

From: [Douglas Ogilvy](#)
To: [Brendan Conboy](#)
Cc: [Hannah Tyler](#)
Subject: Fwd: B2 East MPD Application
Date: Thursday, March 18, 2021 10:43:43 AM

Brendan,

Thanks for the update on your meeting with Mark and your points of clarification last night. Hannah and I have reviewed and discussed your comments and offer below the Applicant's take on the issues raised yesterday.

1. MINOR vs SUBSTANTIVE AMENDMENT

We are puzzled by your recommendation that Planning Commission find the proposed amendments Substantive. The Applicants have proposed two amendments:

1. Amend the Flagstaff DA (the Large Scale MPD) to replace 5 multi-family units with 2 PUD units.
2. Amend the Pod B2 MPD (the Small Scale MPD) to change the approved Volumetrics for development on the B2 East site.

LMC Section 15-6-4(K) states:

1. Minor Modification. *A minor modification to an approved Master Planned Development is a modification that compiles with the Land Management Code and Master Planned Development approval and **does not trigger additional Off-Street Parking requirements, does not reduce Open Space, and does not increase traffic by 5% or more** as demonstrated by a traffic generation study (emphasis added).*

With respect to both the Large Scale MPD and the Small Scale MPD, the proposed amendments conform to the Minor Modification requirements:

- The reduction of 3 residential units from that permitted under the 2007 DA reduces the Off-Street Parking requirement by $1.5 * 3 = 4.5$ stalls. The Off-Street Parking for B2 East under the 2007 Pod B2 Small Scale MPD is 124 required for residential plus up to 75 for the Empire Day Lodge for a total of 199. The Parking Requirement under the B2 East CUP application is 97 stalls for the Lodges, 60 stalls for the Empire Day Lodge plus 8 stalls for the Villas for a total of 165, a 17% reduction.
- The B2 East site is considered a development site under the 2007 DA (Large Scale MPD) with no acreage from this site included as Open Space in the determination that 88% of lands within the Flagstaff Annexation Area will remain as Open Space. Relocation of density from the lower portion of the site to the upper portion of the site does not reduce Open

Space since no part of B2 East is considered Open Space.

- It is intuitively obvious that the reduction in residential units on B2 East from 81 permitted under the 2007 Small Scale MPD to 70 permitted under 48 proposed under the Sommet Blanc CUP will result in a significant traffic reduction.

LMC Section 15-6-4(K) also states:

2. Substantive Modification. Substantive modifications to an approved Master Planned Development create additional impacts and require review of the entire Master Planned Development and Development Agreement by the Planning Commission, unless otherwise specified in the Development Agreement. Substantive modifications include but are not limited to a change of a Finding of Fact or Condition of Approval, a change in Use, or an increase in Floor Area that triggers additional Off-Street Parking requirements, a change in Use or an increase in Floor Area that generates more than a 5% increase in traffic demonstrated by a traffic generation study, or a reduction in Open Space.

- Since the proposed amendments to the Pod B2 MPD and Flagstaff DA result in a reduction in Off-Street Parking requirements, a reduction in traffic, and no reduction in Open Space, **there are no additional impacts caused by the proposed amendments.**
- While the proposed changes to Volumetrics do change the Findings of Fact and Conditions of Approval under the Small Scale MPD, these changes do not create additional impacts and as such are not Substantive. The approved Volumetrics are so highly prescriptive that **any** change from the original Hill Glazier conceptual design would require a change to the Volumetrics. The public record shows that the Hill Glazier conceptual design received minimal overview during the approval of the Pod B2 MPD while the B2 West (Montage) design received extensive review. Furthermore, it is clear that the Hill Glazier conceptual design fails to satisfy Fire Marshall requirements in multiple ways. Clearly it was not the intent of the parties to lock down the design on the B2 East site based on the minimal review conducted in 2007.
- The Applicant has proposed converting 5 multi-family UEs to 2 PUD UEs under the Flagstaff DA (the Large Scale MPD) to reduce building massing by inserting a break between Villa 3 and Villa 4. Should Planning Commission determine that this minor change is Substantive, the Applicants will amend their application to join all five Villas which negates the benefit of splitting these units into two buildings as proposed. This is the **only** change proposed to the Large Scale MPD, so in no case should the Large Scale MPD (the Flagstaff DA) require review.

The definitions of Minor Amendments and Substantive Amendment are incongruent. It is clear that the proposed amendment meet the requirements of the Minor Amendment.

2. ADA UNITS

As stated in previous emails and acknowledged by you this evening, every project at Empire Pass has included ADA units and none have required UEs. For example:

Residences at the Tower (City Council Approval 2-28-19)

- Finding of Fact 1

*Residences at the Tower condominium plat identifies 14 private market rate multi-family residential units totaling 42,453 sf, utilizing 21.227 UE, **as well as 1 ADA unit** and 1 deed restricted affordable unit.... (emphasis added).*

Argent (Planning Commission Approval 11-13-19)

- Density Summary (Staff Report)

ADA accessible units and deed restricted units do not count towards the UE cap.

Empire Residences (Planning Commission Approval 10-25-17)

Finding of Fact 16

*The total floor area of the residential (market rate) units is 49,000 square feet and utilizes 24.5 UE,
this does not include the affordable unit or the ADA unit.*

You also enquired about legislative requirement for accessible units. We are referencing the Americans with Disabilities Act as noted below:

ADA Part 36 Addressees Accessible Requirements

Definition 36.104 states:

*“Place of public accommodation means a facility operated by a private entity whose operations affect commerce and fall within at least one of the following categories:
(1) An inn, hotel, motel, **or other place of lodging**, except for an establishment located within a building that contains not more than five rooms for rent or hire...*

Section 9 addresses Accessible Transient Lodging

- 9.1.2 states that for properties with 26 to 50 rooms, 2 Accessible Rooms are required. Sommet Blanc includes 48 Residential Units plus 2 ADA units for a total of 50, 2 of which must be accessible.

3. RESIDENTIAL ACCESSORY USES

Prior projects at Empire Pass have included numerous amenities that have been

treated as Residential Accessory Uses. Other than the Talisker Tower (which includes a commercial club operation) and the Montage (which includes a commercial spa and several restaurants (all open to the general public) that are treated as Resort Support Commercial), no prior residential buildings at Empire Pass have had amenity space designated as Resort Support Commercial.

The Flagstaff DA (2007) defines this as follows:

“Residential Accessory Uses” provisionally ***means uses that are for the benefit of the residents of a*** commercial residential use such as a hotel or ***nightly rental condominium project.***

The LMC defines “Accessory Use” as follows”

“Accessory Use”. A land Use that is customarily ***incidental and subordinate to the primary use*** on the same Lot.

All of the spaces identified as Residential Accessory in the Sommet Blanc application are for the benefit of residents of a nightly rental condominium project. They are also incidental and subordinate to the primary residential/nightly lodging use. All of the Residential Accessory spaces will be Common Area of the HOA and none shall be open to the general public.

The proposed Residential Accessory areas are consistent with those constructed in previous projects at Empire Pass that have been classified as Residential Accessory.

Argent (Planning Commission Approval 11-13-19)

Staff Report - Residential Accessory uses (Guest amenities)

Common residential amenity areas are provided on level one, including ski lockers, a kid’s room, fitness area, lounge/apres ski area. The basement level contains an owners’s storage area and game room. There is also a reading room and deck on the 6th floor. The guest amenity area is approximately 8,433 sf.

Finding of Fact 5 (G)

*Guest amenity areas (arcade/game room, fitness areas, ski lockers, lobby, lounge, apres ski room, kids room and reading room, etc.) are proposed on the basement, first and sixth level. **These common residential accessory uses do not require UEs** (emphasis added).*

Talisker Tower Addition (Planning Commission Approval 12-14-16)

Finding of Fact 27

*The Tower Club Phase I Conditional Use Permit was approved by the Planning Commission on March 11, 2009, for approximately 8,880 square feet. There are approximately 2,264 sf of private dining club, kitchen and small convenience store uses, and **6,616 sf of residential (and resort) accessory uses** (ski lockers, recreation amenities, kids club and programming, etc.) circulation and storage.*

Empire Residences (Planning Commission Approval 10-25-17)

Finding of Fact 16

*The total floor area of the residential (market rate) units is 49,000 square feet and utilizes 24.5 UE, this does not include the affordable unit or the ADA unit. Guest amenity areas (exercise and recreation areas, locker rooms, lobby and reception area, lounge/pub, restrooms etc.) are proposed on the first level **These common residential accessory uses do not require use of UEs.***

The proposed Resort Accessory amenities included within the Sommet Blanc project are very similar to those provided in prior Empire Pass projects:

- Yoga (exercise area not open to the public)
- Fitness (exercise area not open to the public)
- Skier Lounge (common lobby)
- Ski Valet (common ski lockers)
- Concierge (concierge)
- Other Lounge Areas (common lobby)
- Massage Treatment Rooms (common pools, saunas and hot tubs)

None of these are open to the general public, and none are staffed as a commercial operation.

The massage treatment rooms have similarities to the Spa at the Talisker Tower, but several key differences. The Talisker Spa is operated as a commercial enterprise with Talisker Club employing massage therapists and selling massage treatments to its members. Talisker Club and City Staff both agreed that this was a commercial undertaking and the treatment areas at the Talisker Tower are treated as Resort Support Commercial.

The massage treatment rooms at Sommet Blanc are available to owners and guests on a similar basis to a Board Room. An owner or guest can reserve the treatment room, and procure treatment services from an outside provider. Rather than receiving treatment in his or her residential unit, the owner may receive treatment in a more suitable venue. Neither the HOA nor the HOA Manager will be retaining staff to offer massage services on a commercial basis. The general public will have no access to spa treatments in these rooms. The Applicant thus considers this space to be an accessory use for the residences similar to common pools, saunas and hot tubs.

We have used the above basis for determining that the Restaurant open to the general public is the only Resort Support Commercial space within the Sommet Blanc project.

We would be pleased to tee up a call to discuss further.

Doug & Hannah.