

February 14, 2018

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Dan Bass, dublowlaw10@gmail.com, 435-659-1955

VIA ELECTRONIC MAIL:

Summit County Council
Summit County Planning Department
601 North Main Street
PO Box 128
Coalville, UT 84017

Re: Notice of Appeal of Approval of Conditional Use Permit for Woodward Gorgoza Park City on Parcel # SS-8-C-1; 3863 West Kilby Road, Park City, Utah 84098

Dear Summit County Council and Summit County Planning Department:

The aggrieved persons are appealing the decision of the Snyderville Basin Planning Commission (SBPC), on January 9, 2018, to grant the Conditional Use Permit for the Woodward Gorgoza Park City. The aggrieved persons are also appealing the fact that it was even allowed to go through the Conditional Use Permit process based on the erroneous characterization by the Director of Community Development that the "indoor action sports training facility" could be an accessory building.

The aggrieved persons, residing within one-thousand feet of the exterior boundaries of the proposed development, as well as many others, will be adversely affected by the excessive noise, snowmaking blow over, lighting and traffic generated by this proposed development, not to mention the loss of view shed and open spaces. (139 persons to date)

I live in Southridge. I have been here since the summer of 2006. I have a clear, unobstructed view of Gorgoza Park from my back deck. I see the yurts, parking lot, tubing hill, lighting and most of the other 126 acres. I use my deck all year round. I have a hot tub, gas grill, and tables and chairs. I see the lights, I hear the snowmaking, I even hear the tubing riders, especially the kids laughing as they come down the hill. I experience snowmaking blow over on my deck and have lost sight of the highway when snowmaking has created foggy, cloudy conditions. This situation existed when I bought my house. I have grown used to it and even enjoy hearing the kids laughing. But the level of expansion will turn a minor nuisance into a nightmare. Can you imagine the snowmaking that will be required to cover almost 126 acres, can you imagine the lighting to cover 126 acres, can you imagine lighting the night skies for an additional 2 hours every evening all year. Can you imagine the unobstructed sight of a building 420 feet long, 32 to 45 feet high with 52,107 square feet forever. For those who do not live in the neighborhood, they have no idea how this will change the character of our neighborhood.

The basis for the appeal is that the 45 foot tall, 420 foot long, 52,107 square foot indoor action sports training facility is a "recreation and athletic facility, commercial" and is a prohibited use in the Hillside Stewardship Zone.

I first raised this issue when I wrote to the SBPC and county staff on February 23, 2017.

Tom Farkas <tafarkas@yahoo.com>

To:countycouncil@summitcounty.org,mfranklin@summitcounty.org,bpeck@summitcounty.org,cdeford@summitcounty.org,charte@summitcounty.org

Cc:rmilliner@summitcounty.org,jbooth@summitcounty.org

Feb 23, 2017 at 10:52 AM

Dear Summit County Council and Snyderville Basin Planning Commission:

Considering the importance of Hillside Stewardship protection, a re-examination and correction of the redevelopment application of the subject project is warranted. The designation of "Accessory Building" is not appropriate. The proposed 45 foot tall (40% higher than 32 feet), 52,107 square foot building (420% greater than 10,000 square feet) is the main attraction, hardly an accessory building. The building is in all reality a "Recreation and athletic facility, commercial" and such facilities are prohibited in the Hillside Stewardship Zone District.

I appreciate your consideration of this matter, as it is as important to look out for the well being of the community as it is the developer's interest.

Thank you,
Tom Farkas
8570 Southridge Dr
Park City, 84098
435-658-1939
tafarkas@yahoo.com

You would think as a tax paying citizen of Summit County I would have been **given the courtesy of a response** from the SBPC or staff regarding my complaint and even some advice about what I should do next. I got nothing.

I went to the next Woodward Gorgoza work session that the SBPC held on February 27, hoping to have the opportunity to speak during a public comment period—there was none.

I wrote again on March 2, 2107

Tom Farkas <tafarkas@yahoo.com>

To:countycouncil@summitcounty.org,bpeck@summitcounty.org,charte@summitcounty.org,cklingenstein@summitcounty.org,cdeford@summitcounty.org

Cc:jbooth@summitcounty.org,rmilliner@summitcounty.org

Mar 2, 2017 at 1:23 PM

Dear Summit County Council and Snyderville Basin Planning Commission:

I attended the Work Session on Woodward/Gorgoza. But there was not an opportunity for public comment, so I am writing again to raise my concerns.

This application is based on a faulty premise, that the proposed facility is an "accessory building". Accessory building is clever wordsmithing, but is not right. We all know the adage: if it walks like a duck and quacks like a duck--it is a duck.

The 45 foot high/52,107 square foot building is an indoor action sports facility. As such it is a "recreational and athletic facility, commercial", which is prohibited in a Hillside Stewardship Zone. The sports action facility is the new main attraction, not subordinate to the current use on the site. Requiring more than 200% increase in parking is hardly subordinate. The request to be 45 feet tall was for the indoor action sports

activity. The request to be 52,107 square feet is for the indoor action sports activity. Would that volume be needed for a building, the use of which is incidental to the use on the site?

The applicant, "Parley Recreation Partners", provides recreational facilities. I am sure Woodward would be a wonderful recreation opportunity for Park City, but not where it is prohibited.

This is not an insignificant matter and should be open for public comment.

Thank you, Tom Farkas
Southridge Dr.

Again-- no response, no advice.

I next wrote the Park Record and asked others to speak to this issue when public comment would be allowed.

Tom Farkas <tafarkas@yahoo.com>
To:editor@parkrecord.com
Mar 2, 2017 at 1:28 PM
Editor:

Summit County is playing fast and loose with the development code. Woodward/Gorgoza wants to build a 45 foot tall and 52,107 square foot building to house its indoor action sports facility at the Gorgoza tubing park.

The proposed site is a Hillside Stewardship Zone, which prohibits "recreation and athletic activities, commercial". To get around the prohibition of the recreation facility, the county is calling the building an "accessory building" which is supposed to be a building which is subordinate to, and the use of which is incidental to the use of the site. The indoor sport action facility will be the main attraction on the site. Requiring a 200% increase in parking is hardly subordinate.

The height exception, 45 feet instead of zoned 32 feet (a 40% increase) and the square footage increase request of 52,107 over the zoned 10,000 (420% greater) is to accommodate the indoor action sports activity. We all know the adage: if it walks like a duck and quacks like a duck--its a duck.

The applicant, "Parley Recreation Partners", provides recreation facilities. I am sure Woodward would be a wonderful recreation opportunity for Park City, but not where it is prohibited.

Let's hold the county accountable to the development code. This matter must be challenged during the public comment process.

Tom Farkas
Park City

This has been going on for a year.

I also attended and gave public comment at both County Council hearings on the request for height exception and both hearings of the Board of Adjustment on the request for setback variance. In both cases there was a sense of concern about dealing with those requests before the project had gone through the appropriate review by the SBPC. The minutes of those meetings and the eventual vote of 3 to 2 in both cases bears that out.

The building, as described by the applicant, will serve as an indoor training space for multiple action sports including, skiing, snowboarding, skate boarding, BMX biking, gymnastics, and cheerleading. Dictionary.com defines sport as "an athletic activity requiring skill or physical prowess and often in a competitive nature".

The applicant also states that the size/volume of the facility is intended to serve the indoor training space with the required floor space and ceiling height/volume to create a safe and high quality environment for multiple action sports.

The applicant further states that the facility would also include ancillary functions, such as food and beverage space, a ticket counter, trainer/first aid space, a digital media lab, lockers, restrooms, circulation and back house spaces to support these functions. Of course, the trainer/first aid space and lockers are also directly related to the indoor sports activities.

The building specifications show that roughly 75% of the space is dedicated to indoor action sports activities.

The current Gorgoza Park is an outdoor recreation facility and the existing developed recreational uses are vested. Those uses are the snow tubing hill, associated tow ropes, snowmaking, sales yurt and a parking lot. The use has remained relatively unchanged. (The temporary buildings which were established to be used for sales rentals and restroom facilities were not to exceed five years, and all activity was to be non-motorized which would exclude the mini snowmobiles.)

Compared to the existing developed vested uses, the proposed 52,107 square foot indoor action sports training facility would be the Principal Building on the site. Principal Building as describe in the Snyderville Basin Development Code (10-11-1.43) says “a building in which is conducted the principal use of the lot on which it is situated and the use of which must be consistent with the permitted uses of the zone district it is located”.

The principal use of the lot is outdoor recreational. The Principal Building’s use is indoor recreational. The principal building is a recreation and athletic facility, commercial as defined in the Snyderville Basin Development Code (10-11-1.245) as “a recreation facility operated as a business on private or public property and open to the public for a fee, such as a tennis court, skating rink, or substantially similar use, and support facilities customarily associated with the development”.

Recreation and athletic facilities, commercial are prohibited uses in the Hillside Stewardship Zone, per Section 10-2-10 of the Snyderville Basin Development Code (SBDC). Consequently, they are not subject to the Conditional Use Permit process in this zone.

The fact that the application went through the Conditional Use Permit process was in error. The error was due to the assumption that the indoor action sports training facility could be an accessory building. Snyderville Basin Development Code (10-11-1.37) states an accessory building is “a building or structure which is subordinate to, and the use of which is incidental to, that of the principal building, structure or use on the same lot”.

Oxford Dictionaries defines incidental as “accompanying but not a major part of something”. Merriam-Webster defines incidental as “occurring merely by chance or without intention”.

Oxford Dictionaries defines subordinate as “treat or regard as of lesser importance than something else”. Merriam-Webster defines subordinate as “placed in or occupying a lower class, rank, or position”.

The indoor action sports training facility is not an accessory building because it is not a building or structure which is subordinate to a principal building or structure, because there is none. It is also not a building or structure subordinate to the use on the same lot, which is merely a tubing hill.

My lawyer (Dave Thomas, Legal Memo, 12/1/2016) says, “when development agreements expire, the property reverts back to the underlying zone, but the existing developed uses, densities and configurations vest. Those

become legal nonconforming uses within the underlying zone. The permanent buildings contemplated in the Development Agreement, including the lodge, learning center and maintenance buildings were not constructed and did vest prior to the expiration of the Development Agreement. However, the recreational uses, to the extent that those uses have occurred within Gorgoza Park, have vested.

According to the Snyderville Basin Development Code, Section 10-8-1 F, Abandonment or Loss of Non-conforming Uses: A non-conforming use that is discontinued for a continuous period of one (1) year is presumed abandoned and shall not thereafter be re-established or resumed. The property owner shall have the burden of establishing that any claimed abandonment has not in fact occurred. Any party claiming that a non-conforming use has been abandoned shall have the burden of establishing such abandonment. Any subsequent use of the building, structure or land must conform to the regulations specified in this Title for the zone district in which the use is located.

The website for Gorgoza Park lists its current uses as tubing, mini-snowmobiles (which are motorized) and fort frosty (mini-tubing). Also in use is snowmaking, temporary yurts (originally limited to exist for 5 years) and the parking lot. Exhibit H, Gorgoza Park Historical Brochures and Photographs also demonstrate that all other recreational uses have been discontinued for a continuous year period and therefore are abandoned. I have lived in Southridge since 2006 and am an eye witness to the current uses. All but one use, has not been on the property since I have lived here (the past 12 years). The one use was “learn to ski and snowboard tow line” which was last offered in the 2014-2015 season.

Therefore the only existing developed “mountain outdoor recreational” uses, densities and configurations that are vested are the tubing hill. I am establishing this point to make it clear that the Training Facility is not subordinate to, and the use of which is not incidental to the use on the same lot, which is merely the tubing hill. It is not logically an accessory building.

In the February 14, Dave Thomas Staff Report and Legal Memorandum he states that an accessory building may be subordinate to the “principal use.”The Planning Commission determined through evidence presented that the Training Facility works to enhance the vested principal uses on the Property”. There are no tubing activities in the Training Facility, so how does it enhance the vested use of tubing? Again, logically it is not an accessory building.

The Snyderville Basin Development Code, in Section 10-2-10: Use Table, also states “in cases where a proposed use is not listed in the table, the Community Development Director shall compare the nature and characteristics of the proposed use with those of the uses specifically listed and make a determination if the proposed use is similar in nature and logically fits into any of the categories listed”. The Community Development Director is give discretion in these instances. But the proposed use is listed in the Use Table, therefore the above provision does not apply.

But the Code goes on to state, “in cases where a use is similar in nature to more than one category, the more specific category shall apply.” In the Dave Thomas Legal Memorandum to the County Council, regarding the Gorgoza Park (Woodward) Application, dated December 1, 2016, he states in item # 12, “The expiration of the Development Agreement presents a unique problem. A Training Facility is most analogous to a ‘Recreation and athletic facility, commercial’ on the Use Table. Such facilities are prohibited in the Hillside Stewardship Zone District. However, the existing recreational uses are vested. Gorgoza Park is an outdoor recreation facility. As a result, the Training Facility could be viewed as an ‘Accessory Building over 10,000 square feet’ because it is ‘a building or structure which is subordinate to, and the use of which is incidental to that of ,the principal building, structure or use on the same lot.’ The Director of Community Development, consistent with authority granted to him by the Snyderville Basin Development Code, has determined that this redevelopment application falls into the latter category. As such, the Training Facility is subject to a conditional use permit process.”

Dave Thomas did not say the Training Facility was more analogous, he said most analogous. So it is actually the most specific that shall apply.

Again, as stated above, the Codes says, "in cases where a use is similar in nature to more than one category, the more specific shall apply", and that is Recreation and Athletic facility, commercial which is a prohibited use. This is the "plain meaning" of the Code. The Director of Community Development does not have the authority to say it could be something that is less specific. For the Director of Community Development to say it could be an accessory building is in violation of the Code. The fact that it was allowed to go through the conditional use permit process is an egregious error in violation of the Code.

The 420 feet long, 32 to 45 feet high, 52,107 square feet of the Training Facility is to perform indoor action sports, which is recreation and athletic facility, commercial. Even Mr. Budge, with Snell and Wilmer, representing Parleys Recreation Partners, could not deny this fact when on page 12, in the conclusion of his February 8, 2018 letter to the Council, he states, "This Woodward Project will provide a unique commercial recreation facility at Summit County's western entrance."

The aggrieved persons, and others affected, request that conditional use permit approval of Woodward Gorgoza Park City be voided, and the indoor action sports facility be prohibited in the Hillside Stewardship Zone.

Sincerely,

Tom Farkas and Dan Bass

(on behalf of 47 aggrieved persons in Southridge and Jeremy Point and 92 persons from other neighborhoods)

Southridge

Aggrieved Persons (within 1000 feet)

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Meg & Brian Leaf, megleaf@mac.com, 4076 Hilltop Ct, 435-659-8989

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Jeremy Point

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Woodward Gorgoza Park City Appeal Supporters from other Neighborhoods

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