

December 16, 2020

VIA ELECTRONIC MAIL

Fionnuala B. Kofoed
City Recorder
Recorder's Office, Eagle Mountain City
1650 East Stagecoach Run
Eagle Mountain, UT 84005

**Re: Appeal of Planning Commission Decision
Denying Fieldstone Homes Conditional Use
Permit**

Dear Ms. Kofoed:

I represent Fieldstone Homes ("Fieldstone") in matters related to its Scenic Mountain Development in the City of Eagle Mountain (the "Development"). On behalf of Fieldstone, I hereby submit this appeal of the Eagle Mountain Planning Commission's (the "Planning Commission") decision to deny Fieldstone's application for a conditional use permit (the "CUP"). Fieldstone respectfully requests that the City Council find that the Planning Commission's denial was invalid, and that it grant the CUP.

JURISDICTION AND STANDARD OF REVIEW

This appeal is properly filed pursuant to Eagle Mountain Municipal Code 17.05.180, which states the Planning Commission's decisions on Conditional Use Permits may be appealed to the City Council within 10 days of the decision. Specifically, this appeal requests review of the Planning Commission's denial of Fieldstone's CUP application, which was rendered on December 8, 2020.

Pursuant to EMMC 17.05.180, the City Council "shall review the decision of the [Planning Commission] and their findings of facts to determine if the land use ordinances were correctly applied to the application or decision," and "determine if the original decision was valid

or invalid.”

BACKGROUND

The Development is located on 35 acres of land in Eagle Mountain, and has been developed in multiple phases (A–C) according to a City-approved master development plan and agreement (the “MDA”). See generally, Eagle Mountain City Staff Report, attached hereto as Exhibit A. Phases A and B have been completed successfully. Phase C is the subject of the CUP. *Id.* Pursuant to the MDA, which requires Fieldstone to comply with city code requirements in place at the time the MDA was executed, Fieldstone must obtain a CUP for the multifamily developments planned for Phase C. *Id.*

Upon review of Fieldstone’s CUP application materials, and after multiple discussions between Fieldstone and planning staff, the staff recommended in its report that the Planning Commission “make a motion to approve the conditional use permit, for the reasons set forth in the staff report and in the meeting.” *Id.* Although the staff report made recommendations on conditions for approval of the related master site plan, it did not recommend specific conditions on approval of the CUP. *Id.*

The Planning Commission held a public hearing on Fieldstone’s CUP application on December 8, 2020. Various Commissioners raised several concerns that were not addressed in the staff report, including concerns regarding fire safety. See Eagle Mountain Planning Commission Meeting, Dec. 8, 2020, 1:52–2:36, https://emcity.granicus.com/player/clip/191?view_id=1&redirect=true (last accessed December 15, 2020).

After some discussion, the Planning Commission voted 4-1 to deny the CUP for three specific reasons: (1) the townhouses do not include a man-door for fire department access to each of the units; (2) the parallel parking spaces create a safety issues with ingress and egress of emergency vehicles and do not constitute a “guest type” parking space; and (3) the open spaces and amenities are not integrated as required by EMMC 16.35.105, as in place at the time the MDA was executed. *Id.* at 3:04–3:07.

ARGUMENT

Fieldstone bases this appeal on three legal principles, each of which independently provide a basis for invalidating the Planning Council’s decision. First, the denial of the CUP is contrary to the Utah Conditional Use Permit statute and the EMMC, which permits denial only when conditions *cannot be* imposed to mitigate reasonably anticipated detrimental effects of a proposed use. Second, the developer is protected by the Utah vesting laws, which prohibit the city from imposing requirements and conditions that were not in place at the time that the development became vested. And third, that the concerns upon which the PC based the denial are non-issues according to the United Fire Authority.

Utah law is clear that “[a] land use authority *shall approve* a conditional use if reasonable conditions are proposed, or can be imposed, to mitigate the reasonably anticipated detrimental effects of the proposed use” Utah Code § 10-9a-507(2)(a)(i) (emphasis added). Further, the land use authority may only reject a conditional use “[i]f the reasonably anticipated detrimental effects of a proposed conditional use cannot be substantially mitigated by the

proposal or the imposition of reasonable conditions to achieve compliance with applicable standards” *Id.* at § 507(2)(c). Additionally, under EMMC 17.95.050(B), the Planning Commission may only deny the application “based upon findings of facts.”

Despite the above requirements, the Planning Commission denied Fieldstone’s CUP for the three specified reasons, but without any discussion as to potential conditions that could mitigate these concerns. Moreover, the Planning Commission made no factual findings that their concerns could not be substantially mitigated by any imposed conditions. The only discussion shedding light on the reason for an outright denial of the CUP came through Commissioner Pengra’s comments that Fieldstone and the City were at “an absolute impasse.” However, as he recognized, Fieldstone and the City had only been engaged in informal discussions regarding the site plan. The December 8 meeting was the first time the Planning Commission formally addressed Fieldstone’s CUP application. Therefore, there is no basis for the conclusion that the City or Fieldstone could not have proposed or agreed to conditions mitigating the Planning Commission’s concerns, as finally determined.

Moreover, “an impasse” does not relieve the Planning Commission of its duty to either impose conditions that would mitigate its concerns, or make a specific finding that no such conditions are possible. By failing to do either, the Planning Commission’s rejection of the CUP application is contrary to Utah law and the EMMC, and is therefore invalid.

Furthermore, Phase C of the development has “vested” status under Utah law, prohibiting the imposition of conditions and requirements based upon newly passed ordinances, even if the conditions had been imposed. The Utah “Vested Rights” rule, found in Utah Code §§ 10-9a-509(1)(a)(ii), and in Western Land Equities v. City of Logan, 617 P.2d 388 (Utah 1980), establishes that an applicant for land development is entitled to approval if the application complies with the zoning ordinances in place on the date the application was filed. Accordingly, an applicant is entitled to consideration of the application under the ordinances in place at the time of vesting, even if the ordinances subsequently change.

The ordinances and requirements that control the Development were vested in accordance with the MDA. Accordingly, ordinances passed by the City subsequent to the vesting date are not applicable to the Development. The fire ordinance that was of concern to the Planning Commission is such an ordinance. Imposing that ordinance on the Development is therefore a violation of Fieldstone’s vested rights.

Nevertheless, Fieldstone does not intend to invalidate or minimize the City’s new ordinance here, nor to disregard safety issues. However, even if the Planning Commission could legally deny the CUP, and even if the Planning Commission had considered the vested rights, new information confirms that the concerns expressed as the reason for the denial were misplaced. The Planning Commission did not have this information at or prior to their meeting. As you can observe in the letter from the Unified Fire Authority attached hereto as Exhibit B, which was obtained the day following the Planning Commission’s denial, the issues of man-doors and parallel parking are specifically addressed therein, and the current design has been approved UFA in this instance. The UFA explicitly states that it is not concerned with these issues. Presumably, if the Planning Commission had this information, they would have

approved the CUP. With this appeal Fieldstone requests that the City Council do so.

CONCLUSION

The Planning Commission's rejection of the CUP was invalid because it failed to consider and/or make any factual or legal findings regarding conditions that would mitigate its concerns regarding the proposed use. Instead, the Planning Commission only described its concerns with the CUP, and concluded that the parties could not come to an agreement regarding mitigating solutions. Such is not a proper basis for denying a CUP, as mutual agreement is not a prerequisite to a CUP approval. Moreover, the concerns expressed in the Planning Commission meeting, and cited as the reason for the denial are inapplicable to the Development under Utah's Vested Rights Rule and are, according to the Unified Fire Authority, non-issues. Accordingly, Fieldstone respectfully requests that the City Council find the Planning Commission's decision invalid, and grant the requested Conditional Use permit.

Sincerely,



Brent N. Bateman
Dentons Durham Jones Pinegar

cc: Johna Rose
Lianne Pengra
Jeremy Cook
Steve Mumford