



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

September 2, 2026

*Re: Five-Acre Site—Applications PL-26-06914, PL-26-06915, PL-26-06917, and PL-26-06920;  
Comment*

Dear Chair Van Dine and Members of the Commission:

Park City has rebuilt itself more than once. The culture holds, in gathering places along Bonanza Drive and Kearns Boulevard—a juice at Booster on the way to work, a cookie at Auntie Em’s on a Friday morning, breakfast with friends at Wasatch Bagel, gelato after school, a sandwich at Stacked eaten standing up, dinner at El Chubasco, lunch outside at Sammy’s with the mountain in front of you, a pizza picked up at Fuego on the way home, a designer measuring a room for somebody’s first house here. The City wrote that down two years ago. The vision statement of its Bonanza Park Small Area Plan reads: “Bonanza Park is a neighborhood where Parkites gather to shop, dine, and express local art and culture.” The plan’s survey of existing conditions adds that the neighborhood “is long considered where locals live, shop, and dine.” Bonanza Park Small Area Plan 5, 24 (adopted July 11, 2024). We represent the businesses that make that true.

We represent the owners of thirteen businesses on and around the Five-Acre Site.

- Emily Burney, owner of Auntie Em’s Baked Goods, 1351 Kearns Boulevard, Suite 150, in The Emporium, which adjoins the west edge of the Site.
- Mack Tilling, owner of Mack’s Finest Gelato, 1890 Bonanza Drive #117, in Park City Plaza, across Bonanza Drive to the east.
- Kathryn Babcock, owner of Nosh, 1890 Bonanza Drive, Suite 112, in Park City Plaza.
- Jason Greenberg, owner of Stacked Sandwich Co., 1890 Bonanza Drive, Suite 118, in Park City Plaza.
- Angel Ruiz, owner of El Chubasco, 1890 Bonanza Drive, Suite 115, in Park City Plaza.
- Kreg Van Stralen, owner of Wasatch Bagel, 1890 Bonanza Drive, in Park City Plaza.
- Edwin Buitrago, owner of Booster Juice, 1890 Bonanza Drive, in Park City Plaza.

- Samuel Harris, owner of Samwell Enterprises LLC, doing business as Sammy’s Bistro, 1890 Bonanza Drive #100, in Park City Plaza.
- Kelly Wallman, owner of San Francisco Design, 1890 Bonanza Drive, in Park City Plaza.
- Allison Cook, owner of PC Carriage House Retreat LLC, which operates lodging at 1940 Prospector Avenue, south of the Site.
- Dawn Kenton, owner of DK 611 LLC, which operates at 1940 Prospector Avenue.
- Jason Crobarger, owner of Fuego Bistro & Pizzeria, 2001 Sidewinder Drive.
- Diana Peterson, owner of Park City Massage Therapy LLC, 2273 Monarch Drive, in Prospector Village.

Eight of the thirteen occupy one building, Park City Plaza, directly across Bonanza Drive from the Site. One adjoins its west property line. Two operate on Prospector Avenue to the south. One is on Sidewinder Drive, at an intersection the traffic study shows dropping two levels of service. One is on a residential street in Prospector Village. Each owner owns a business that operates within Park City. Please include this letter in the record for each of the four applications, in the packet for the September 9 work session, and in the record for the public hearing when it is noticed.

Park City needs housing. The Code provides the framework. Our clients ask the Commission to apply it—the list of allowed uses, the height limit, the parking count, the traffic study, and a plan for the soil under their floors.

These applications were filed this year. The Council authorized them on March 19, 2026, four votes to one. This Commission opened its review on June 24 with a site visit and an introductory work session. The buildings have changed at every meeting since. The applicant proposed height reductions on August 19 and staff reported them on August 26. The applicant has told the Commission that five of the seven buildings are not drawn yet: “[o]nce comments are received on the example buildings, the balance of the project will be redesigned accordingly.” No one could have commented in 2024 on a building that does not exist in September 2026.

What the public was asked about years ago was a new zoning district for Bonanza Park. It was never adopted. A member of the public reminded the Commission of that in writing on June 24, 2026: the Council “held three public hearings on that code (May 22, 2025; June 26, 2025; and August 26, 2025), yet consensus was never reached.” The plan was adopted and the code behind it was not.

On this record the findings the Code requires cannot be made. Our clients ask the Commission to deny the applications. If the Commission is not prepared to deny them, it should not vote until the amphitheater has a use classification, the parking count includes it, the three required submittals are filed, and each approved building height appears as a number measured from Existing Grade.

### *What the Code Requires*

Four tests apply to this project.

To build higher than 35 feet, the applicant must satisfy six criteria. LMC § 15-6-5(F). The Code places the burden on the applicant, not on the Commission and not on the public: “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.”

To approve the master planned development at all, the Commission must be able to make seventeen findings. § 15-6-6(A) through (Q). Two matter most here. It must find that the project “complies with all requirements of the Land Management Code,” § 15-6-6(A), and that it “meets the minimum requirements of Section 15-6-5,” § 15-6-6(B).

To issue the two conditional use permits, the Commission must work through seventeen review criteria. § 15-1-10(E). Among them are traffic and street capacity, off-street parking, building mass and bulk, noise and vibration, delivery and trash areas, and mine hazards and the Soils Ordinance.

And because this project asks for more parking than the Code requires, the Commission must weigh seven further items before it may allow that. § 15-6-5(E).

The applicant must satisfy every requirement on every list. An applicant “must meet all of the requirements,” and “a failure on [the applicant’s] part to meet any of the requirements will render its application infirm.” *Sidwell v. Wasatch County*, 2026 UT App 67, 591 P.3d 1273. A use left off the Code’s lists is not authorized, and an approval of it is illegal. *Carrier v. Salt Lake County*, 2004 UT 98, 104 P.3d 1208.

### *The Amphitheater Is Not a Listed Use*

Section 15-2.18-2 lists the Allowed Uses and the Conditional Uses in General Commercial. It then provides: “Any Use not listed above as an Allowed or Conditional Use is a prohibited Use.” § 15-2.18-2(C).

Neither list includes an amphitheater. The applicant’s parking analysis describes “plans for an amphitheater with a capacity of 980 seats” and computes event parking demand for it.

The Utah Supreme Court decided this question in *Carrier*. A county approved a gravel pit in a zone whose conditional use list omitted gravel pits, reasoning that the operation fit a broader listed category. The Supreme Court reversed. The term appeared in other zones and was left out of this one, so the omission was deliberate, the use was unauthorized, and the approval was illegal.

Utah Code § 10-20-507 sets the procedure. A land use authority may decide whether a proposed use aligns with a use already on the list. If it does not, the applicant must go to the City Council for an ordinance. The Commission cannot create a use.

Section 15-2.18-10 is titled “Goods and Uses To Be Within Enclosed Buildings.” Its second subsection, “Outdoor Uses Prohibited/Exceptions,” provides that “[t]he following outdoor Uses may be allowed by the Planning Department upon the issuance of an Administrative Permit,” and lists five: outdoor dining; outdoor grills and beverage service stations; outdoor storage and display of bicycles, kayaks, motorized scooters, and canoes; outdoor events and music; and display of merchandise. § 15-2.18-10(B). An amphitheater is not among them.

The Commission needs an answer before it approves anything. Under which listed use is the amphitheater approved?

If the answer is outdoor events and music, that use carries its own permit. It “requires an Administrative Conditional Use permit,” it “must also comply with Section 15-1-10, Conditional Use review,” and the applicant “must submit a Site plan and written description of the event” addressing seven items: notification of adjacent property owners, no violation of the City’s Noise Ordinance, impacts on adjacent residential uses, proposed plans for music, lighting, structures, electrical and signs, “[p]arking

demand and impacts on neighboring Properties,” duration and hours of operation, and impacts on emergency access and circulation. § 15-2.18-10(B)(4). None of those is in this record. No such permit has been applied for.

On August 12 the applicant told the Commission that “the amphitheater is not a ticketed event facility. This is designed for free events.” Free events fill seats. The Code counts seats.

If the answer is one of the Recreation Facility categories, the parking ratios apply and the classification governs the site for the life of the project.

If the answer is outdoor events and music, there is a further problem. The Planning Department issues that permit, and the same subsection provides that “[a]ppeals of departmental actions are heard by the Planning Commission.” § 15-2.18-10(B). The Commission hears the appeal. Approve the amphitheater as a component of the master planned development and the Commission decides in the first instance a matter the Code assigns to the Department, and the neighbors lose the review the Code gives them.

No notice has described the amphitheater. The legal notices for the August 12, August 26, and September 9 meetings describe the project in the same words: a mixed-use development “Including 106 Residential Units, Over 30,000 Square Feet of Commercial and Multidisciplinary Art Space, Community Green Space, and an Underground Parking Garage.” The July 8 staff report lists an amphitheater and an arts pavilion as separate components of the project. The September 9 notice sets the item as a work session, takes no public comment, and states that “[a] future public hearing and potential action will be subsequently noticed.” Whenever that hearing is noticed, the notice should describe what the Commission is being asked to approve.

#### *The Parking Count Omits the Amphitheater*

The Code sets parking by use. For an “Auditorium and Assembly Hall” it requires one space for every five seats. § 15-3-6. A 980-seat amphitheater is 196 spaces. The applicant’s consultant computes more: using “the Park City’s assumption of 4 seats per vehicle,” it finds that “the event space would generate demand for an additional 245 parking stalls.”

The required-parking calculation omits both figures. The applicant’s tabulation counts the apartments, the childcare center, the leasing office, the retail, the café, the restaurant, and the arts studio. It leaves out the largest parking generator on the site. Whatever the count leaves out, the neighbors absorb.

The record states the required number two different ways. The August 12 staff report tells the Commission that “[t]he Applicant proposes 280 parking spaces in an underground garage, 72 spaces more than required by code,” which puts the requirement at 208. The applicant’s plan sheet in the same packet prints “REQUIRED PARKING: 180 SPACES REQUIRED,” “NON-REQUIRED PARKING: 101 SPACES PROVIDED,” and “TOTAL PARKING PROVIDED: 281 SPACES PROVIDED,” and the Vehicle Parking Count table on that sheet sums to 281. Commissioner Shand made the point from the dais on August 12: the Code “states that 208 parking spaces are required and there are 280 provided in this application. However, on the Time-of-Day Parking Supply chart, it shows that around 280 are needed for most of the day.”

The City’s own transportation staff told the Council on October 13, 2025 that “[t]he proposed land uses generate parking demand that is fully met by one level of underground parking with 277 spaces.” That is a statement of demand rather than of the Code requirement, and it does not mention the amphitheater. Staff added in the same memo that the design changes then under discussion “add an extra, loosely

defined, scenario to the required Traffic Impact Study (TIS) and potential Transportation Demand Management (TDM) strategies, making it difficult to define applicable mitigation measures.”

The applicant’s consultant reports that “a supply of 399 stalls should be provided for the project based on ITE data during non-event operations,” and then, after applying shared parking, 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, it lands on “a recommendation of 285 parking stalls on the site”—five more than the 280 proposed—and closes that gap in one sentence: “With the 9 additional surface level stalls, it is anticipated there will be sufficient parking during non-event operations.”

The City has already said those nine stalls do not comply. Section 15-3-3(G) provides that “[t]he Parking Area design for five (5) or more vehicles must not necessitate backing cars onto adjoining public sidewalks, parking strips, or roadways.” Staff wrote 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.” The applicant’s conclusion that parking is adequate rests on nine spaces the City says do not comply. They remain on the plan. The Commission cannot find that this project “complies with all requirements of the Land Management Code,” § 15-6-6(A), while nine spaces on that plan do not.

For events the analysis puts demand at 515 stalls, “235 parking spaces greater than the proposed capacity of 280 stalls,” and recommends “an off-site parking plan.” On August 12 the applicant told the Commission where those cars would go: “Typically, the additional parking will be at the high school parking lot. This lot is generally available outside of school hours.” The Code does not permit that. Required parking “must be on-Site unless the Planning Commission allows such parking on adjacent or nearby deed restricted Lots.” § 15-3-2(C). The high school lot is neither adjacent nor deed restricted, and no such lot is identified anywhere in this record. On a winter evening the plan is that families park at the high school and walk back along Kearns Boulevard. The overflow lands on the streets and lots our clients share. Eight of our clients’ doors open onto that lot. That lot fills now. Our clients’ customers circle it on an ordinary weekday, before this project adds a single car.

This Commission has denied a permit on these grounds and been affirmed. In August 2025 the Court of Appeals upheld its denial of a conditional use permit because the applicant’s parking mitigation plan contained discrepancies in its calculations, had not been verified by the City’s own expert, and relied on data from a situation not comparable to Park City—including overflow parking at a high school available only a limited number of days per month. *VR CPC Holdings Inc. v. Park City Municipal Corp.*, 2025 UT App 130, 578 P.3d 249. Without clear calculations, the court explained, “it is impossible to know whether the potential parking impact would increase by 2.5% or by something significantly greater.” Every one of those features is present here.

Section 15-6-5(E)(1)(b) directs the Commission to consider “[a] Parking comparison of projects of similar size with similar occupancy type.” The applicant offers three: EngineHouse, the Pendry, and Parkview Condominiums. None has an amphitheater, an event lawn, or an event program.

Shared parking may be considered “only when there is Guarantee by Use covenant and deed restriction.” § 15-6-5(E)(1)(d). No covenant exists.

The Code also requires “[p]rovisions for overflow Parking during peak periods.” § 15-6-5(E)(1)(f). The applicant answers with four measures, every one of them on the Site: provide adequate on-site parking, reserve required spaces for residents, manage and enforce, and monitor. Overflow is what

happens after on-site parking runs out. The applicant's own event analysis says that happens by 235 stalls and recommends "an off-site parking plan." There is no such plan in this record.

The applicant says the extra stalls exist to prevent exactly what our clients expect. Its parking management plan states, under the heading Protecting Surrounding Neighborhoods, that "[o]ne of the objectives of the proposed parking supply is to reduce parking spillover into surrounding residential neighborhoods and nearby commercial areas." Parking Management Plan § 2.2. The plan's own section on spillover prevention drops the second half: there the objective is "to minimize parking demand within surrounding neighborhoods." § 4.4. Our clients are the nearby commercial area. They are across Bonanza Drive, and their parking is free.

The garage is not. The applicant will "[i]mplement a paid parking program for public retail Uses and visitors to the Site." On August 12 it told the Commission the difficulty in its own words: "it could be challenging to encourage visitors to pay to park underground," and "[d]ue to the challenges, there is a desire for the parking to be plentiful and for the parking garage to be open with bright lighting."

Geometry finishes the thought. The study assumes the garage access is "limited to right turns only, at least functionally during the peak hours." Park City Plaza sits on the other side of Bonanza Drive with a surface lot that charges nothing. A driver who will not pay, or will not queue for a right-turn-only garage, has an easier option in plain sight: park in the Plaza lot, walk across for a bagel or a juice, and turn right onto Bonanza Drive. Mr. Van Stralen's customers and Mr. Buitrago's will be looking for that space. Neither study models that choice. The parking study does not test what a price does to driver behavior, and the traffic study counts trips by land use rather than by where a driver decides to leave the car.

The Code directs the Commission to look at this. It must evaluate "potential adverse impacts of the proposed Parking reduction and Density increase, if any, upon the surrounding neighborhood and conditions of approval to mitigate such impacts." § 15-6-5(E)(1)(g). The evaluation in this record faces inward. It asks whether the project has enough parking for itself. It does not ask what happens to the lot across the street. And one of our clients is inside the promise the plan makes. Ms. Peterson works at 2273 Monarch Drive, a residential street in Prospector Village, reached from Park City Plaza by way of Prospector Avenue. When the plan speaks of surrounding residential neighborhoods, that is the street it is speaking about.

And the mechanism it relies on does not exist yet. The applicant states that "[b]efore the garage opens, the operating procedures will identify how payment will be collected, whether paid parking is available only to patrons of on-site uses or to the public at large, the applicable rates and hours, any duration or overnight restrictions, and the availability and administration of business validations," and that "[t]hese details will be established after the parking operator and final commercial program" are settled. The Commission is asked to approve a spillover-prevention plan with no rate, no hours, and no decision about who may park there. A condition cannot supply what the Code requires the application to contain. *Sidwell*, 2026 UT App 67, 591 P.3d 1273.

### *There Is No Building Height to Approve*

The Code measures a building's height from the ground the building sits on. "No Structure shall be erected to a height greater than thirty-five feet (35') from Existing Grade. This is the Zone Height." § 15-2.18-4.

The applicant measures from finished floor. Its August 19 narrative describes Buildings Two through Six as limited "from finished floor to the top of the building parapet" to about 35 feet. The August

26 staff report sets out what that leaves: “[a] five-foot height exception is requested for rooftop mechanical equipment and screening,” and “[o]n portions of the downhill slope within the site, the Applicant requests an exception for approximately five to eight feet.” Building One “is proposed to remain a four-story building.”

The narrative concedes the datum. Portions of the buildings “will continue to exceed 35 feet when measured in accordance with the LMC height methodology,” and the heights “will vary somewhat based on the slope of the existing grade.” Vary by how much is not stated for any building.

No complete set of plans exists. The applicant drew two buildings, Two and Five, and told the Commission that “once comments are received on the example buildings, the balance of the project will be redesigned accordingly.” Building One is again given no height.

Section 15-6-5(F) says what the Commission must write down: “If and when the Planning Commission grants additional Building Height based on a Site specific analysis, the approved additional Building Height shall only apply to the specific plans reviewed and approved by the Planning Commission. Additional Building Height shall be specified as a Finding of Fact in the Master Planned Development Approval, in the Development Agreement, and on each plat within the Master Planned Development that includes a Building with an additional Height allowance.” One number for each building, measured from Existing Grade. The packet supplies none. No one can hold a builder to a number nobody wrote down.

*Inside the Frontage Protection Zone the Height Is 35 Feet*

Buildings Two and Three front Kearns Boulevard inside the hundred-foot Frontage Protection Zone.

Section 15-2.20-4 opens with this sentence: “Lot and Site Requirements and Building Heights for all Development Activities and uses within the Frontage Protection Zone must be consistent with the underlying Zoning District and are subject to the following additional requirements.” The underlying district is General Commercial. Its height is 35 feet from Existing Grade, with five more feet for a gabled roof at 4:12 or steeper. §§ 15-2.18-4, 15-2.18-4(A)(1). Section 15-6-5(F) does not mention the Frontage Protection Zone.

The question has been put three times and never answered. A member of the public asked it in writing on June 24: what code section authorizes building heights exceeding 35 feet within the zone? A former member of this Commission asked the City Council in writing on November 6, 2025 whether the four-story buildings “will ... have step-backs, particularly within the Frontage Protection Zone.” Commissioner Shand raised § 15-2.20-4 from the dais on August 12. The answer given addressed subsection (B), which is about which review criteria apply. It did not address the opening sentence, which is about Building Heights.

Staff has said elsewhere that exceptions may reach sixty feet. On November 6, 2025 the Planning Director told the Council that “[u]nder the current code, buildings could have exceptions up to 60 feet in height if project enhancements were provided.” Her next sentence named them: “Exceptions included open space, affordable housing, and parking.” That statement does not mention the Frontage Protection Zone, and the enhancement it names first—open space above the minimum—has already been spent under § 15-6-5(D)(2)(a).

The Commission should get that answer in writing before it votes. The 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.” § 15-2.20-1(A), (B). This is the first thing a visitor sees of the town. Taller buildings stand elsewhere in Park City, in other zoning districts and outside this zone. The Code sets height district by district. In this zone it sets 35 feet.

*The Added Height Carries Floor Space, Which the First Criterion Forbids*

The first criterion allows extra height that “provides desired architectural variation.” It forbids extra height that “result[s] in increased square footage or Building volume over what would be allowed under the zone-required Building Height and Density.” § 15-6-5(F)(1).

The applicant has explained what the height is for. 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,” that “[t]here would be a floor lost on Buildings 2 and 3,” and that “[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 observed that “the number of units is tied to the proposed massing.” Sixteen to nineteen apartments is floor space.

The applicant’s own narrative says the same thing in writing. The height is justified “[b]y accommodating portions of the development program vertically rather than expanding building footprints across the site,” and “[w]ithout the requested Building Height, accommodating the same development program would require larger building footprints.” Applicant’s Supplemental Building Height Narrative, July 8 packet pp. 301–02 of 833. That is the program being carried upward, not architectural variation.

The Planning Director told the Council the same thing before the application was filed. Asked on November 6, 2025 whether four stories would require an affordable master planned development, she “stated the applicant could submit an MPD with a height exception,” and that “[t]he applicant could not increase the density beyond what would otherwise be allowed for the height because the site was under the density that would otherwise be allowed.”

The applicant answers with a percentage. Staff tells the Commission that “the maximum allowable Building volume of the site is approximately 482,078 square feet,” that the applicant “proposes a total square footage of 185,512 square feet, or 38% of the allowed density on the Site,” and that the envelope figure is “[b]ased on the required Setbacks, allowed Building Height, and Open Space.” July 8 staff report, p. 192 of 833. The applicant’s sheet prints the arithmetic: 229,561 square feet of site area, times 0.7, times three stories, which is 482,078 exactly. No setback is subtracted. The number assumes the applicant could build to the property line on every side, which the Code does not allow.

The Commission has been given the figure four different ways, in order. The June 24 staff report said 499,450 square feet, and Commissioner Beal asked that day “that the correct numbers be provided so there is consistency in the materials that are being reviewed.” The applicant’s June 29 narrative gave “an approximate building envelope of 499,450 cubic feet,” and the sheet that narrative cites prints 482,078 square feet and 5,624,245 cubic feet. The July 8 report answered Commissioner Beal in a footnote: the June 24 discrepancies came from “different information available through the Summit County Records and the property survey and proposed subdivision,” and “[t]he numbers are now confirmed and accurate.” That same report calls 482,078 square feet a “Building volume,” and staff repeated the label on August 12. Square feet measure area, not volume. The mislabel survived the footnote that certified the number. The City confirmed a figure it was still describing in the wrong units, and findings built on a figure like that cannot be reviewed.

*The Shadow and Air Circulation Findings Cannot Be Made*

The second criterion requires the Commission to find that buildings “have been positioned to minimize visual impacts on adjacent Structures,” and 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).

The criterion names three impacts. Two are studied. The third is only recited. The applicant’s narrative repeats the phrase “loss of air circulation” three times and analyzes it nowhere. The staff reports do not analyze it. The solar study does not measure it. A criterion the Commission must find satisfied has been answered by quoting it back.

On the west line the applicant’s entire basis is a statement about Ms. Burney’s building: that “[t]he Emporium has a small ten-foot-wide side yard along the edge of the site with no employee or public access,” and therefore that there are “no potential problems caused by shadows, loss of solar access, and loss of air circulation.” Nothing supports that except the applicant’s own say-so about a building it does not own or occupy.

The applicant also appears to have the wrong building. Staff asked what the landscape buffer along the west property line would consist of. The applicant answered that the 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 describes Com-Park Plaza, which the applicant’s own narrative places on the south half of the west edge. The Emporium is on the north half. In its very next answer the applicant says so: “There are existing trees along the edge of the Emporium that straddle the property line which we will endeavor to maintain.”

Staff’s reading of the shadow study does not support the finding either. Describing the study, staff writes that “[t]he 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, where Auntie Em’s bakes in the morning. The criterion asks whether the problem has been mitigated. A winter morning in shadow is the problem.

The applicant describes everything across Bonanza Drive as “commercial properties and surface parking to the east” and concludes there are “no impacts from shadows, loss of solar access, and loss of air circulation.” Staff again 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 a building, not a parking lot. Eight of our clients’ businesses operate in it, and five o’clock is the middle of their business day. Mr. Harris seats customers outdoors at Sammy’s. Five o’clock at the equinoxes is when they sit down, and the view and the light are what they came for. Direct light is not incidental to Mr. Tilling: he leased a different space in the same building first and moved to his present space in part because it receives more direct light. The people who lose the light were never asked about it.

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 that the sun is behind the mountain by about 3:00 p.m. The five o’clock winter frame shows no shadow because there is no sun.

#### *The Traffic Study Does Not Do What the City’s Guidelines Require*

One left turn out of Prospector Avenue is projected to take eleven and a half minutes. In the Future (2037) Plus Project scenario the westbound left at Bonanza Drive and Prospector Avenue carries an average delay of 402.0 seconds in the morning peak and 689.0 seconds in the evening peak, each at level of

service F. Those figures sit in Appendix C. They are not in the study's summary tables, its conclusions, or any staff report. Our clients' customers make that turn. Ms. Cook's lodging guests and Ms. Kenton's customers are at 1940 Prospector Avenue, and that left turn is how they leave.

The summary tables cannot show it. They cap reported delay at 50 seconds for an unsignalized intersection and 80 for a signalized one, so a failing movement of several minutes prints simply as poor. Compare Table 12 and Table 13. Without the project that movement reads "f (>50)" in both peaks. With the project it reads "f (>50)" in both peaks. The same three characters stand for 402.0 seconds and for 689.0. A commissioner reading the tables cannot see what the movement is, or what the project adds to it.

At the Commission's request staff converted the letter grades into seconds. In 2037 with the project, the morning wait at Kearns Boulevard and Sidewinder Drive goes from 14.5 seconds to 27.2, dropping two grades. Mr. Crobarger's restaurant is on Sidewinder Drive. Bonanza Drive and Prospector Avenue goes from 29.5 seconds to 37.8 in the morning, from D to E. Kearns and Bonanza is already at E in the evening and gets worse, from 63.7 seconds to 70.3. At that intersection in the morning peak the northwest left turn goes from 66.8 seconds to 86.1, crossing from level of service E to F with the project.

The applicant's new narrative leads with a different pair of numbers: 1.4 seconds of added average delay in the morning at Kearns and Bonanza and 2.6 in the evening. Those are intersection averages, from a different forecast year than the table staff prepared. They do not describe the two intersections that fail.

The study never counted the hour that decides this corner. Park City High School stands at 1750 Kearns Boulevard, on the same road as the Site at 1401, 1409 and 1415 Kearns Boulevard. It releases students at 2:25 p.m. Monday through Thursday and at 11:30 a.m. on Friday. Park City High School 2026–2027 Bell Schedule. The study counted the minor intersections from 7:00 to 9:00 a.m. and from 4:00 to 6:00 p.m., and determined the peak hours it analyzed to be "between 9:00 and 10:00 a.m." and "between 4:00 and 5:00 p.m." Neither release falls inside any of those windows.

Both count days were Fridays. The minor intersections were counted on Friday, April 10, 2026. The major intersections, including Bonanza Drive and Kearns Boulevard, were not counted for this study at all; the City supplied counts performed on Friday, February 23, 2024, which the study carried forward two years at one percent. On a Friday the high school empties at 11:30 in the morning. No one was counting.

The study also assumes the way out, and the way out is one direction. The garage access sits "approximately 50 feet south of the Prospector Avenue / Bonanza Drive intersection." Because of queuing from Bonanza and Kearns, "the proximity of Prospector Avenue and other accesses creating unsafe offsets," and a traversable median, "the garage access was assumed to be limited to right turns only, at least functionally during the peak hours." The Kearns access is the same: "the Private Drive was assumed to be limited to right turns only." Traffic that needs to go the other way goes around. The way around is the left turn out of Prospector Avenue.

The word "school" does not appear in this study. Neither does "students." More than forty thousand words about traffic on Kearns Boulevard, and the high school on Kearns Boulevard is not in them. The applicant nonetheless proposes to send its event overflow to that school's parking lot.

The Commission has been told what the intersection does at that hour. One resident wrote that at 3:00 p.m. traffic at Bonanza and Kearns was "backed up 2 blocks so the left. North turn lane could not be accessed," and added that this was "still the less busy time of year." Another, who drives the intersection four times a day, wrote that "it does not take much disruption to create a traffic choke point there." A

resident of thirty-three years wrote that she has “watched the congestion get worse and worse every year.” Exhibit K, Public Input, August 12 packet. None of that is in the study either. Two twenty-five in the afternoon is also when the after-school trade reaches Park City Plaza, which is the hour the gelato case and the sandwich counter are busiest.

On August 12 the applicant’s engineer confirmed that this project generates 1,238 new daily vehicle trips. Commissioner Frontero said that day that he “does not believe the mitigation strategies that have been outlined will be able to address all of the new trips,” and that he “does not see enough evidence that the mitigation strategies will be effective.” The Commission must find that the project “addresses and mitigates traffic.” § 15-6-6(P). It cannot make that finding on a record in which the applicant’s own study states that its mitigation measures were never analyzed for effectiveness, and in which the remaining mitigation depends on transit infrastructure that does not yet exist.

The study also forecasts background growth at one percent a year, taken from a single UDOT automatic traffic recorder, and applies it to counts already two years old at the intersection this project fronts.

And the study counts trips by land use, not by parking supply. Staff puts the excess at “approximately 35% more than required by the LMC.” The trips those stalls invite are in no table in this study.

Section 15-6-4(E) requires the applicant to submit a Traffic Impact Study “pursuant to the City’s adopted Transportation Impact Study Guidelines.” The Guidelines were adopted June 23, 2023. Five of their requirements were not performed.

The Guidelines provide that “[c]ontext-sensitive mitigation measures should be examined for intersections that exceed the level of service standard or produce queues that affect traffic operations at other intersections.” The study states: “None of the mitigation considerations were implemented and analyzed as part of the traffic impact study and are only provided for the City to consider.”

The Guidelines provide that “the 50th and 95th percentile queue lengths and available queue storage should be reported for each intersection,” and that where the 50th percentile queue exceeds available storage the analyses “should be reviewed to determine if spillback queueing affects the traffic operations at other intersections within the roadway network.” The study reports 95th percentile queues. The phrase “50th percentile” appears nowhere in it. Available queue storage is reported for no intersection.

The Guidelines provide that “[h]istorical crash data should be summarized at each study intersection for the previous five-year period,” and that for any proposed roadway improvements “a safety analysis using crash modification factors as outlined in the AASHTO Highway Safety Manual should be conducted.” The study collected data “within 250 feet of the study intersection(s) that are located adjacent to the development property,” reported 67 crashes in the study area, 44 of them at Bonanza Drive and Kearns Boulevard, and concluded that “[t]here are no trends or mitigation measures recommended based on the crash reports.” The study’s own Table 3 sorts those forty-four by type: eighteen angle crashes and fourteen front to rear, thirty-two of the forty-four. Those are the collision types that follow signal delay and left-turn conflict, and this project drives the northwest left turn at that intersection from 66.8 seconds to 86.1 and from level of service E to F. The data came from UDOT Numetric AASHTOWare, July 2026, and covers January 1, 2021 through December 31, 2025. The Guidelines name Numetric and the study used it. It gathered the data the Guidelines require, found no trend in it, and ran no crash modification factor analysis.

The Guidelines also require the counts to be adjusted for the season in which they were taken. Traffic data at locations outside the five core intersections “should be collected by the project developer at each intersection for each required peak period and adjusted using seasonal adjustment factors shown in Table 2.” Table 2 puts a spring count, April 1 to June 15, at seventy percent of peak. The developer counted the minor intersections on Friday, April 10, 2026, and applied no factor. The study’s only stated reason for skipping the adjustment reaches the other half of the network: “Since the counts at the major intersections were collected during one of the busiest days of the year, Hales Engineering did not make seasonal adjustments to the observed traffic volumes.” Bonanza Drive and Prospector Avenue is a minor intersection. The 402-second and 689-second left turns this letter opens with rest on an unadjusted spring count.

And the Guidelines fix the day. “The design day for the transportation impact study should reflect a typical Friday during the peak winter (January to mid-March) period.” The major intersections were counted on Friday, February 23, 2024, which meets that. The minor intersections were counted on Friday, April 10, 2026, which does not.

A study that omits what the Guidelines require is not submitted pursuant to them. The Commission cannot find that this project “complies with all requirements of the Land Management Code.” § 15-6-6(A).

The trip generation table has three lines. Table 8 lists Affordable Housing (223), 88 dwelling units; Multifamily Housing (Low-Rise) (220), 18 dwelling units; and Strip Retail Plaza, <40k (822), 26.9 thousand square feet. That is the whole model. A customer who cannot turn out of Prospector Avenue stops coming. That is how a traffic study becomes a business problem for the people who were already here.

Everything the City calls a public benefit sits inside that third line, or nowhere. The restaurant, the café, the childcare center and the arts studios are modeled as strip retail, and all of it takes the forty percent pass-by reduction the table applies to retail. A childcare drop-off at eight in the morning is not a passing errand. The 980-seat amphitheater has no square footage in the table and no line of its own.

Staff asked about one of them. Reviewing the parking study, the City wrote: “Should the fitness studio shown on the site plan in building 3 have its own land use in Table 3? ITE has a land use code for this, 492-Health/Fitness Club.” The applicant answered: “The fitness area is a residential amenity.” It said the same of the plan sheet: “The gym is for residential amenities only.” Its own plan sheet labels that space “FITNESS STUDIO (3,459 SF).” When the applicant presented its retail concept to the City Council on September 24, 2025, an “Inclusive Fitness Studio” appeared on the list of community uses, beside the restaurant, the coffee shop and the bike shop.

Staff asked about the arts space in the parking study, where the tables did not match each other. The answer there was that “[t]he arts spaces were classified as a public park for ITE calculations.” No public park appears in the traffic study’s trip generation table either.

The square footage does not match either. The study models 26,930 square feet of commercial space. The applicant’s plan set and the City’s website report 32,581. The notices say “Over 30,000 Square Feet.” The study leaves out more than five thousand square feet of the project’s own commercial program, and codes what it does count as a strip mall.

### *The Open Space Cannot Be Spent Twice*

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 answers that thirty percent is required and about sixty percent is proposed.

The applicant’s narrative states that 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,” and then says the open space it proposes is “not required.” That reads § 15-6-5(D)(1) correctly. The district is excepted from the sixty percent standard.

That reading defeats the criterion. If no minimum applies, there is no minimum for the additional height to exceed, and the finding fails as arithmetic. If the thirty percent redevelopment figure applies instead, § 15-6-5(D)(2)(a) 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 open space requirement. It cannot also be the price of the additional height. The Commission should not pay twice for the same benefit.

Separately, the Code directs that “[t]he Planning Commission shall designate the preferable type and mix of Open Space for each Master Planned Development.” § 15-6-5(D)(3). The Commission has not made that designation.

*Three Required Documents Are Missing, and the Soil Plan Does Not Exist*

Section 15-6-5 provides that all master planned developments “shall contain the following minimum requirements.” Three of them are documents. The June 24 staff report answers each with a sentence.

Section 15-6-5(K), captioned Mine Hazards, requires that “[a]ll Master Planned Development Applications shall include a map and list of all known Physical Mine Hazards on the Property and a Physical Mine Hazard mitigation plan.” Staff answers that “[t]he Applicant submitted an Analysis of Brownfield Cleanup Alternatives prepared by Terracon on August 15, 2024.” A cleanup alternatives analysis is not a map, a list, or a mitigation plan. Section 15-6-6(M) requires the Commission to find that the project “addresses and mitigates Physical Mine Hazards according to accepted City regulations and policies.”

Section 15-6-5(L), captioned Historic Mine Waste Mitigation, requires an applicant “with Property that is located within the Park City Soils Ordinance Boundary” to submit a soil remediation mitigation plan. The June 24 report states that “[t]he site is within the City’s Soil Ordinance Boundary.” Staff answers that the applicant “will coordinate with the City’s Property and Environmental Services Manager to meet the requirements of Municipal Code of Park City Chapter 11-15.” A commitment to coordinate is not a plan. Section 15-6-6(N) requires the Commission to find that the project “addresses and mitigates Historic Mine Waste and complies with the requirements of the Park City Soils Boundary Ordinance.”

Section 15-6-5(N), captioned Historic Sites, requires that “[a]ll Master Planned Development Applicants shall submit a map and inventory of Historic Structures and Sites on the Property and a Historic Structures Report prepared by a Qualified Historic Preservation Professional.” Staff answers that “[t]he property does not include any Historic Sites.” The Code asks for a submittal, not a conclusion. Section 15-6-6(O) requires the Commission to find that the project “addresses Historic Structures and Sites on the Property, according to accepted City regulations and policies, and any applicable Historic Preservation Plan.”

Staff performed exactly this analysis for a far smaller project on the same August 12 agenda. For a basement addition and Accessory Apartment at a Landmark Historic Structure on Woodside Avenue, staff worked through the conditional use criteria one at a time, including noise and vibration, delivery and trash screening, and “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 comparable finding appears anywhere in the Five-Acre Site report.

The City has committed public money to remediate this soil. On August 22, 2024 the Council entered the site into the State Voluntary Clean Up Program. On March 19, 2026, approving the second amendment to its agreement with the applicant, the Council agreed to “a City contribution up to \$40 million, and a commitment from the City to pay for soil remediation.” The June 24 staff report discussed the Soils Ordinance Boundary and the Terracon analysis. The July 8 staff report does not use the word soil. Nor mine hazard, nor Terracon, nor remediation, nor arsenic, nor Chapter 11-15. The discussion was there in June and gone by July.

The City described that soil to a federal agency. In its FY2026 Brownfields Cleanup Grant application to the Environmental Protection Agency, Park City Municipal Corporation states that “over 28,000 cubic yards of contaminated fill is present at the site, with concentrations of arsenic as high as 585 milligrams per kilogram (mg/kg), lead as high as 15,700 mg/kg, and mercury as high as 286 mg/kg, far exceeding EPA Regional Screening Levels.” It reports groundwater containing trichloroethene and chloroform “above EPA Residential Vapor Intrusion Screening Levels (VISLs) but below maximum contaminant levels (MCLs).” It budgets the removal of 23,135 tons of soil. It states that “Metals-impacted fill materials are present throughout the site at depths of up to 8.5 feet below ground surface (bgs).” The garage goes eighteen feet down.

Park City also represented to EPA that it “will exercise appropriate care with hazardous substances found at the site by maintaining a vacant and capped site until site remediation is complete,” and that “[m]aintaining the site as vacant until cleanup avoids vapor intrusion risk related to VOCs identified previously in groundwater at the site.”

The application gave EPA a schedule: the Remedial Action Plan and the final cleanup-alternatives analysis prepared in the first quarter of 2027, approved in the second, field mobilization in the third, soil removal complete in the fourth. The City told a federal agency that the plan governing this excavation will not exist until 2027, and asks this Commission to approve the excavation now. EPA selected no cleanup grant in Utah for fiscal year 2026, and Park City does not appear on its list of selected recipients. The site remains enrolled in the Voluntary Cleanup Program of the Utah Department of Environmental Quality, Division of Environmental Response and Remediation, where the City says it intends to obtain closure.

There is no Remedial Action Plan, no final cleanup-alternatives analysis, no site management plan, and no environmental covenant. The record contains no excavation volume, no dewatering analysis, no haul route, no disposal facility, and no dust control plan. The Commission is asked to approve seven buildings and a below-grade parking structure on that ground in October.

Nine of these thirteen businesses prepare or serve food. Ms. Burney manufactures it at that property line. Her building sits at the western edge of a parcel the applicant proposes to excavate substantially in its entirety, and the buffer is five feet. The applicant says of the trees on that line: “Trees cannot be relocated due to the contaminated soils.” It also told the Commission that “[t]here is no separate access for commercial/delivery vehicles,” and that “[a] level garbage pick-up and temporary pick up and delivery area is provided at the west garage entrance. It is located eighteen feet below grade and is screened from

public view.” Every delivery to this project, and every garbage truck, comes and goes at the corner nearest her ovens.

Section 15-6-6(B) requires a finding that the project “meets the minimum requirements of Section 15-6-5.” The three documents that section requires have not been submitted. A condition cannot cure the deficiency. An applicant must meet all mandatory requirements, and where it does not the remedy is denial. *Sidwell*, 2026 UT App 67, 591 P.3d 1273.

#### *Forty-Five Feet at This Corner Is the Council’s Decision*

The Code does contain a path to 45 feet, and this application does not take it. Section 15-6.1-8(A) governs Affordable Master Planned Developments. It provides that Building Height “shall comply with the underlying Zoning District Building Height for the perimeter Building Façade planes,” and that height “is forty-five feet (45’) from Existing Grade when the following criteria are met”: a ten-foot setback “on all perimeter Building Façade planes from the underlying Zoning District Building Height to the forty-five foot (45’) Building Height”; infrastructure “in place or can be updated to meet the increased demand”; and compliance with façade variation. Even there, the perimeter planes hold to the underlying district. No setback is proposed on Buildings Two and Three.

The City has described its path to 45 feet to a federal agency. Its FY2026 Brownfields Cleanup Grant application states that “[a] new Bonanza Park Mixed Use Zoning (BPMX) District will replace the current outdated commercial and auto-driven zoning,” and that the district “will encourage a mix of uses and provide a path toward increasing building heights to 45-feet through the addition of a density bonus where developers provide community benefit in return for increased density.” The Council has not enacted that district. It held three public hearings on it in 2025 and reached no consensus.

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,” and it must do so by ordinance. Utah Code Ann. § 10-20-501. This Commission’s decision, by contrast, “is an administrative act.” § 10-20-901(3). And a land use authority “shall apply the plain language of land use regulations.” § 10-20-901(1). The applicant is not entitled to a table the Council never enacted. Forty-five feet at this corner is a decision for the Council, made in public, by ordinance.

#### *Whatever the Commission Decides, It Must Decide in Writing*

Concerns voiced while voting are not findings. In *McElhaney* the 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.” *McElhaney v. City of Moab*, 2017 UT 65, ¶ 41, 423 P.3d 1284.

That matters more than it once did. On appeal, the Code provides that “[t]he appeal authority shall review factual matters on the record, with deference to the land use authority.” § 15-1-18(G). And where an adversely affected party appeals, the statute now places on that party the burden of proving that the decision “is illegal, or that the factual findings are clearly erroneous.” Utah Code Ann. § 10-20-1105(2). Facts get deference. Findings the Commission does not write cannot be reviewed at all.

Interpretation is different. The same subsection directs the appeal authority to “determine the correctness of the land use authority’s interpretation and application of the plain meaning of the land use regulations, and interpret and apply a land use regulation to favor a land use application unless the land use regulation plainly restricts the land use application.” § 15-1-18(G). Whether an amphitheater is a listed use, whether height is measured from Existing Grade, and whether the Frontage Protection Zone ties height to

the underlying district are questions of interpretation, reviewed for correctness. Each of those provisions plainly restricts.

Objections of this kind are evidence. In *VR CPC* residents challenged the reliability of an applicant's parking analysis at a Commission hearing, the Commission denied the permit, and the Court of Appeals affirmed. The district court found, and the Court of Appeals affirmed, that the residents' comments were "not public clamor, but are reasonable concerns based on evidence in the record that cast doubt onto whether the expert analysis under the Parking Mitigation Plan was reliable." 2025 UT App 130, ¶ 16, 578 P.3d 249 (quoting the district court's ruling). Every figure in this letter comes from the City's own filings and its own consultants.

The buildings will stand for a century. Every choice in them is made once, on the night of the vote. No one lowers a building after it is built. No intersection at level of service F returns to D. The view down Kearns Boulevard, which the Code protects by name, does not come back. The soil moves once, past our clients' doors, under a plan the City has told a federal agency will not exist until 2027.

Name the use. Count the parking. Set each height as a number measured from Existing Grade. Say what happens to the soil. Write the findings down.

A record that answers those questions can be defended to this community and to a court. This one answers none of them.

Our clients will unlock their doors the morning after the vote, and their children will grow up across the street from what the Commission approves. They ask for the Code the City wrote, and nothing more.

This letter does not replace the objections stated in our August 19 letter, which appears at pages 186 through 193 of the August 26 packet. It reasserts them and adds to them. Each client states these objections in its own name, timely and specifically. Utah Code Ann. § 10-20-1101(2). Each point above is asserted by each client as a separate and independent ground. Because the staff report and draft findings for any final action have not been published, each client reserves the right to comment further and waives no ground not stated here.

Best regards.

Very truly yours,

A handwritten signature in blue ink, appearing to read "RJMc", is positioned above the typed names of the signatories.

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