be provided for the project based on ITE data during non-event operations,” and concludes after shared-parking credit that “there is anticipated to be insufficient parking for the development during non-event operations. A total of 317 stalls should be provided to meet the shared parking requirements.” After every reduction it claims, including a ten percent reduction supplied by Hales Engineering, it lands on “a recommendation of 285 parking stalls on the site”—five more than the 280 proposed—and closes the gap in one sentence: “With the 9 additional surface level stalls, it is anticipated there will be sufficient parking during non-event operations.” For events, the same analysis puts demand at 515 stalls, “235 parking spaces greater than the proposed capacity of 280 stalls,” and recommends “an off-site parking plan.” No off-site parking plan is in the record. The Commission has already been told where the overflow will go. On July 8 the Executive Director of the Prospector Square Property Owners Association reported that “the lot directly across the street is full every day,” and that he “does not want to see that lot become an overflow lot for the development on the Five-Acre Site.” That lot is on Mr. Tilling’s side of Bonanza Drive.

Those nine stalls are the ones the City has already condemned. Nine surface spaces sit next to Munchkin Road. Staff says that “[b]ecause they require backing onto an adjacent roadway, these spaces do not comply with LMC § 15-3-3(G) and are not included in this analysis.” Leaving them out of the count does not make them lawful. They are still drawn, and the applicant’s own conclusion that parking is adequate depends on them. The Commission cannot find that this project “complies with all requirements of the Land Management Code” while nine spaces on the plan do not. § 15-6-6(A).

Contaminated Soil and Mine Hazards

The record does not show what excavation will do to the neighboring businesses or to the community. The June 24 staff report covers the subject in three sentences, and repeats two of them. The August 12 report does not return to it. Section 15-6-5(K) requires every master planned development application to “include a map and list of all known Physical Mine Hazards on the Property and a Physical Mine Hazard mitigation plan.” Section 15-6-5(L) requires an applicant inside “the Park City Soils Ordinance Boundary” to “submit a soil remediation mitigation plan and shall indicate areas of hazardous

soils and proposed methods of remediation and/or removal subject to the requirements and regulations of the Municipal Code of Park City Chapter 11-15.” The Commission must then find that the project “addresses and mitigates Physical Mine Hazards” and “addresses and mitigates Historic Mine Waste and complies with the requirements of the Park City Soils Boundary Ordinance.” § 15-6-6(M), (N).

The June 24 staff report says “[t]he site is within the City’s Soil Ordinance Boundary.” It says “[t]he Applicant submitted an Analysis of Brownfield Cleanup Alternatives prepared by Terracon on August 15, 2024.” And it says “[t]he Applicant will coordinate with the City’s Property and Environmental Services Manager” under Municipal Code chapter 11-15. That is all of it. The last two of those sentences appear again under the heading “Mine Hazards and Historic Mine Waste Mitigation.”

Two requirements go unmet. Section 15-6-5(K) calls for a map, a list, and a mitigation plan. The section captioned “Mine Hazards and Historic Mine Waste Mitigation” has none of the three. Section 15-6-5(L) calls for a soil remediation mitigation plan. A 2024 analysis of cleanup alternatives is a different document. The City has confirmed the Boundary applies. The project is a below-grade 280-space garage on 5.27 acres. The record holds no excavation volume, no dewatering analysis, no haul route, and no disposal facility. Section 15-6-6(B) requires a finding that the project “meets the minimum requirements of Section 15-6-5.” A missing submittal is a gap in the application.

This is not abstract for Ms. Burney. Her business is food manufacturing, and her building sits at the western edge of the parcel the applicant proposes to excavate. The buffer between them is five feet. The applicant says of the trees on that line: “Trees cannot be relocated due to the contaminated soils.” It also proposes that “[g]arbage Pick-up will occur at the lower garage level by the West Garage entrance,” eighteen feet below grade, with dumpsters emptied by truck daily. That is the corner of the Site nearest her ovens. The record contains no dust control plan.

Staff performed this analysis for a far smaller project on the same agenda. The August 12 packet included a basement addition and Accessory Apartment at a Landmark Historic Structure on Woodside Avenue. For that application staff worked through the conditional use criteria one at a time, including criterion twelve, “Noise, vibration, odors, steam, or other mechanical factors that might affect people and Property Off-Site,” criterion thirteen, “Control of delivery and service vehicles, loading and unloading zones, and Screening of trash and recycling pickup Areas,” and criterion fifteen, “Within and Adjoining Environmentally Sensitive Lands, Physical Mine Hazards, Historic Mine Waste, Park City Soils Ordinance, Steep Slopes.” On that last one staff found the site “is not within or adjoining” the Park City Soils Ordinance. This Site is within it, by the City’s own statement, and no such finding appears anywhere in the Five-Acre Site report.

The conditional use standard does not fill that gap. The Commission must approve a conditional use “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.” LMC § 15-1-10; see Utah Code Ann. § 10-20-506(2). But mitigation assumes the impacts are known. Conditions must “be stated on the record” and “reasonably relate to mitigating the anticipated detrimental effects.” § 10-20-506(2)(b). The Commission cannot mitigate an excavation whose volume, dewatering, and disposal are not before it.

Whatever the Commission decides, it must decide in writing. Concerns voiced while voting are not findings. In *McElhaney*, councilmembers stated reasons for their votes, and the Utah Supreme Court still sent the case back, because a council sitting as an adjudicative body “needs to produce findings of fact capable of review on appeal.” Where it does not, the remedy is a remand to make them. *McElhaney v. City of Moab*, 2017 UT 65, ¶ 41, 423 P.3d 1284. Administrative land use decisions are reviewed for

substantial evidence. *See Bradley v. Payson City Corp.*, 2003 UT 16, ¶¶ 10, 15, 70 P.3d 47; Utah Code Ann. § 10-20-901(3). Here, the record does not support the required findings, and the Commission should reject the applications.

This letter states our clients' objections timely and specifically. Utah Code Ann. § 10-20-1101(2).

Best regards.

Very truly yours,

A handwritten signature in blue ink, appearing to read "RD McConnell", is positioned above the typed names.

Ryan D. McConnell (Utah Bar 20650)
Matthew S. Boyden (Utah Bar 20701)