

BEFORE THE CITY COUNCIL  
OF THE  
CITY OF KETCHUM

In the Matter of the Administrative Appeal of:	)	
	)	
	)	APPLICANT/APPELLANT
Scott and Julie Lynch, Yahn Bernier and Elizabeth McCaw, and the Distrustful Ernest Revocable Trust, for the Sawtooth Serenade (Applicant / Appellant)	)	APPEAL BRIEF
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Of the Decision of the Planning and Zoning Commission	)	

On behalf of Scott and Julie Lynch, and Yahn Bernier and Beth McCaw and Distrustful Ernest Revocable Trust (collectively, "Appellants" or "Applicants"), this Memorandum is made in Support of their Notice of Appeal of the City of Ketchum Planning & Zoning Commission's ("Planning Commission") Findings of Fact, Conclusions of Law, and Decision dated November 30, 2023 (the "Decision") regarding the Sawtooth Serenade Development (the "Project") in which the Planning Commission affirmed the Staff Determination dated August 24, 2023 ("Determination Letter") finding that Ketchum's Interim Ordinance 1234 ("Ordinance 1234") applies to Applicants' Application for Design Review under Ketchum Municipal Code ("KMC") §17.96, which was deemed complete prior to Ordinance 1234, and such application is null and void pursuant to Section 3 of Ordinance 1234.

This is a case about the legal issue of vesting – and the processing of a Project through the Design Review process that, by all accounts, vested prior to the adoption of Ordinance 1234 by the City. Vesting simply establishes the zoning and regulatory framework under which a project will be evaluated. Vested rights are established at the time an application is deemed substantially complete by the Municipality. When the zoning or regulatory frameworks change, vested rights are sometimes referred to as "grandfathered" under the framework applicable at the time the application was filed.

This is also a case about the lengths, both subtle and bold, the City's planning staff has taken to prevent a project that it does not like from proceeding, despite the fact that the Project meets all objective requirements of the law in effect at the time of application. In fact, the record shows the City repeatedly delayed implementing vesting language consistent with Idaho law in drafting the ordinance, in the hopes that Applicants' Project would not vest. As that became less feasible, City staff focused on manipulating the interpretation of prospective sunset or expiration language incorporated into the ordinance as a means to limit the "grandfathering" of vested applications and misled the Planning Commission with respect to other pending applications, all to the detriment of the Project.

Based on the arguments set forth herein, as well as those set forth in Applicants' Letter of Appeal to the Planning Commission dated September 7, 2023 and Applicants' Response Memorandum to the Planning Commission dated November 9, 2023, both of which are submitted as exhibits hereto and incorporated herein by this reference, the City Council should reverse the Decision of the Planning Commission and allow Applicants' Project to proceed through the KMC Chapter 17.96 Design Review Process.

### **Relevant History**

In order to better put the matter in context, below is a timeline of events:

- March 2019: Applicants purchase the unimproved property located at 260 1<sup>st</sup> St.
- January 2020: Applicants engage design team to start work on the Project.
- February 2020: Applicant's design team has initial discussions with the City of Ketchum Planning Department (the "Planning Department").
- August 11, 2022: Applicants submit their first Preapplication Design Review submittal to the Planning Staff under KMC Chapter 17.96
- August 16, 2022: the Planning Commission holds its ONLY hearing on draft Ordinance 1234 and refers it to Ketchum City Council ("City Council") for review, with guidance for staff to revise Section 1 so "current Pre-Application

Design Review applications deemed complete would not be subject to the interim ordinance . . .” See Minutes of August 16, 2022 P&Z Meeting attached as Exhibit 1; Transcript of August 16, 2022 P&Z Meeting attached as Exhibit 2.

- September 16, 2022: 36 days after filing, Planning Department issues a Completeness Letter for Applicants’ first Preapplication Design Review submittal deeming it incomplete. See September 16, 2022 Completeness Letter attached as Exhibit 3.
- September 19, 2022: City Council holds its first hearing on draft Ordinance 1234 and makes first reading of the Ordinance. See Minutes of September 19, 2022 Council Meeting attached as Exhibit 4; Transcript of September 19, 2022 Council Meeting attached as Exhibit 5.
- September 30, 2022: Applicants resubmit their Preapplication Design Review application addressing 14 issues raised in the September 16 Completeness Letter.
- October 3, 2022: City Council holds its second hearing on draft Ordinance 1234 and makes second reading of the proposed Ordinance. Revisions to vesting provisions are suggested by the City Attorney and approved by the Council. See Minutes of October 3, 2022 Council Meeting attached as Exhibit 6; Transcript of October 3, 2022 Council Meeting attached as Exhibit 7.
- October 11, 2022: In email, the City Attorney assures Applicants’ attorney the revisions to draft Ordinance 1234 will provide for vesting based on Preapplication being “substantially complete.” See October 11, 2022 Email Correspondence with the City Attorney attached as Exhibit 8.
- October 17, 2022: 18 days after resubmission, the Planning Department issues a Completeness Letter for Applicants’ Preapplication Design Review resubmittal deeming it complete. See October 17, 2022 Completeness Letter attached as Exhibit 9.
- October 17, 2022: City Council approves revised Ordinance 1234 and makes final reading.

- October 18, 2022: Planning Staff sends emails to two OTHER applicants, but not the Applicants, advising of City position that preapplication design review previously vested under 17.96 required filing of design review application within 180 calendar days of last Planning Commission review meeting. See October 18, 2022 City Correspondence with the Perry Building Development attached as Exhibit 10; October 18, 2022 City Correspondence with the 4<sup>th</sup> and Main Development attached as Exhibit 11.
- January 9, 2023: Public notice published by Planning Staff for Applicants' Preapplication Design Review meeting with the Planning Commission.
- January 24, 2023: Applicants' Preapplication Design Review Meeting held with the Planning Commission. The Planning Commission votes to allow Applicants' Project to proceed to Final Design Review. See Minutes of January 24, 2023 P&Z Meeting attached as Exhibit 12; January 24, 2023 Staff Report attached as Exhibit 13.
- August 7, 2023: After diligently working to incorporate Planning Commission comments from Preapplication Design Review and meet other requirements of the Planning Staff, Applicants submit their Final Design Review application.
- August 24, 2023: Planning Department issues Determination Letter to Applicants, declaring Applicants' Preapplication Design Review to be null and void pursuant to Ordinance 1234. See Determination Letter attached as Exhibit 14.
- September 7, 2023, Applicants appeal the Determination Letter to the Planning Commission. See Letter of Appeal attached as Exhibit 15.
- November 3, 2023: Planning Department submits an Administrator Reply Brief in response to Applicants' Appeal Letter. See Administrator Reply Brief attached as Exhibit 16.
- November 9, 2023: Applicants file Response Memorandum to the Administrator's Reply Brief. See Response Memorandum attached as Exhibit 17.

- November 14, 2023: the Planning Commission holds Appeal Hearing (the “Appeal Hearing”) for the Applicants’ Project. At the conclusion of the hearing, the Planning Commission votes 4-1 to affirm the Determination Letter. See Transcript of November 14, 2023 Appeal Hearing attached as Exhibit 18.
- November 28, 2023: Planning Commission finalizes and adopts their Decision. See Transcript of November 28, 2023 P&Z Decision Hearing attached as Exhibit 19.
- November 30, 2023: Decision is signed and issued. See Decision attached as Exhibit 20.
- December 11, 2023: Applicants timely file their notice of appeal of the Commission’s Decision to the City Council.

### **SUMMARY OF FACTS**

The Applicants purchased the unimproved property located at 260 1<sup>st</sup> St in Ketchum in March 2019. They began working on the Project in January 2020 with the ultimate goal of building a future home for their two families in downtown Ketchum. Preliminary discussions with the Ketchum Planning Department began as early as February 2020. Since beginning work, the Applicants have invested over 2500-man hours of professional time over more than three years to develop a project conforming to all the requirements of the Ketchum Municipal Code. Indeed, work on the Project began long before discussions of an interim ordinance, Ordinance 1234, started taking place in March 2022, which, among other things, would preclude the Applicants’ Project as planned.

After years of work, in a race to beat the adoption of Ordinance 1234, Applicants submitted a complete Preapplication Design Review application to the Planning Department on August 11, 2022. However, that Preapplication was deemed incomplete more than a month later, on September 16, 2022. After addressing 14 comments and required actions from the Planning Department, Applicant’s resubmitted their application on September 30, 2022. Over two weeks later, the Planning Department found that the

additional work Applicants completed met the requirements needed for the Project application to be deemed “complete” on October 17, 2022.

Because Applicants understood the new ordinance would prohibit the Project they had designed, and due to the significant time and work that Applicants had already committed to the Project, they made sure to stay involved with the public process and participated in hearings, to the extent allowed,<sup>1</sup> related to the proposed ordinance. In hearings on Ordinance 1234 held by both the Planning Commission and Council, Applicants specifically raised legal issues related to language included in the draft of the ordinance regarding vesting, specifically as it related to vesting of projects subject to mandatory preapplication design review under Chapter 17.96 of the Ketchum Municipal Code (“KMC”).

As a direct result of their participation, Applicants received assurances on and off the record from the Planning Commission, the City Attorney, the Planning Department, the Mayor, and the Council that any project deemed complete at the mandatory preapplication phase prior to the adoption of Ordinance 1234 would not be subject to the new ordinance. At the August 16, 2022 P&Z Meeting, the Commissioners directed staff to change Section 1 of draft Ordinance 1234 stating “Current Pre-Application Design Review applications deemed complete would not be subject to the interim ordinance . . . .” See Minutes of August 16, 2022 P&Z Meeting. However, in an effort clearly directed to preclude the Project from vesting prior to the adoption of Ordinance 1234, Staff declined to incorporate that directive into the draft of the Ordinance, instead retaining language that a Preapplication Design Review Meeting with the Planning Commission would be required for vesting.<sup>2</sup>

At the September 19 City Council Meeting, both Applicant’s counsel and Planning Commissioner Moczygomba objected to the new language regarding vesting proposed

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<sup>1</sup> Despite being one of only two members of the public to comment on draft Ordinance 1234 at the Planning Commission’s August 16, 2022 Hearing, Chair Murrow cut off Applicants’ attorney’s comments at exactly 3 minutes.

<sup>2</sup> It was evident at this time that while Applicants might be able to get a substantially complete Pre-Application submittal into Planning Staff, they would not be able to schedule a meeting prior to the adoption of the Ordinance.

by staff as not consistent with Idaho law or the direction of the Planning Commission. Two weeks later, on October 3, 2022, after staff still refused to incorporate the vesting language directed by the Planning Commission, City Attorney Matt Johnson, after researching caselaw raised by Applicants' attorney, advised the Council to delete language requiring a preapplication meeting prior to vesting a project, so that vesting under the new ordinance would ONLY apply to those applications deemed substantially complete AFTER the adoption of the new Ordinance. In his concluding remarks, the Mayor noted that the legal clarification "does shift, you know, what is grandfathered and what is not a little bit." Transcript of October 3, 2022 Council Meeting at 1:56:30 –40.

Following that meeting, by email correspondence dated October 11, 2022, the City Attorney confirmed to the Applicants' attorney that the final revision will make clear that vesting is based on the application being "substantially complete."<sup>3</sup> See October 11 Email Correspondence with the City Attorney. Ordinance 1234 was then passed on October 17, 2022 by City Council with new language regarding vesting and without further discussion.

On January 24, 2023, Applicants participated in the required Preapplication Design Review meeting with the Planning Commission. The Staff Report for that meeting made it abundantly clear that the Project was not subject to Ordinance 1234 "as the application was deemed complete prior to the effective date of the new ordinance." See January 24, 2023 Staff Report at pg. 2. After almost two hours of review and comment by the Planning Commission, they voted to allow the Project to proceed to Design Review.

Then, after working diligently to address comments of the Planning Commission and obtain required information from city contractors and franchise holders, Applicants submitted their Application for Design Review on August 7, 2023, only to receive the Determination Letter, concluding that the Preapplication Design Review was null and void pursuant to the Ordinance which the City repeatedly assured did not apply.

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<sup>3</sup> Despite clear direction from the Mayor, Council and City Attorney to make vesting at substantial completion, consistent with Idaho law, Ms. Landers declined to use the word "substantial" in the final version of the Ordinance.

**Notably, at no point between the adoption of Ordinance 1234 on October 17, 2022 and the August 7, 2023 Design Review Application did ANYONE from the City suggest to ANY member of the Applicant team that the City's position was that their preapplication design review would only be effective for 180 days as a result of Ordinance 1234.<sup>4</sup> This despite the fact that Senior Planner Abby Rivin, apparently without solicitation, advised two other applicants with projects pending between Preapplication Design Review and Design Review, of the City's view that Section 3 of Ordinance 1234 limited vesting of grandfathered preapplication submittals to 180 calendar days from the last review meeting on the preapplication with the Commission, *the day after Ordinance 1234 was adopted*. See October 18, 2022 City Correspondence with the Perry Building Development; October 18, 2022 City Correspondence with the 4<sup>th</sup> and Main Development.**

## **LEGAL STANDARD**

Pursuant to Title 17 of City of Ketchum Zoning Code, the authority of the Council in this hearing on appeal is to consider the record, the order, requirement, decision or determination of the Planning Commission and the notice of appeal, as well as the oral and written legal arguments of the Appellant and the Planning Commission and/or staff representing the Planning Commission. The Council may then affirm, reverse or modify, in whole or in part, the decision or determination of the Planning Commission. Furthermore, the Council may remand the application to the Planning Commission for further consideration with regard to specific criteria stated by the Council. See KMC § 17.144.020.

In considering this appeal, it should be noted that the enabling legislation for the Commission, and Ketchum's Zoning Ordinance itself, is the Local Land Use Planning Act,

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<sup>4</sup> The Applicant team first learned of the Planning Department's position by email from Planning Director Morgan Landers on August 8, 2023, within 7 minutes of downloading Applicants' Final Design Review application package. That email notice was later formalized in the August 24, 2023 Determination Letter.



I.C. § 67-6501 et seq. (“LLUPA”). The first listed purpose of the LLUPA is to “protect property rights while making accommodation for other necessary types of development. . . .” I.C. § 67-6502(a). Among the statutory duties of the Planning Commission is to insure that “land use policies, restrictions, conditions and fees do not violate private property rights, adversely impact property values, or create unnecessary technical limitations on the use of property . . . .” I.C. § 67-6508(a).

## **ARGUMENT**

Applicants now appeal to the Council to reverse the Planning Commission’s Decision issued on November 30, 2023 because it is not based on the applicable facts or the law. The Decision ultimately affirmed the Determination Letter issued by the Planning Department based upon the following findings: 1) that Preapplication Design Review and Design Review are separate and distinct steps in the application process (Decision, pg. 3); 2) that the Administrator appropriately interpreted and applied the 180 day requirement of Ordinance 1234 (*Id.*); and 3) that the 180 day requirement of Ordinance 1234 was equitably applied and that there was no evidence of delay by staff. (*Id.*). Notably, the record is clear that the Planning Commission made these findings without the benefit of any legal analysis with respect to the concept of “vesting” nor the interpretation of the City’s Design Review Ordinance from the City Attorney, but rather only after hearing the Planning Director’s argument to justify her Determination Letter. Moreover, a review of the transcripts demonstrates that the Planning Commissioners had drastically differing impressions and understandings of how these important legal concepts should be interpreted, few of which appear to be incorporated into the Decision, nor support the ultimate Decision made. Accordingly, the Decision must be reversed.

### **1) The Decision is Not Founded in the Deliberation of the Planning Commissioners**

#### **a. November 14, 2023 Deliberation**

At the November 14, 2023 Planning Commission Hearing on Applicants’ appeal of the Determination Letter, there was no legal analysis presented by the City Attorney

with respect to vesting or the design review application process. Rather, the Commissioners were left to weigh the arguments presented by staff and the Applicants. Not surprisingly, the Commissioners sided with staff. However, their deliberations at the November 2023 Appeal Hearing exposed a surprising lack of certainty about the issue of vesting and the design review process in general and do not support, or even address, a majority of the findings included in the Decision.

For example, during oral argument, **Commissioner Passovoy** inquired:

*I guess the question I have for the City Attorney, and for Mr. Laskey [sic] is if Ordinance 1234 does not apply to an approved pre-application, predesign review application that was completed, deemed complete prior to the adoption of 1234, what is the point of the grandfather period, or whatever you choose to call it. (Transcript of November 14, 2023 Appeal Hearing at pg. 36, Ins. 7-14).*

The City attorney declined to answer, stating that he was serving only as “process attorney.” *Id.*, at Ins. 21-25.

Then, during deliberation, **Commission Chair Morrow** directly contradicted the vesting language contained in Ordinance 1234<sup>5</sup> and staff’s argument regarding grandfathering by proclaiming:

*“In my opinion, it’s always been its own thing. It’s always been a charette to give advice on things. It didn’t ever have any real power to it, in a way . . . [t]here was no vesting of their project at pre-app. It was a design charette for us to give them ideas . . . You know, it’s voluntary. They were like, why do we have to come in and do this, we’re going to bring our project in. So, I’ve always been under the impression that it was its own thing, that it was more of a curtesy to developers and designers . . . that’s always been in my head, that pre-app is, it’s just a charette. It doesn’t vest anything. **Vesting happens at design review.** (Id., at pg. 48, ln. 14 to pg. 50, ln. 1).*

He then went on to say: “So, just because they’re linked doesn’t mean they’ve vested, or they’re grandfathered. Again, these may be legal determinations that I’m not making.”

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<sup>5</sup> As well as various statements of the Mayor, City Attorney, and Planning Department on Preapplication Design and vesting as set forth in Section 3, below.

(*Id.*, at pg. 50, Ins. 11-14). Then: “I’m not, I’m a little confused. Either the 180 days doesn’t apply, or it does apply, and they missed it.” (*Id.*, at pg. 51, Ins. 16-18).

While it is straightforward to apply the language of Ordinance 1234 to applications received after Ordinance 1234 was passed, the Commissioners were clearly confused on how to address the Project as its application had been deemed completed before the adoption of Ordinance 1234. Without legal guidance, the Planning Commission incorrectly interpreted and applied the new ordinance. Later in deliberations, **Commissioner Passovoy**, states:

*If I really look at the language of Section 1, it says that anything that has vested is subject to the ordinance. And the vesting, in terms of vesting, a pre-application only means that you don’t have to go through a pre-application process. But its not vested for all purposes.”* (*Id.*, at pg. 54, ln. 24 to pg. 55, ln. 6).

She then equivocates: “*So I am coming down on the side of staff’s conclusion on this. But it is a very, very, as Brenda said, a very tricky situation. And it’s difficult to parse your way through these various words that have loaded meanings.* (*Id.*, at pg. 55, Ins. 18-22).

**Commissioner Carter** expressed his confusion:

*You know there is a question of, you know . . . if you’re – if it’s deemed that were not, that the Applicant isn’t subject to the Interim Ordinance 1234, but then they are subject to a part of Interim Ordinance 34 [sic], that seems to be a conflict. . . . It seems like the, you know, the decision of whether or not the Applicant is subject to Section 3 of 1234 to our intent you know, is a – ultimately comes down to some legal principles, you know, whether or not, you know, it’s vested or its not vested, other complex, sort of legal principles that you know, I don’t – I’m not a trained attorney. I don’t want to make that – I feel like I don’t want to make that determination. I want to give the Applicant the opportunity to make this argument in front of somebody who is more, you know, a body that’s more trained . . .* (*Id.*, at pg. 56, ln. 16 to pg. 57, ln. 13).

**Chair Murrow** summarized Commissioner Carter’s comments as follows:

*. . . you’re saying, because none of us really know what vesting is. And I guarantee in the new code, we’ll have better*

*this vest here, this vest there, whatever it is. But because of that, you're more comfortable allowing experts on how to parse that term out do it than have us make that decision."* (*Id.*, at pg. 58, ln. 23 to pg. 59, ln. 5).

**Commissioner Cordovano's** comments dealt primarily with his feeling that the "project doesn't meet the development standards for an exceedance in Ketchum and has no place in Ketchum" and that he felt there was discussion of intent to limit the timeframes of vested applications. (*Id.*, at pg. 59, ln. 9 to pg. 61, ln. 15).

**Commissioner Moczygemba**, on the other hand, stated:

*I think, in relistening to the meeting we had regarding 1234, it was clear out of fairness that we wanted to include this grandfathering provision out of fairness for preapps that came through before 1234 was put in place. . . . I think there was a concern by staff that there would be . . . this glut of applications just trying to get this pre-application deemed complete<sup>6</sup> and then they'd sit for, you know, a long period of time, until they were ready to proceed. . . I have some sympathy for the Applicant team that **the way that that was captured between section 1 and section 3 just completely misses the mark of that particular conversation and how it was worded.** . . .*

*And so you know there was arguments being made by both sides about, okay, is a preapplication design review actually a vestment, I guess, of the process or not. So, again, that's just arguing what the terms versus what the intent was. **But the most important part to me is Section 1, clearly is the applicability of the entirety of this 1234.** So, I think I would agree with the applicant, that the application of 1234 and pieces and parts is not necessarily appropriate. I think it's an all or nothing thing. Either we're under 1234, or we're under the 17.96. (*Id.*, at pg. 46, ln. 5 to pg. 47, ln. 17).*

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<sup>6</sup> At the August 16, 2022 hearing on Ordinance 1234 before the Planning Commission, Commissioner Moczygemba acknowledged that projects in Preapplication Design Review "[W]ere started six, seven, eight months ago." Transcript of August 16, 2022 P&Z Meeting at 1:06:32-51. With that understanding, she projected that there would not be a rush of applications trying to get in before the adoption of Ordinance 1234 because, "I think it's been said before the requirements for preapplications are essentially the requirements for design review. And so, you're still needing civil landscape on and on." *Id.*, at 1:15:48-1:16:10.

She later expanded on her analysis, reasoning:

*[if] it's only pre-application vested then you do design review, and you're vested – you know, the other part of this Section 1 is building permit. So, to me, if that's the take, then there's probably several projects that were approved under design review that were preparing their plans. And now, they should also be subject to 1234, because they were not vested under that.” (Id., at pg. 64, Ins. 9-18).*

After discussing the process, but not the law, with the City Attorney, he advised: “So you’ll give direction tonight. I’ll prep, draft a written decision for you that will come back within those 30 days” (*Id.*, pg. 67, In. 25 to pg. 68, In. 3), the Planning Commission voted 4-1, with Commissioner Moczygamba against, to affirm the Determination Letter.

### **b. November 28, 2023 Deliberation**

The Findings of Fact, Conclusions of Law, and Decision presently before you were adopted by the Planning Commission at their November 28, 2023 Meeting. Although approved by a 4-1 vote, the Findings incorporate little of the deliberations articulated at the Appeal Hearing, where all Commissioners with the exception Commissioner Moczygamba lacked any certainty or understanding of the legal issue at hand. However, to make matters worse, at that meeting, Commissioner Passovoy recommended revisions to the findings to add language, without any basis in reality, that the “Appellant in this situation actually urged for the 180-day grace period to be added.” Transcript of November 28, 2023 Decision Hearing, pg. 4, Ins. 1-3). The Commissioners then went on to discuss Applicants role in the inclusion of Section 3 at the City Council level, and Applicants purported support of that language. (*Id.*, at pgs. 4-8).<sup>7</sup> This resulting finding, fully unsupported as discussed in more detail below, was incorporated into the Decision. The fact is, based on the applicable Idaho law and discussions focused on Section 1 of

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<sup>7</sup> It should be noted that (1) Susan Passovoy was not a member of the Planning Commission for the single meeting on August 16, 2022 when draft Ordinance 1234 was reviewed and advanced for City Council review; and (2) that paragraph 3 was never discussed directly by any member of the City Council, the Applicant or the public in the City Council Hearings on Ordinance 1234.

Ordinance 1234, there were no legal grounds to support a finding that Section 3 could be applied to the Project.

Commissioner Passovoy also disclosed that she had a conversation with the City Attorney regarding vesting. “*But I, as he reminded me, everyone seemed to be a little confused about it. **And I don’t think it’s essential to our decision.***” (*Id.*, at pg. 6, Ins. 8-12).

Based on the foregoing, it is clear that the findings made by the Commissioners, and drafted by the City Attorney, are not supported by the record, the law or the deliberations. Indeed, **in a matter entirely related to vesting, the Commission, on advice of legal counsel, admitted that everyone was confused about the issue, but that it isn’t essential to the decision.** They then adopted a decision contrary to the law and the record before them.

**2) Preapplication Design Review and Design Review are Part and Parcel of the Same Design Review Approval Process.**

The Design Review Chapter of the Zoning Code **requires** Preapplication Design Review on any lot or lots totaling 11,000 square feet or more as a condition precedent with Design Review. KMC §17.96.010.C.1. Design Review approval is then a condition precedent to make application for a building permit. KMC § 19.96.090. While each of these steps require separate applications and fees, they are both part and parcel of the same permitting process for the Project. When an application under KMC Chapter 17.96 is vested prior to Ordinance 1234, the entire process under that chapter is vested.

When Ordinance 1234 was initially proposed and presented to the Planning Commission on August 16, 2022, draft Section 1 regarding vesting stated:

***Preapplication Design Review Applications deemed complete prior to the effective date of this ordinance, that do not have a subsequent Design Review application deemed complete, are subject to the provisions contained herein.***

At that point in time, Applicants were struggling to get what was, compared to other preapplications deemed complete by staff, a complete Preapplication Design Review application accepted as complete by City staff. At the meeting, Applicants raised Idaho's legal standard regarding the vesting of new ordinances on land use applications and the **fact** that Ketchum's ordinance required Preapplication Design Review as a required step in the Design Review Process and a condition precedent to Design Review, that it charged a fee to have the Preapplication Design Review reviewed, and that Preapplication Design Review required submittal of the exact same information as Design Review (in fact they use the exact same application form). The Planning Commission and Planning staff discussed vesting, without any further participation from Applicants. Then Planning Director Suzanne Frick initially suggested that Preapplication Design Review was not a "formal process" and should not be treated as vesting a project, but noted that if it did vest a project, we should "build guardrails" so that a project wouldn't be vested for years. Staff then said it would work on the "mechanics" of vesting of a project with a substantially complete Preapplication Design Review submittal. Transcript of August 16, 2022 P&Z Meeting at 1:12:53 to 1:14:55.

The next version of draft Ordinance was never reviewed by the Planning Commission, but rather was reviewed directly by the City Council on September 19, 2022. This version included the following language:

**Preapplication Design Review Applications that have been reviewed by the Planning and Zoning Commission at one review meeting prior with the Commission as of the effective date of this ordinance.**

This version was also the first to add Section 3 which included a 180-day timeframe within which "Developments" that have completed Preapplication Design Review under Ordinance 1234 to file for Design review, presumably the so-called guardrails suggested by Ms. Frick for applications filed under the new ordinance. At that meeting, Applicants again presented the Idaho caselaw regarding vesting and argued that vesting of a development was triggered upon the determination of a substantially

complete, mandatory Preapplication Design Review Application, which is consistent with Idaho law.

The final draft of Ordinance 1234, which was adopted on October 17, 2022, included the following language regarding vesting:

*The following interim regulations and standards apply to any . . . Building Permit, **Preapplication Design Review, Design Review, Subdivision, or Conditional Use Permit application deemed complete for vesting purposes after the effective date of this Ordinance** . . .*

Just before Ordinance 1234 was signed by the Mayor, Applicants received a Completeness Review Letter from the Planning Department indicating that “. . . the application has been deemed complete and will be scheduled for the next available hearing.” October 17, 2022 Completeness Letter at pg. 1 (emphasis in original). At that point, as a matter of law, the application process for the Project was vested under the ordinance in effect PRIOR to the adoption of Ordinance 1234, that is KMC § 17.96.

Idaho law is clear that a land use applicants rights are “measured under the law in effect at the time of the application.” *Citizens Against Linscott/Interstate Asphalt Plant v. Bonner County*, 168 Idaho 705, 717(2021) quoting *S. Fork Coal. v. Bd. of Comm'rs of Bonneville Cnty.*, 117 Idaho 857, 861, 792 P.2d 882, 886 (1990) (citations omitted); see also *Taylor v. Canyon Cnty. Bd. of Comm'rs*, 147 Idaho 424, 436, 210 P.3d 532, 544 (2009).

The policy undergirding this rule is “to prevent local authorities from delaying or withholding action on an application in order to change or enact a law to defeat the application.” *Taylor*, 147 Idaho at 436, 210 P.3d at 544 (citation omitted). Thus, the rule is an outgrowth of the well-established principle that legislation does not ordinarily have retroactive effect. See *Cooper v. Bd. of Cnty. Comm'rs of Ada Cnty.*, 101 Idaho 407, 412, 614 P.2d 947, 952 (1980); see also *Ben Lomond, Inc. v. City of Idaho Falls*, 92 Idaho 595, 601, 448 P.2d 209, 215 (1968) (reasoning that the rule to apply the ordinance in effect at the time of the application is “in accord with the general rule that legislation generally acts prospectively only”). *Id.*



As previously stated, under Ketchum Ordinance Chapter 17.96 – Design Review, Preapplication design review was a **required** step in the design review process. KMC §17.96.010.C.1. It is not a separate and distinct process as suggested in the Planning Commission’s findings, but rather requires the applicant to submit all materials required under section 17.96.040, just as are required under the Design Review application.<sup>8</sup> The purpose of preapplication review is to allow the Planning Commission to “exchange ideas” and give direction to the applicant on ‘design concept.’ KMC §17.96.040.C.2. In practice, an applicant cannot proceed to Design Review until the Planning Commission formally votes to allow the development application to proceed. The Planning Commission, after nearly two hours exchanging ideas and direction on the design concept, formally voted to allow the Project to “advance” to the Design Review stage of the Design Review Process on January 24, 2023. The motion carried on a 4-1 vote, with former Commissioner and current City Council member Spencer Cordovano opposing. See Minutes of January 24, 2023 P&Z Meeting.

As noted by Ms. Frick in the Planning Commission Hearing leading up to the adoption of Ordinance 1234, Chapter 17.96 (prior to the adoption of Ordinance 1234) does not include a timeframe within which an applicant must file its Design Review application after the Planning Commission advances it to that stage.<sup>9</sup> However, from a legal perspective, the lack of the inclusion of a timeframe does not render the vesting of a project invalid. In fact, in a case with facts very similar to the present matter, *South Fork Coalition v. Board of Com’rs of Bonneville County*, the South Fork Coalition was created to oppose a proposed development and appealed the approval of a final development plan to the Idaho Supreme Court. The Court determined that the governing ordinance for an application for preliminary approval of a planned unit development (“PUD”) is the ordinance in effect at the time the application was filed, and the preliminary plan was approved under that standard. 117 Idaho 857, 886, 792 P.2d

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<sup>8</sup> Preapplication Design Review is a subsection of the Design Review Chapter of the Code, not a separate Chapter such as with Building Permits or Conditional Use Permits

<sup>9</sup> Ms. Frick argued that this defect was a basis to not allow vesting of a Development Project until after Preapplication Design Review was completed and a design review application was deemed complete. On the advice of legal counsel, that was not the language ultimately adopted in the final version of Ordinance 1234.

882, 861 (1990). Similar to the present case, the applicable ordinance provided no deadline for PUD to apply for a final development plan. *Id.*, at 887. Therefore, the Board of Commissioners advised applicants to file their application for a final development plan within one year of the effective date for preliminary approval, and when applicants timely applied for their final development plan, the Court then upheld the Board of Commissioners' finding that the application was timely filed. *Id.* Likewise, in the present matter, the Preapplication Design Review Vested the Project under the Design Review Chapter of the Code, KMC § 17.96. At the time of vesting, § 17.96 had no timeframe within which an applicant needed to file for Design Review after being advanced from Preapplication Design Review. For a vested application under KMC § 17.96, this did NOT change when Ordinance 1234 was adopted.

Moreover, despite being one of only three applications pending in the Design Review Process when Ordinance 1234 was adopted, neither the Planning Staff nor the Planning Commission included a timeframe within which it expected a Design Review application to be filed with the City in order to maintain its vested status when the Planning Commission voted to recommend advancement to Design review, as is the standard practice in decisions where entitlements are subject to expiration.<sup>10</sup>

Based on the foregoing, it is clear the Project vested under KMC § 17.96 prior to the adoption of Ordinance 1234, and therefore the Project is not subject to the time limitation included in Section 3 of that Ordinance. As such, Applicants' Preapplication Design Review cannot, as a matter of law, be determined to be null and void, and the Planning Commission Decision must be reversed.

**3) The 180-day Requirement of Ordinance 1234 was Not Appropriately Interpreted and Applied by the Administrator to the DR Application because the Project Vested Under the Applicable Ordinance Prior to the Adoption of Ordinance 1234**

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<sup>10</sup> Interestingly, Planning staff did advise the two other pending applications of the date on which they needed to submit a complete Design Review Application to maintain their vested status under KMC § 17.96, although, improperly, and contrary to law, using the timeframe from Section 3 of Ordinance 1234.

The Planning Commission's Decision concluded that "Ordinance 1234 specifically considered and provided for situations where a preapplication design review had already been conducted and with an allowance of an additional 180-day timeframe for the next process: application for design review." Decision, pg. 3. However, the only legitimate reading of Section 3 of Ordinance 1234 states:

Developments subject to Design Review Approval pursuant to KMC 17.96 . . . that have conducted a preapplication design review meeting with the Commission, must file a complete Design Review Permit application and pay all fees within 180 calendar days of the preapplication with Commission, otherwise the preapplication review will be null and void.

There is nothing in this provision to suggest that it applies to Developments that have vested prior to the adoption of this provision (and Ordinance 1234 in general). Moreover, there was absolutely no discussion of this provision at the City Council level and it does not comport to "grandfather" language discussed at the August 16, 2022 Planning Commission meeting where Ms. Frick suggested adding proper guardrails on pre-app approvals to keep them moving and to identify specifically those projects "caught in limbo" and give them a timeframe. (See Transcript of August 16, 2022 P&Z Meeting, at 01:18:47 – 01:19:02). Rather, it is clearly "sunset" language designed to limit the time of entitlements for projects vested under the new ordinance. And, after Applicants' Preapplication Design Review was deemed complete as a "limbo" project, nobody from the City ever contacted Applicants to advise them of a deadline to file their Design Review Application.

Indeed, as stated by Mayor Bradshaw at the October 3 Council Meeting, the legal clarification and modification to the vesting language of Section 1 to Ordinance 1234 "shifts . . . what is grandfathered and what is not a little bit." (See Transcript of October 3, 2022 Council Meeting at 01:56:27 –40). Moreover, that language was adjusted in light of the City Attorney's review of Idaho law as cited in *Citizens Against Linscott/Interstate Asphalt Plant, supra*. The 180-day timeframe was written to apply to Projects that vested under Ordinance 1234, and, as a matter of law, simply cannot apply to prior projects.

The Decision goes on to state that “[T]he 180-day grace period was placed with the Applicant’s knowledge and support, and therefore Applicant should have been aware the grace period applied . . . .” Decision, pgs. 3-4. In making this claim, the Decision cites to “Applicant’s Memo.” A review of Applicants’ letters submitted to the Planning Commission on appeal plainly shows that at no time have Applicants ever endorsed or supported a “grace period” or noted such in any of their briefings. In fact, in discussing vesting on several occasions with the City Attorney, this concept, and Section 3 in general was never raised, nor discussed as a time limit that would apply to a previously vested Development Project. Moreover, there is absolutely no evidence in the record that Applicants knew the 180-day period included in Section 3 of Ordinance 1234 was intended to apply to them. As discussed below, Applicants had received confirmation from the City Attorney and Planning Director that Ordinance 1234 did not apply to their Project on several occasions.

To that end, it is enlightening that the Planning Commission asked the Planning Director at the Appeal Hearing whether any other projects had reached out to the Planning Department as to whether Ordinance 1234 would apply to them. At that time, Ms. Landers stated for the record that:

So, it was this project, of Sawtooth Serenade, it was the Perry Buildings, and it was Fourth and Main. . . . ***Both of those applications inquired to staff, following adoption of 1234, on whether that provision of Section 3 applied. And staff responded to both of those applications that it did.***  
Transcript of Appeal Hearing, pg. 31, Ins. 11-21.

Emails obtained through FOIA requests disclose that the Planning Director’s representation is patently false as neither the Perry Buildings nor the Fourth and Main Projects inquired staff as to the applicability of Section 3. Rather, the day after Ordinance 1234 was approved, Senior Planner Abby Rivin emailed representatives of both of the other pending projects advising them of the City’s position with respect to timing for filing their final design review applications. See Exhibits 10 and 11.

Next, the Planning Commission's Decision goes on to affirm that "the intent of Section 3 was to provide a reasonable timeframe for an applicant that had conducted preapplication review to proceed to final design review under pre-Ordinance 1234 standards, while not allowing an applicant to delay and sit on the preapplication design review completion and pre-Ordinance 1234 standards without further timely action." Decision, pg. 4.

Notwithstanding well-established Idaho law on vesting, the record contradicts the Decision's representation of the intent of Section 3. At the August 16, 2022 Planning Commission Hearing on Ordinance 1234, then Administrator Suzanne Frick informed the Planning Commission that there is no timeframe for how long a preapplication approval is valid, unlike design review. Transcript of August P&Z Meeting at 1:10:26-58. With that in mind, Chair Morrow suggested, "Can we add a time limit to preapp?" *Id.*, at 1:11:33-39. Indeed, the Planning Commission and Planning Department didn't want projects sitting with Preapplication approval for years. *See generally* Transcript of August P&Z Meeting. Despite the Planning Commission's guidance to implement a grace period to apply to the three pending applications, Planning staff included a "sunset" clause in Ordinance 1234 so that new projects would now have 180-days to proceed to Design Review.

Therefore, the Decision improperly considered the record and the law as it concluded that, "[T]he Administrator appropriately found that the Final Design Review Application . . . was beyond the 180-day window to preserve the previously completed preapplication design review. Decision, pg. 4. The Decision further distorts the record when it claims Applicants could have reached out "just as other applicants did." *Id.* As previously shown, no other applicants reached out to the City. The Decision affirming the Determination Letter is neither consistent with the intent or language of Ordinance 1234, nor the record as a whole, and as such, must be reversed.

**4) The 180-Day Requirement of Ordinance 1234 Was neither Equitably Applied, nor Was There No Evidence of Improper Delay by City Staff.**

Contrary to the Decision, the record shows that Ordinance 1234 was not equitably applied to the Applicants' Project. Despite Applicants receiving direct confirmation that Ordinance 1234 was not applicable to them, the Planning Department changed its position without warning. Furthermore, as outlined above, the finding that other applicants contacted the Planning Department as to the applicability of Ordinance 1234, the record shows to be untrue. Instead, the Planning Department reached out to them. Throughout the application process, Applicants and their Project have never been treated equitably and fairly by the Planning Staff, rather Staff had continuously refused to follow Planning Commission directives on language related to vesting and continuous delay in processing Applicants' application.

Further, the record before the Planning Commission included a list of delays the Applicants team experienced between Preapplication Design review and Design Review that was wholly discounted by the Planning Commission. (See Timeline of Delays attached as Exhibit 21). Indeed, the policy behind project vesting in Idaho is designed specifically to prevent the type of action on display here in of the processing of this Design Review Application.

The policy undergirding this rule is "to prevent local authorities from delaying or withholding action on an application in order to change or enact a law to defeat the application." *Taylor, Supra*.

Without being informed that there was a deadline for filing a vested Design Review Application, Applicants were left shooting in the dark. Even so, Applicants' Design Review application was submitted only 197 days after receiving the Planning Commission's recommendation to proceed to Design Review. On such a record, it's easy to be skeptical of the unexplained delays in scheduling meetings with staff due to staff unavailability, three weeks in April and May (April 24 to May 17), and in receiving required responses from City's contractors – four weeks with Michael Decker regarding street lighting and seven weeks with Clear Creek Disposal (June 16 to August 2) regarding garbage pickup location, despite diligent efforts by the Applicants' team. See Timeline of

Delays. Moreover, without a deadline, there was no reason to request any accommodation from staff.

Based on the foregoing, the record does not support the Planning Commission's findings related to equal application of Ordinance 1234 nor lack of evidence of improper delay by City staff and contractors. As such, the decision must be reversed.

**5) The Commission's Decision Directly Contradicts the Bad Faith Ruling of the Recent *BRACKEN V. CITY OF KETCHUM* Case against the City of Ketchum.**

The Decision of the Planning Commission is even more surprising given the recent Idaho Supreme Court ruling against the City in *Bracken v. City of Ketchum*, 537 P.3d 44 (Idaho 2023). Citing to the same case law on vesting that has been repeatedly cited by Applicants, the Idaho Supreme Court concluded that the developer's rights vested under the ordinance in effect at the time it filed its first application, which the City refused to accept, and that Bracken's "rights could not be taken away by Ketchum's enactment of a new ordinance [thereafter] . . . ." *Id.*, at 54.. The Court then, citing *Ben Lomond, Inc. v. City of Idaho Falls*, 92 Idaho 595, 602 (1968), pointed out the City of Ketchum's "bad faith conduct" stating:

[T]o hold for the City in the present case would mean that a city, merely by withholding action on an application for a permit, could change or enact a zoning law to defeat the application. It could, in substance, give immediate effect to a future or proposed zoning ordinance before that ordinance was enacted by proper procedure. (*Id.*, at 55).

The Determination Letter and the Planning Commission Decision, both apparently rendered without the benefit of legal advice from the City Attorney as to the intricacies of vesting, lead the City into a procedural decision eerily similar to that in *Bracken*. For this reason alone, it seems abundantly clear that the Decision should be reversed so that the vested Design Review Application can proceed on its merits.

## 6) The City is Estopped from Changing Its Position Regarding Vesting.

The Planning Commission never addressed the issue of estoppel at the Appeal Hearing or in their Decision. A simple review of the record shows that the only time it was mentioned was when Commissioner Carter asked James Laski to explain estoppel. Transcript of November 14 Appeal Hearing, pg. 40, ln. 14 to pg. 41, ln. 7.. The Planning Commission's omission is unsurprising to Applicants, as they have repeatedly faced pushback from the City at every step of the application process.

“Quasi-estoppel prevents a party from changing its legal position and, as a result, gaining an unconscionable advantage or imposing an unconscionable disadvantage over another.” *Hollingsworth v. Thompson*, 168 Idaho 13, 22–23, 478 P.3d 312, 321–22 (2020); *Garner v. Bartschi*, 139 Idaho 430, 437, 80 P.3d 1031, 1038 (2003). “Unlike equitable estoppel, quasi-estoppel does not require an undiscoverable falsehood, and it requires neither misrepresentation by one party nor reliance by the other.” *Hollingsworth*, 168 Idaho at 23, 478 P.3d at 322. Quasi-estoppel applies when:

(1) the offending party took a different position than his or her original position and (2) either (a) the offending party gained an advantage or caused a disadvantage to the other party; (b) the other party was induced to change positions; or (c) it would be unconscionable to permit the offending party to maintain an inconsistent position from one he or she has already derived a benefit or acquiesced in.

*Id.* (quoting *Trumble v. Farm Bureau Mut. Ins. Co. of Idaho*, 166 Idaho 132, 136, 456 P.3d 201, 215 (2019)).

The facts here are in line with *Hollingsworth*, where the Court found quasi-estoppel applied when a hospital changed its position by holding itself out as a private corporation in its business filings with the Idaho Secretary of State, but then later claimed it was a governmental entity when sued. The public filings led the plaintiffs to believe the hospital was a private corporation, causing them to disregard the ITCA notice deadline to the benefit of the hospital. 168 Idaho at 23, 478 P.3d at 322. Likewise, in the present



situation, the City cannot now change its position regarding vesting to preclude Applicants from proceeding under the under the prior Code provisions.

As outlined at length above, and in Applicants' prior briefing before the Planning Commission, the City confirmed, on numerous occasions, that the Project was not subject to Ordinance 1234. The issue of substantial completion and vesting was also confirmed through email correspondence between City Attorney and Applicants' attorney the days leading up to the adoption of Ordinance 1234:

Jim –

I checked in with Morgan. She said she's currently reviewing all the resubmitted items this week and will be issuing a completeness letter based on that submittal.

For the Council meeting next Monday there will be a clearer revised version of the interim ordinance that clarifies the distinction that was discussed at the last meeting in response to your comments. That revision will make clear vesting is based on an application being "substantially complete."

So I believe in combination those two items will address your request.

Matt

Matthew A. Johnson  
WHITE PETERSON GIGRAY & NICHOLS, P.A.  
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5700 E. Franklin Rd., Ste. #200  
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**From:** Jim Laski <[jrl@lawsonlaski.com](mailto:jrl@lawsonlaski.com)>  
**Sent:** Tuesday, October 11, 2022 9:42 AM  
**To:** Matthew A. Johnson <[mjohnson@WHITEPETERSON.com](mailto:mjohnson@WHITEPETERSON.com)>  
**Subject:** RE: Ketchum Ordinance 1234

Hi Matt – would it be possible to get conformation that my client's application ( at 260 N 1<sup>st</sup> Ave) is substantially complete and will be reviewed under the presently existing ordinance, rather than the proposed new ordinance 1234? I written statement to that effect would be much appreciated.  
Thank you  
Jim



**JAMES R. LASKI**

Lawson Laski Clark, PLLC  
675 Sun Valley Road, Suite A  
PO Box 3310  
Ketchum, ID 83340  
208-725-0055 Phone  
208-725-0076 Fax

(See October 11, 2022 Email Correspondence with the City Attorney.).

Even more clear and succinctly, the Staff Report for the Preapplication Design Review Meeting held January 24, 2023, issued on or about January 19, 2023, states that this application is not subject to Interim Ordinance 1234:

The application is not subject to Interim Ordinance 1234 as the application was deemed complete prior to the effective date of the ordinance.

(January 24, 2023 Staff Report at Pg. 2).

Finally, and to the point that required Preapplication Design Review vests the entire Design Review Application Process, 2 hours and 31 minutes into the Preapplication Design Review Meeting of January 24, 2023, Planning Administrator Morgan Landers states:

“ . . . Staff also provided a review of the project’s compliance with interim ordinance 1234. ***This Project does not come under the purview of the interim ordinance because it was deemed substantially complete prior to the effective date . . .***”

(Transcript of January 24, 2023 Planning Commission Meeting at 2:31:11 – 22).

Quite simply, given that the City has repeatedly advised the Applicants that Ordinance 1234 is not applicable to the Project as their application was deemed complete prior to its adoption, and because Applicants relied on the representations made by the City in proceeding through the Design Review Process, it cannot now change its stance regarding vesting to preclude Applicant from proceeding under the prior KMC § 17.96 provisions. Accordingly, on the basis of quasi-estoppel, the Decision must be reversed.

**7) The Planning Commission Was Unable to Properly Consider and Follow the Law Because the City Attorney Failed to Provide Legal Insight or Analysis on the Issues Presented.**

Finally, it must be noted that City Attorney Matthew Johnson, despite being involved in multiple hearings regarding the applicability of Ordinance 1234, failed to provide legal insight and analysis to the Planning Commission at the Appeal Hearing.

Additionally, the City Attorney failed to ensure the Planning Commission's Decision addressed all the issues presented. As the record demonstrates, the City Attorney was acutely familiar with Interim Ordinance 1234 as he had helped draft Ordinance 1234, he was present at every hearing before the Planning Commission and Council, and he had multiple communications with Applicants' team regarding Ordinance 1234.

In fact, the City Attorney had already agreed with Applicants position on vesting when he told the Council, "The key is based on some Idaho case law if an application has more or less submitted everything it needs to and its application fee that's what is termed substantially complete." Transcript of October 3, 2022 Council Meeting at 1:55:05-18. However, he then failed or refused to provide this same conclusion to the Planning Commission at the November Appeal Hearing.

The Planning Commission sought legal insight multiple times throughout the Appeal Hearing. For example, Commissioner Moczygamba asked, "[A]re we deciding between intent versus I guess the legality of the language of how that was written. You know, can we say, well, it was written like this. But what we meant was?" Transcript of November 14, 2023 Appeal Hearing, pgs. 32-33, Ins 25-4. Additionally, Commissioner Carter sought legal insight for definitions and explanations of "Vesting" and "Estoppel." Then, when asked to provide legal insight by Commissioner Passovoy Mr. Johnson declined by saying, "Let me just clarify something for you, Susan. So, because I'm serving as the process attorney for this, not arguing a side. So, I think you would want to go to Morgan if you want kind of the City perspective." *Id.*, at pg. 36, Ins. 21-25. Although seemingly there to advise the Planning Commission on Idaho law, the City Attorney directed the Commissioners to the Administrator for legal insight. By abstaining, the Planning Commission was denied the opportunity to have their questions as to the law answered. Because of that deficiency, the Planning Commission and Applicants both were denied valuable legal insight and analysis.

As a direct result of the lack of legal insight and analysis from the City Attorney, the Planning Commission was left to deliberate on legal issues that the Planning

Commission did not feel comfortable addressing. In fact, throughout the deliberations, the Planning Commission noted that they did not feel equipped to properly consider the issues before them. As previously discussed, Commissioner Carter simply put it, “[T]he decision of whether or not the Applicant is subject to Section 3 of 1234. . . ultimately comes down to some legal principles. . . whether or not, you know, it’s vested or it’s not vested, other complex, sort of legal principles that, you know, I don’t – I’m not a trained attorney. I don’t want to make that determination. I want to give the Applicant the opportunity to make this argument in front of somebody who is more, you know, a body that’s more trained. . . .” *Id.*, at pgs. 56-57, Ins. 25-12.

The City Attorney knew the Planning Commission struggled to understand the law presented. As Commissioner Passovoy noted while finalizing the Decision, “I will say I had talked with Matt about the discussion we had regarding vesting. But I, as he reminded me, everyone seemed to be a little confused about it. And I don’t think its essential to our decision.” Decision Hearing, pg. 6, Ins. 8-11. Clearly, the City Attorney allowed the Planning Commission to determine that vesting wasn’t an essential issue, a fact he knew to be untrue. Had the City Attorney simply presented his own legal insight and analysis, presumably, he would have helped inform the Planning Commission where they struggled on legal decisions and confirmed to the Planning Commission that the Ordinance 1234 did not apply to Applicants Project. Instead, Applicants have been forced to proceed further in the Appeal Process, spending additional time and money to do so.

### **Conclusion**

As presented above, it is clear the Planning Commission’s Decision on the Administrative Determination violates Idaho law regarding the vesting of land use permits, is contrary the express provisions of Ordinance 1234 and the prior written and stated actions of the City with respect to this Project. Combined with the foregoing, the unexplained delays create an unlawful procedure in the processing of Permit Application. As such the Administrator’s action in making the determination, and the Planning Commission’s Decision to Affirm is arbitrary and capricious, contrary to the law and a

clear abuse of discretion – designed to stop the Project. As such, we respectfully urge the Council to reverse the Planning Commission’s Decision and allow the Project to proceed with Design Review.

Respectfully Submitted this 20<sup>th</sup> day of February 2024.

LAWSON LASKI CLARK, PLLC

By: 

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James R. Laski  
Attorney for Appellants/Applicants

# EXHIBIT 1



CITY OF KETCHUM  
MINUTES OF THE SPECIAL MEETING  
PLANNING AND ZONING COMMISSION  
Tuesday, August 16, 2022

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**CALL TO ORDER:** (00:00:25 in video)

Chairman Neil Morrow called the meeting to order at 4:30 p.m.

**Roll Call:**

Tim Carter  
Spencer Cordovano  
Brenda Moczygemba  
Neil Morrow

**COMMUNICATIONS FROM COMMISSIONERS:**

None

**PUBLIC HEARING:** (00:02:55 in video)

1. **ACTION ITEM:** Recommendation to conduct a Public Hearing, review, and take action on a proposed interim ordinance to amend Titles 16 and 17 of the Ketchum Municipal Code. Senior Planner Morgan Landers gave a recap of the Emergency Ordinance.

Public Comment:

Perry Boyle (00:45:45 in video)  
Jim Laski (00:53:50 in video)

The Commission noted the following changes:

**Section 1:** Current Pre-Application Design Review applications deemed complete would not be subject to the interim ordinance with an expiration date to be determined.

**Section 12:** Clarify language from “not exempt from “ to “subject to”.

**Motion to advance the proposed interim ordinance to City Council for their consideration, with changes as noted.**

Motion made by Tim Carter; Seconded by Spencer Cordovano

**Ayes:** Tim Carter, Spencer Cordovano, Neil Morrow

**Nays:** Brenda Moczygemba

**COMMUNICATIONS FROM STAFF**

Commissioner Cordovano requested a discussion of ADU's.

**ADJOURNMENT:** (02:50:15 in video)

**Motion to adjourn at 7:17 pm.**

Motion made by Neil Morrow; seconded by **Spencer Cordovano**.

**Ayes:** Tim Carter, Spencer Cordovano, Brenda Moczygemba, Neil Morrow

**Nays:** None



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Chair Neil Morrow



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Lisa Enourato, Interim City Clerk  
City of Ketchum



## EXHIBIT 2

Below is a partial transcript of the August 16, 2022 P&Z Meeting.  
Applicants have highlighted the speaker when possible and removed text in  
the interest of brevity.

Jim Laski Comments

00:54:23,500 --> 00:54:27,300  
thing. The real issue I have today is in  
1040  
00:54:26,300 --> 00:54:29,800  
section one of the proposed ordinance  
1041  
00:54:29,800 --> 00:54:32,800  
and that talks about vesting of applications.  
1042  
00:54:32,800 --> 00:54:36,300  
And in that it says pre-application design  
1043  
00:54:35,300 --> 00:54:38,500  
review applications deemed complete prior  
1044  
00:54:38,500 --> 00:54:41,400  
to the effective date of the this ordinance that do  
1045  
00:54:41,400 --> 00:54:44,800  
not have a subsequent design review application deem complete  
1046  
00:54:44,800 --> 00:54:47,800  
our subject to the provisions contained here  
1047  
00:54:47,800 --> 00:54:48,100  
in  
1048  
00:54:49,100 --> 00:54:50,300  
and I would submit that that  
1049  
00:54:51,700 --> 00:54:54,400  
sentence or that provision is probably illegal under  
1050  
00:54:54,400 --> 00:54:57,900  
Idaho law the design  
1051  
00:54:57,900 --> 00:55:01,100  
review criteria in your code requires  
1052  
00:55:00,100 --> 00:55:04,300  
pre-application. It's not a optional process.  
1053  
00:55:03,300 --> 00:55:07,500  
You have to do the pre-application in  
1054  
00:55:06,500 --> 00:55:09,500  
order to do the design review  
1055

00:55:09,500 --> 00:55:12,700  
application. So this city controls how  
1056

00:55:12,700 --> 00:55:15,200  
that process goes forward controls the  
1057

00:55:15,200 --> 00:55:18,700  
timing of that process despite the fact that you  
1058

00:55:18,700 --> 00:55:22,500  
are request. It's the exact same submittal requirements  
1059

00:55:22,500 --> 00:55:24,000  
as a design review requirement.  
1060

00:55:24,700 --> 00:55:27,200  
And also includes a  
1061

00:55:27,200 --> 00:55:31,900  
fee, so I just want to read to you a couple of cases from Idaho  
1062

00:55:31,900 --> 00:55:34,100  
Supreme Court that talk about  
1063

00:55:34,100 --> 00:55:35,900  
the vesting of applications.  
1064

00:55:36,700 --> 00:55:40,500  
The first one will be citizens against Lynn  
1065

00:55:39,500 --> 00:55:43,900  
Scott Bonner to 2021  
1066

00:55:42,900 --> 00:55:44,200  
case.  
1067

00:55:45,300 --> 00:55:46,400  
from the Idaho Supreme Court  
1068

00:55:47,300 --> 00:55:48,300  
and it's as  
1069

00:55:49,900 --> 00:55:52,400  
Idaho is adopted the minority position that land use  
1070

00:55:52,400 --> 00:55:55,300  
ever a land use applicants rights are measured under  
1071

00:55:55,300 --> 00:55:57,200  
the lawn effect at the time of the application.  
1072

00:55:58,300 --> 00:56:01,700  
The policy undergirding this rule  
1073

00:56:01,700 --> 00:56:04,500  
is to prevent local authorities from delaying or  
1074

00:56:04,500 --> 00:56:07,600  
withholding action on an application in order to change or  
1075

00:56:07,600 --> 00:56:09,400  
enact a law to defeat the application.  
1076

00:56:10,800 --> 00:56:13,100  
Thus the rule is an outgrowth of the  
1077

00:56:13,100 --> 00:56:16,500  
well-established principle that legislation does not  
1078

00:56:16,500 --> 00:56:18,500  
ordinarily have an retroactive effect.  
1079

00:56:20,200 --> 00:56:23,400  
In 2009 and Taylor V Canyon County  
1080

00:56:23,400 --> 00:56:26,300  
similar. They're similar  
1081

00:56:26,300 --> 00:56:29,700  
language, Idaho laws. Well established applicants rights  
1082

00:56:29,700 --> 00:56:32,300  
are determined by the ordinance and existence at the  
1083

00:56:32,300 --> 00:56:34,200  
time of filing an application for a permit.  
1084

00:56:35,300 --> 00:56:38,000  
The minority rule it goes on to say the same thing.  
1085

00:56:38,900 --> 00:56:41,600  
But then goes on in other words the rule  
1086

00:56:41,600 --> 00:56:44,300  
in. It ensures that local authorities do not engage in  
1087

00:56:44,300 --> 00:56:47,200  
the arbitrary action before they render a decision  
1088

00:56:47,200 --> 00:56:50,500  
on an application policy behind this rule is  
1089

00:56:50,500 --> 00:56:53,600  
independent of whether or not the local authorities would ultimately  
Grant  
1090

00:56:53,600 --> 00:56:56,800  
the underlying application. So my point

1091  
00:56:56,800 --> 00:56:56,900  
is  
1092  
00:56:57,900 --> 00:56:59,400  
If you have a pre-application.  
1093  
00:57:00,600 --> 00:57:04,500  
That's in that has not then gone  
1094  
00:57:03,500 --> 00:57:06,500  
through the pre-application process which  
1095  
00:57:06,500 --> 00:57:09,900  
I've had clients where that has taken actually years  
1096  
00:57:09,900 --> 00:57:11,300  
to get through.  
1097  
00:57:12,300 --> 00:57:12,800  
then  
1098  
00:57:14,300 --> 00:57:17,100  
you cannot say that they then have to  
1099  
00:57:17,100 --> 00:57:20,000  
go through in conform with the new

#### Commissioner Morrow Comments

1100  
00:57:20,700 --> 00:57:22,600  
ordinance. That's three minutes. Thank you.  
1101  
00:57:25,100 --> 00:57:28,600  
You can submit if you have other stuff for  
1102  
00:57:28,600 --> 00:57:29,600  
the accounts we could submit.  
1103  
00:57:30,700 --> 00:57:32,200  
Do we have other public comment?  
1104  
00:57:37,300 --> 00:57:37,900  
in the back  
1105  
00:57:39,500 --> 00:57:40,500  
no more not no one else online.  
1106  
00:57:41,800 --> 00:57:44,300  
okay, so in in can I ask that the  
1107  
00:57:45,500 --> 00:57:48,300  
Um staff check that with

1108

00:57:48,300 --> 00:57:51,300

the city attorney and make sure that we're not putting something in

1109

00:57:51,300 --> 00:57:55,300

there. That would be a clear violation of Idaho law

Suzanne Frick Comments

1110

00:57:54,300 --> 00:57:57,400

by all means we will check that

1111

00:57:57,400 --> 00:58:00,600

as this moves forward. I would just mention also in

1112

00:58:00,600 --> 00:58:03,400

pre-application. There is no

1113

00:58:03,400 --> 00:58:06,400

decision. The commission is making in a

1114

00:58:06,400 --> 00:58:09,800

pre-application really all you're doing is deciding whether

1115

00:58:09,800 --> 00:58:12,500

or not something moves on to the design review.

1116

00:58:12,500 --> 00:58:16,400

We don't have you adopt findings or a

1117

00:58:15,400 --> 00:58:18,700

record of decision. So but

1118

00:58:18,700 --> 00:58:21,500

nevertheless he brings up a good point. We

1119

00:58:21,500 --> 00:58:24,400

will review that with the city attorney

1120

00:58:24,400 --> 00:58:27,500

to make sure there is no vulnerability in

1121

00:58:27,500 --> 00:58:31,000

what's being proposed. Yeah good and also so that we're just we're clear

1122

00:58:30,200 --> 00:58:33,200

that this is this is what you have to do and

1123

00:58:33,200 --> 00:58:36,100

it's legal to do and the other thing I

1124

00:58:36,100 --> 00:58:39,800

would make note as part of this budget

1125  
00:58:39,800 --> 00:58:42,800  
process in the fiscal year 23 budget,  
1126  
00:58:42,800 --> 00:58:44,900  
which starts October 1st.

1277  
01:06:07,300 --> 01:06:10,300  
If anyone feels strongly about sending a recommendation today, or  
1278  
01:06:10,300 --> 01:06:13,300  
is there more discussion is there something else you

#### Commissioner Moczygemba Comments

1279  
01:06:13,300 --> 01:06:16,500  
need to see or hear? I like to handle this  
1280  
01:06:16,500 --> 01:06:19,800  
similarly to how we handle the emergency ordinance and  
1281  
01:06:19,800 --> 01:06:23,200  
kind of go Section by section. So there's a  
1282  
01:06:23,200 --> 01:06:26,700  
lot to each piece and part and starting  
1283  
01:06:26,700 --> 01:06:29,500  
with section one. I completely agree  
1284  
01:06:29,500 --> 01:06:34,400  
with Mr. Lasky regarding I  
1285  
01:06:32,400 --> 01:06:37,400  
guess it's this vesting  
1286  
01:06:36,400 --> 01:06:40,000  
of applications or what's you  
1287  
01:06:39,600 --> 01:06:42,900  
know what this applies to things that  
1288  
01:06:42,900 --> 01:06:45,400  
are coming through or maybe in for  
1289  
01:06:45,400 --> 01:06:48,200  
pre-application design review, you know,  
1290  
01:06:48,200 --> 01:06:51,700  
those projects were started six seven eight months ago.  
1291

01:06:51,700 --> 01:06:54,100  
And so even though  
1292  
01:06:54,100 --> 01:06:55,800  
we're talking about a 12 month.  
1293  
01:06:56,600 --> 01:06:58,400  
Interim ordinance. I'm  
1294  
01:06:59,500 --> 01:07:01,200  
I would prefer trying to limit.  
1295  
01:07:02,500 --> 01:07:05,300  
the scope of that timeline and the amount  
1296  
01:07:05,300 --> 01:07:08,600  
of people and money and investment dollars that  
1297  
01:07:08,600 --> 01:07:11,200  
have already gone into projects as we can, you know,  
1298  
01:07:11,200 --> 01:07:14,500  
and maybe that's only one or  
1299  
01:07:14,500 --> 01:07:16,300  
two projects in the pipeline, but  
1300  
01:07:17,300 --> 01:07:21,500  
I think as much uncertainty as we can bake in  
1301  
01:07:21,500 --> 01:07:25,100  
here the better anybody have any strong feelings,  
1302  
01:07:24,100 --> 01:07:27,500  
you know, nobody would like to stop a lot of those projects  
1303  
01:07:27,500 --> 01:07:30,500  
more than me, but I do feel like it's a little  
1304  
01:07:30,500 --> 01:07:31,600  
bit unfair.  
1305  
01:07:32,600 --> 01:07:32,900  
just  
1306  
01:07:33,900 --> 01:07:36,100  
Morally, another thing I want to bring up is  
1307  
01:07:36,100 --> 01:07:39,200  
today as of today. There's four baking lots for  
1308  
01:07:39,200 --> 01:07:42,900  
sale in the city Ketchum and 17 closed  
1309



01:07:42,900 --> 01:07:43,700  
in 2020.  
1310  
01:07:45,700 --> 01:07:46,200  
Tim  
1311  
01:07:49,100 --> 01:07:53,300  
let's can we just talk about what that the details  
1312  
01:07:52,300 --> 01:07:55,300  
of what section one are so let's see  
1313  
01:07:55,300 --> 01:07:58,100  
the following them regulations and standards apply to building permits.  
1314  
01:07:59,100 --> 01:08:01,500  
Preapped and reviews subdivision. He's permit  
1315  
01:08:03,600 --> 01:08:07,400  
so the permits are these out so these regulations apply  
1316  
01:08:06,400 --> 01:08:07,500  
to  
1317  
01:08:09,700 --> 01:08:12,100  
These two permits design review subdivision conditional use  
1318  
01:08:12,100 --> 01:08:15,500  
permits that are deemed complete. The applications are deemed complete.  
1319  
01:08:16,100 --> 01:08:19,400  
So it's at the point that the applications are deemed  
1320  
01:08:19,400 --> 01:08:19,800  
complete.  
1321  
01:08:22,400 --> 01:08:25,100  
This ordinance would then apply to them? Is that what  
1322  
01:08:25,100 --> 01:08:25,400  
this says?  
1323  
01:08:28,400 --> 01:08:31,200  
so if I can I can clarify to clarify so we  
1324  
01:08:31,200 --> 01:08:34,700  
understand exactly what the  
1325  
01:08:35,800 --> 01:08:38,600  
metric is that we are using to apply this  
1326  
01:08:38,600 --> 01:08:41,100  
ordinance to if that's what we're discussing here. Let's make  
1327

01:08:41,100 --> 01:08:44,100  
sure we all understand what what it says. Yeah, and and I think  
1328

01:08:44,100 --> 01:08:47,300  
we kind of chatted about this during the emergency ordinance as  
1329

01:08:47,300 --> 01:08:50,100  
well. And the term deemed complete is a pretty  
1330

01:08:50,100 --> 01:08:53,300  
significant milestone for projects. It's also  
1331

01:08:53,300 --> 01:08:55,900  
the least objective Milestone that we have.  
1332

01:08:56,400 --> 01:08:59,600  
You know when we get applications in the door, they go  
1333

01:08:59,600 --> 01:09:02,400  
through a couple of different steps, right? You submit an application and  
1334

01:09:02,400 --> 01:09:05,500  
we make sure we have the documents that we need and and  
1335

01:09:05,500 --> 01:09:08,200  
they pay their application fees and then the planning staff  
1336

01:09:08,200 --> 01:09:11,200  
will review and make sure that all of those documents include all  
1337

01:09:11,200 --> 01:09:14,500  
of the necessary information. And so I think  
1338

01:09:14,500 --> 01:09:17,400  
that the reason why we recommend using  
1339

01:09:17,400 --> 01:09:20,400  
that Milestone as deemed complete is because that is an actual  
1340

01:09:20,400 --> 01:09:23,800  
Milestone that gets communicated to an applicant where they  
1341

01:09:23,800 --> 01:09:26,200  
are formally in the process because we have everything that we  
1342

01:09:26,200 --> 01:09:29,700  
need to do our full analysis. And so one of  
1343

01:09:29,700 --> 01:09:33,000  
the concerns about having a less  
1344

01:09:32,400 --> 01:09:35,700  
objective kind of Milestone is  
1345

01:09:35,700 --> 01:09:38,800  
that we may get an onslaught of  
1346

01:09:38,800 --> 01:09:41,200  
incomplete applications because people are just trying to  
1347

01:09:41,200 --> 01:09:44,100  
submit an application but it may be, you know,  
1348

01:09:44,100 --> 01:09:47,400  
a fraction of the information that we need, right? So because I  
1349

01:09:47,400 --> 01:09:51,500  
think we talked about that at the emergency ordinance as well. Sorry. I  
1350

01:09:51,500 --> 01:09:52,300  
just want to know how many  
1351

01:09:53,200 --> 01:09:56,300  
Current projects. Let's say we send this to  
1352

01:09:56,300 --> 01:09:58,900  
City Council in the next meeting. They approve the annual mortgage.  
1353

01:09:59,500 --> 01:10:02,700  
How many current projects would that Encompass that  
1354

01:10:02,700 --> 01:10:05,400  
would not have to worry about vesting because  
1355

01:10:05,400 --> 01:10:06,700  
they're already in the process?  
1356

01:10:08,300 --> 01:10:12,900  
So really the the vulnerability is projects  
1357

01:10:11,900 --> 01:10:14,900  
that have submitted but  
1358

01:10:14,900 --> 01:10:17,600  
haven't been deemed complete which probably by  
1359

01:10:17,600 --> 01:10:20,900  
the time this ordinance goes into effect. They're  
1360

01:10:20,900 --> 01:10:23,600  
going to be deemed complete. So I don't  
1361

01:10:23,600 --> 01:10:27,000  
think there's a big risk to that Universe the  
1362

01:10:26,500 --> 01:10:29,300  
the risk is those that  
1363

01:10:29,300 --> 01:10:32,600  
are in pre-application and as Brenda indicated.  
1364  
01:10:32,600 --> 01:10:35,300  
So what if that is a  
1365  
01:10:35,300 --> 01:10:39,100  
concern if the commission will take that back because the  
1366  
01:10:38,100 --> 01:10:43,800  
difficulty we have with pre-application applications  
1367  
01:10:41,800 --> 01:10:45,100  
is that  
1368  
01:10:44,100 --> 01:10:47,600  
there is no determination and  
1369  
01:10:47,600 --> 01:10:51,000  
there's no time frame for how long that  
1370  
01:10:50,200 --> 01:10:53,100  
decision is valid.  
1371  
01:10:54,100 --> 01:10:57,400  
So unlike design review permits. There is  
1372  
01:10:57,400 --> 01:11:00,500  
a expiration date for how long that approval  
1373  
01:11:00,500 --> 01:11:05,200  
is good for there is no expiration date  
1374  
01:11:04,200 --> 01:11:07,300  
for a pre-application. So what we don't  
1375  
01:11:07,300 --> 01:11:10,400  
want is a project has been  
1376  
01:11:10,400 --> 01:11:13,400  
approved through pre-application and then it  
1377  
01:11:13,400 --> 01:11:17,200  
sits for two years or three years before that design  
1378  
01:11:16,200 --> 01:11:19,400  
review application is actually submitted.  
1379  
01:11:20,300 --> 01:11:24,100  
So we will need to work through this issue. If the  
1380  
01:11:23,100 --> 01:11:27,900  
commission is looking to vest a  
1381

01:11:27,900 --> 01:11:30,700  
project under old standards with  
1382  
01:11:30,700 --> 01:11:32,300  
the filing of a pre-application.

Commissioner Morrow Comments

1383  
01:11:33,800 --> 01:11:36,800  
Can we add a time limit  
1384  
01:11:36,800 --> 01:11:39,400  
to preamp exactly? So so that's if  
1385  
01:11:39,400 --> 01:11:42,400  
that is your desire then what we'll do  
1386  
01:11:42,400 --> 01:11:46,000  
is take back that information and figure  
1387  
01:11:45,300 --> 01:11:48,500  
out how to fix the vulnerabilities that  
1388  
01:11:48,500 --> 01:11:51,500  
we know of in the process. I mean a reasonable  
1389  
01:11:51,500 --> 01:11:54,400  
amount of time whatever it is, but we do get projects that  
1390  
01:11:54,400 --> 01:11:58,100  
come back after a few years that we're pre design  
1391  
01:11:57,100 --> 01:12:00,400  
review approved and right then I've said  
1392  
01:12:00,400 --> 01:12:03,500  
and we haven't seen them again and if the rules change in  
1393  
01:12:03,500 --> 01:12:06,500  
between, I'd like to if they come back I'd like  
1394  
01:12:06,500 --> 01:12:09,600  
to make them apply the new rules exactly. It's recent  
1395  
01:12:09,600 --> 01:12:13,300  
Hotel projects. Come to mind. Yeah a  
1396  
01:12:12,300 --> 01:12:14,500  
wall I mean  
1397  
01:12:16,300 --> 01:12:19,900  
Can you reiterate that one more time for me in layman's terms  
1398

01:12:19,900 --> 01:12:22,600  
you father so in for most  
1399  
01:12:22,600 --> 01:12:26,000  
every permit that we Grant you  
1400  
01:12:25,300 --> 01:12:28,900  
are making a finding or there  
1401  
01:12:28,900 --> 01:12:31,500  
is an official action you're taking to approve  
1402  
01:12:31,500 --> 01:12:34,300  
deny or approve with conditions of  
1403  
01:12:34,300 --> 01:12:37,900  
approval. Right? There's a record of that determination and  
1404  
01:12:37,900 --> 01:12:40,800  
then that approval is good for a  
1405  
01:12:40,800 --> 01:12:43,300  
certain period of time a year. It can  
1406  
01:12:43,300 --> 01:12:46,800  
be extended usually for another year. And so  
1407  
01:12:46,800 --> 01:12:49,600  
there is a procedure for how long those approvals  
1408  
01:12:49,600 --> 01:12:52,200  
are good for there's a shelf life to  
1409  
01:12:52,200 --> 01:12:52,300  
them.

#### Suzanne Frick Comments

1410  
01:12:53,200 --> 01:12:57,500  
In the pre-application process, there  
1411  
01:12:56,500 --> 01:12:59,500  
is no determination. The  
1412  
01:12:59,500 --> 01:13:02,500  
Planning and Zoning commission makes there is  
1413  
01:13:02,500 --> 01:13:05,400  
no time frame for how  
1414  
01:13:05,400 --> 01:13:08,600  
long that decision is good for. All  
1415

01:13:08,600 --> 01:13:12,100  
you are doing in a pre-op is to say yep. We're  
1416

01:13:11,100 --> 01:13:14,800  
okay. You can now file your  
1417

01:13:14,800 --> 01:13:16,500  
design review application.  
1418

01:13:17,500 --> 01:13:20,500  
And so then that really starts the formal review  
1419

01:13:20,500 --> 01:13:23,600  
and approval process because remember in pre-app, there's  
1420

01:13:23,600 --> 01:13:27,000  
no public hearing. It is really an informal.  
1421

01:13:26,700 --> 01:13:29,900  
It's it's English  
1422

01:13:29,900 --> 01:13:33,100  
a red between us exactly. It is an informal discussion  
1423

01:13:32,100 --> 01:13:35,600  
between the commission and the applicant no  
1424

01:13:35,600 --> 01:13:38,400  
public hearing no public input. It is  
1425

01:13:38,400 --> 01:13:41,400  
really just for you to say projects good  
1426

01:13:41,400 --> 01:13:45,400  
to go move it on to the next phase of review. And  
1427

01:13:44,400 --> 01:13:48,200  
so if we're now investing projects  
1428

01:13:47,200 --> 01:13:50,800  
under that procedure, we  
1429

01:13:50,800 --> 01:13:54,000  
need to kind of build guardrails around  
1430

01:13:53,400 --> 01:13:57,100  
it so that we aren't vesting a  
1431

01:13:56,100 --> 01:14:00,600  
project for years and years and years. Well things  
1432

01:13:59,600 --> 01:14:02,500  
have changed reasonable but limited

Commissioner Morrow Comments

1433

01:14:02,500 --> 01:14:05,000  
amount of time. So if you change or you

1434

01:14:05,500 --> 01:14:08,200  
wait a year, you have to come back and redesign in the old one doesn't

1435

01:14:08,200 --> 01:14:11,200  
work anymore. And that's I I'm a big

1436

01:14:11,200 --> 01:14:12,800  
fan of putting that in so we don't get

1437

01:14:13,700 --> 01:14:16,500  
This kind of none of the developers want

1438

01:14:16,500 --> 01:14:19,200  
us to have any say in what they do in their time frame and but

1439

01:14:19,200 --> 01:14:22,300  
they're real happy to abuse the system if they can drag it

1440

01:14:22,300 --> 01:14:25,400  
out for three years and it benefits them then they'll do that. Well, I'd

1441

01:14:25,400 --> 01:14:29,100  
like to eliminate that because that's bull

City Staff Comments

1442

01:14:28,100 --> 01:14:32,100  
so and and maybe it is that we

1443

01:14:31,100 --> 01:14:34,500  
figure out what's the universe of projects.

1444

01:14:34,500 --> 01:14:37,700  
They're in pre-app when this ordinance comes

1445

01:14:37,700 --> 01:14:40,500  
forward and then those specific projects are the

1446

01:14:40,500 --> 01:14:43,200  
ones that get grandfather did and and then we

1447

01:14:43,200 --> 01:14:46,600  
give them a period of time. So if this again

1448

01:14:46,600 --> 01:14:49,000  
is a direction that commission wants us to

1449



01:14:49,100 --> 01:14:52,100  
go in we'll figure out the mechanics of how to make it

Commissioner Morrow Comments

1450

01:14:52,100 --> 01:14:55,800  
work. Yeah, and it gets us around saying hey, it's it's vested  
1451

01:14:55,800 --> 01:14:58,300  
even though it's not approved right? We're saying look  
1452

01:14:58,300 --> 01:15:02,900  
you can do this, but you have to come to design approval and  
1453

01:15:02,900 --> 01:15:05,200  
you have to do that within a certain amount of time or you have to  
1454

01:15:05,200 --> 01:15:08,100  
start over and if they don't like it or it's uncertain  
1455

01:15:09,200 --> 01:15:10,000  
Not too bad.

1456

01:15:10,900 --> 01:15:11,600  
Okay, so we're

1457

01:15:12,900 --> 01:15:15,400  
Oh, sorry, and I was just gonna clarify something the  
1458

01:15:15,400 --> 01:15:19,000  
Mr. Lasky stated not all projects require pre-application. So  
1459

01:15:18,200 --> 01:15:21,100  
we do have a good chunk of projects that are  
1460

01:15:21,100 --> 01:15:24,300  
on single Ketchum Town site Lots if you all recall  
1461

01:15:24,300 --> 01:15:27,900  
you did make a change to the pre application process earlier on  
1462

01:15:27,900 --> 01:15:30,300  
this year with the final historic preservation  
1463

01:15:30,300 --> 01:15:33,000  
ordinance. So there are a good chunk of  
1464

01:15:33,400 --> 01:15:36,600  
projects that don't that aren't going to be subject to this because pre  
application  
1465

01:15:36,600 --> 01:15:37,000

is not required.

Commissioner Moczygemba Comments

1466

01:15:39,800 --> 01:15:42,500

At night I would agree and thanks for the clarification

1467

01:15:42,500 --> 01:15:45,300

Susan on pre-application not

1468

01:15:45,300 --> 01:15:48,300

having a I guess expiration date so to

1469

01:15:48,300 --> 01:15:51,100

speak so I think that's a great idea. I don't

1470

01:15:51,100 --> 01:15:51,800

know that any.

1471

01:15:52,700 --> 01:15:56,000

Applications pre-applications are going to be rushed

1472

01:15:55,300 --> 01:15:58,500

in between now and then because it I

1473

01:15:58,500 --> 01:16:01,800

think well, I think it's been said before the requirements

1474

01:16:01,800 --> 01:16:04,900

for pre-application are essentially the requirements

1475

01:16:04,900 --> 01:16:07,400

for design review. And so you're

1476

01:16:07,400 --> 01:16:10,100

still needing civil landscape on and on.

1477

01:16:10,100 --> 01:16:13,500

So anyways, I guess I'm not too worried about a glut

1478

01:16:13,500 --> 01:16:15,200

of applications trying to squeeze in.

1479

01:16:17,800 --> 01:16:20,000

So that we've we're kind of

1480

01:16:20,200 --> 01:16:21,200

okay with the first one then.

1481

01:16:21,700 --> 01:16:22,200

I'm

1482

01:16:23,300 --> 01:16:26,700

Still not a hundred Brazil trying to get this out of bureaucracy

Commissioner Carter Comments

1483

01:16:26,700 --> 01:16:30,200

and the electric is that if you're

1484

01:16:30,200 --> 01:16:34,000

as soon as your application is deemed complete after if

1485

01:16:33,600 --> 01:16:36,400

you complete before the ordinance changes, then

1486

01:16:36,400 --> 01:16:40,500

you are you must meet the requirements of before

1487

01:16:39,500 --> 01:16:42,200

the ordinance. If you're deemed

1488

01:16:42,200 --> 01:16:45,400

complete after the ordinance change and you have to meet the requirements of the

1489

01:16:45,400 --> 01:16:48,400

new ordinance right of all of all applications the

1490

01:16:48,400 --> 01:16:53,200

tricky part is this pre app. So I

1491

01:16:51,200 --> 01:16:55,600

think we're saying that if you're

1492

01:16:55,600 --> 01:16:57,300

pre-app is deemed complete.

1493

01:16:58,500 --> 01:17:01,500

And correct me if I'm wrong staff, but if

1494

01:17:01,500 --> 01:17:04,800

you're if you're pre-app is deemed complete that isn't

1495

01:17:04,800 --> 01:17:07,000

that isn't the same

1496

01:17:07,500 --> 01:17:10,700

metric because pre app is different. So you actually

1497

01:17:10,700 --> 01:17:13,100

have to get through pre-app and then have your

1498

01:17:13,100 --> 01:17:16,200

design review deemed complete. That's that's how  
1499  
01:17:16,200 --> 01:17:17,100  
I understand it and  
1500  
01:17:18,800 --> 01:17:21,100  
I think that but it's written so  
1501  
01:17:21,100 --> 01:17:24,300  
put it to put it straight. We have currently written. We're having  
1502  
01:17:24,300 --> 01:17:27,700  
this option to apply this ordinance potentially to  
1503  
01:17:28,900 --> 01:17:31,700  
For the man Perry's building.  
1504  
01:17:33,200 --> 01:17:36,200  
So if it's Etc if it passes, I think we're saying  
1505  
01:17:36,200 --> 01:17:40,800  
let's make it let's move the metric to pre-app deemed  
1506  
01:17:40,800 --> 01:17:43,300  
complete that will learn those aren't through  
1507  
01:17:43,300 --> 01:17:43,900  
the final.  
1508  
01:17:45,100 --> 01:17:48,400  
No, I just know we're suggestions. We're just being complete but  
1509  
01:17:48,400 --> 01:17:51,800  
make pre-app, uh limited limited  
1510  
01:17:51,800 --> 01:17:54,600  
amount of time reason why it's written  
1511  
01:17:54,600 --> 01:17:55,400  
that.  
1512  
01:17:56,300 --> 01:17:59,700  
The preappdeem complete metric isn't  
1513  
01:17:59,700 --> 01:18:03,100  
adequate is because you what  
1514  
01:18:02,100 --> 01:18:05,400  
we're saying is creep team complete is  
1515  
01:18:05,400 --> 01:18:08,300  
inadequate you it must be designed review deemed complete  
1516  
01:18:08,300 --> 01:18:11,400

right but we're saying what if  
1517  
01:18:11,400 --> 01:18:14,600  
we move it to pre-app deemed complete but put a  
1518  
01:18:14,600 --> 01:18:17,700  
limitation on how long that pre approval.  
1519  
01:18:18,900 --> 01:18:21,800  
Informal approval is right. So we're  
1520  
01:18:21,800 --> 01:18:23,300  
moving the metric from  
1521  
01:18:24,400 --> 01:18:27,200  
design it design design review deemed complete to  
1522  
01:18:27,200 --> 01:18:28,700  
pre-app. Does that team complete?  
1523  
01:18:29,400 --> 01:18:32,100  
Right. That's what we're talking. That's what we're seeing. This will  
only  
1524  
01:18:32,100 --> 01:18:35,600  
last until the ordinance is approved and then there will be the rule and  
there  
1525  
01:18:35,600 --> 01:18:38,400  
will be no more. So it only is those projects that are  
1526  
01:18:38,400 --> 01:18:41,200  
falling through the middle that that it will  
1527  
01:18:41,200 --> 01:18:45,300  
happen and that has to find a way to put proper guard Wells on pre-app  
approvals  
1528  
01:18:44,300 --> 01:18:47,800  
and it is in an infinite. We'll vote  
1529  
01:18:47,800 --> 01:18:49,900  
on a time frame for it in the next meeting but  
1530  
01:18:50,200 --> 01:18:53,200  
Or we identify specifically what those projects are  
1531  
01:18:53,200 --> 01:18:56,200  
and then you know, we give them a time  
1532  
01:18:56,200 --> 01:18:59,800  
frame but here you go, right? So right now  
1533  
01:18:59,800 --> 01:19:02,500

there's yeah, there's probably one project that  
1534  
01:19:02,500 --> 01:19:06,400  
is caught in this limbo right now. Okay, so  
1535  
01:19:05,400 --> 01:19:08,100  
we'll we'll if this is the  
1536  
01:19:08,100 --> 01:19:10,300  
desire we'll figure out how to make it happen.  
1537  
01:19:11,600 --> 01:19:14,100  
I mean, like I said, I wish  
1538  
01:19:14,100 --> 01:19:17,500  
it was applying to all those but it doesn't seem totally fair and  
1539  
01:19:17,500 --> 01:19:20,000  
I want to make it apply because these are some of  
1540  
01:19:20,100 --> 01:19:23,300  
our last Lots it's a super transitional time.  
1541  
01:19:23,300 --> 01:19:24,800  
I'm just trying to cut through.  
1542  
01:19:25,500 --> 01:19:26,900  
To the straight answers here.  
1543  
01:19:31,600 --> 01:19:34,600  
Thanks. Yeah, you want to go to the next one? Yeah, sure  
1544  
01:19:34,600 --> 01:19:37,600  
section two I think is just a definition. So

## EXHIBIT 3



City of Ketchum  
Planning & Building

September 16, 2022

Thielsen Architects  
Attn: Dave Thielsen - Architect

Galena Engineering  
Attn: Matt Smithman – Civil Engineer

[Sent via email]

Re: 260 N 1<sup>st</sup> Ave – Preapplication Design Review - Completeness Review

Dear Mr. Thielsen and Mr. Smithman,

The City of Ketchum Departments have completed their review of the Preapplication Design Review for the project at 260 N 1<sup>st</sup> Ave. Please see below for all comments. At this time, the application has been deemed incomplete. Additionally, it appears that some elements of the project are not compliant with applicable sections of the Ketchum Municipal Code (KMC). While you provided many of the required materials, the following items must be corrected, and revised information must be provided to certify the application as complete. Where applicable, references to the KMC have been provided for clarity. Please provide a written response to each comment upon resubmittal of your application materials.

### Planning Department

#### General Zoning Comments

1. *Comment:* Based on the slope of the lot, it is correct to apply the term “basement” to the project and remove that square footage from the building. However, staff will need to verify that the methodology used for establishing what area falls under the definition of “basement” is correct.
  - a. *Required Action:* Please provide a diagram in schematic or plan and section views showing how the invisible plane was delineated and what square footage is included in the “basement” definition and what constitutes the 954.16 SF of gross floor area remaining.
2. *Comment:* The Gross Floor Area (GFA) and Net Floor Area (NFA) calculations on Sheet A1.1 don’t appear to match the net and gross SF outlined on Sheets A1.2-A1.4. For the ground level, the gross floor area on Sheet A 1.1 and A1.2 indicate a net floor area of 5,680 SF, however it is unclear what that square footage includes. Also, for Sheets A1.3 and A1.4, the GFA outlined is consistent with Sheet A1.1 but it is unclear what constitutes the NFA for these levels and what has been removed since the stair tower and elevator have already been removed.
  - a. *Required Action:* Please provide Floor Area diagrams for each floor that outlines what is included in the GFA and what is not. The best way to show this is by using shading or coloring to color code each area. In the diagrams, please also include square footages.
3. *Comment:* Sheet A1.1 shows GFA of the building, however, specific square footage of each unit and each space on the ground floor is necessary to verify parking requirements for all uses.
  - a. *Required Action:* Please revised Sheet A1.1 to include a summary of square footages by use that outlines each residential unit, parking, storage, The Commons, and the Commons Court and Event Space



4. *Comment:* The cover letter submitted as part of the project outlines that the intent of the ground floor Commons and Commons Court and Event Center is to be a “gathering place....which would be used for fundraising and philanthropic events”. The letter does not address the use of the space when those events are not happening. Staff presumes this space would be for the benefit of the residents, family and guests but not the public, however, this is a deduction based on the cover letter and clarification is necessary. Staff is also unclear whether the fundraising and event space is only the Commons Court and Event Space, or if it includes the Commons as well. Additionally, Sheet A1.1 outlines under “Required Parking” that the space is classified as “Food Service”. Staff does not believe the proposed use meets the definition of food service, but rather an “Assembly, place of”. The floor plans do not show a location within the space where food is being prepared. This is a key element of a “Food Service” use. The definitions of referenced uses are noted below:

**Food service:** An establishment where food and drink are prepared, served and consumed on site with associated outdoor dining, or distributed to customers through take out, delivery or catering. Typical uses include, but are not limited to restaurants, cafes, delis, catering services and brewpubs that do not distribute beer produced for off-site consumption.

**Assembly, place of:** The use of land for a meeting place where persons gather together for purposes of attending civic, social, religious functions, recreational events or entertainment performances on a regular or recurring basis including, but not limited to, religious institutions, banquet facilities, funeral homes, theaters, conference centers, stadiums, or indoor or outdoor recreational facilities, but excludes a "cultural facility" as defined by this chapter. A gathering of less than 25 persons shall not be considered a place of assembly provided the gathering is accessory and incidental to the principal use.

Assembly uses require the approval of a Conditional Use Permit in the CC-2 zone district to ensure any impacts from events held in the space are mitigated through certain conditions.

- a. *Required Action:* Please provide an expanded narrative as to the function of the ground floor space and justification for its classification as Food Service. Please provide clarity on the function of the space when not being used for events. Please also provide clarity on what portion of the space will be used for events. Once additional information is provided, staff will make a determination on the use proposed.
5. *Comment:* It generally appears that the project is in conformance with setback requirements, however, the methodology used appears that there may be area where square footage is calculated toward both facades’ setback square footage, which is not the correct methodology. In general, square footage should be counted toward one side other the other using reasonable extensions of the building façade to delineate space. Please see the attached example from another project for reference. The front façade along 1<sup>st</sup> Ave had a portion of the building on the south end significantly set back from the street. In this instance, the main edge of the building façade was carried to the property line to delineated what was included in the setback square footage (area in black). As you can see, the two setback calculations do not overlap (black and red areas).
- a. *Required Action:* Please revise Sheets A1.2-1.4 delineate the square footage calculation with independent calculations for each façade. Staff has provided an attached draft of how the calculations should be delineated for the ground floor.
6. *Comment:* Sheet A7 outlines the proposed building height at the front and the rear of the building and the guardrail that extends above the 42-foot height maximum. Although the code reference in Note 10 is correct in relation to height, the city categorizes “perimeter walls that enclose roof top decks that exceed the maximum building height limit as a “fixed amenity” that must be set back 10 feet from the building façade per KMC 17.12.040. Built-in hot tubs are also considered “fixed

amenities” that must be set back. It is unclear from Sheet A6 what the setback is to the hot tub from the building façade at that location.

a. *Required Action:* Please revise the plans to reflect the required setback for all roof top decks. Please also revise Sheet A6 to provide a dimension from the building façade to the hot tub location.

7. *Comment:* The 3-foot setback along the alley shows wood fencing to screen the transformer and condensers, electric meters/CT panel, and raised landscape bed. The 3-foot setback is intended to be a clear zone to assist in snow management operations in the winter, therefore these items need to be relocated from within the 3 feet setback along the alley.

a. *Required Action:* Please revise the site plans to reflect revisions as noted above to avoid future unintended damage of property due to snow management operations. Please also provide a letter from Idaho Power approving the location of the transformer with associated clearances and proposed electric meters.

8. *Comment:* Depending on final use determination for the ground floor space, the dumpster and one recycling bin will not likely be adequate for the proposed use when special events occur. Once a use determination is made for the ground floor space, a letter of approval of the garbage service based on the use will be required from Clear Creek Disposal.

a. *Required Action:* This comment is for information only; no action is required at this time. Upon use determination, please provide a letter from Clear Creek Disposal approving the garbage configuration.

9. *Comment:* Sheet A2 shows the dimensions of the parking garage area including dimensions of the parking spaces and width of the drive aisle, however, the dimensions of the 5 spaces on the Sun Valley Rd side of the parking area are noted to not meet minimum requirements and the drive aisle width does not appear to meet the 24-foot minimum between the stair and bump out where the “Trolley” area is noted. Drive aisle between stairwell and trolley/bump out area needs to also be 24 feet. Compact spaces are only permitted with certain types of uses and only when the total number of required spaces is 10 or more. If parking is proposed, it must meet the minimum dimensional standards.

a. *Required Action:* Please revise the ground floor layout to demonstrate that all parking spaces meet the minimum dimensional standards and that the drive aisle width of 24 feet can be met for the full length of the drive aisle.

10. *Comment:* Construction Management Plans (CMP) are no longer required at the time of design review. Staff has not reviewed the submitted CMP. Comments on the CMP are provided at the time of building permit application for a project.

a. *Required Action:* No action required at this time, this comment is for information only.

11. *Comment:* Sheets EL5-8 show the foot candles at the property boundary, however, the sheets do not show foot candles outside the property line. Staff is concerned that there may be light trespass across the property boundary into the public right-of-way as there are numerous locations along the perimeter that have medium to high foot candle measures. For instance, foot candles measuring 1.0 and 2.8 adjacent to the north property boundary and alley measurements of 9.1 and 8.8. There may be no light trespass across the property boundary per KMC 17.132.030 stating “All existing and/or new exterior lighting shall not cause light trespass and shall protect adjacent properties from glare and excessive lighting.” Figure 1 in the KMC only refers to light emitting from inside buildings, not exterior lighting.

a. *Required Action:* Please revise the photometric study to include foot candle measurements just outside the property boundary for verification there is no light trespass. Please note that all exterior lighting including planter, tree, and water feature lights should be included in the calculations.

12. *Comment:* Per KMC 17.132.030.F “Uplighting. Uplighting is prohibited in all zoning districts, except as where permitted in this chapter.” Staff does not believe that the “Lip of Planter” lighting or the water feature lighting fully complies with the limitation on uplighting. As outlined in KMC 17.132.030.H.2 “All exterior lighting fixtures shall be full cutoff fixtures with the light source fully shielded, except as exempted in this chapter.” As such, light fixtures must be fully shielded as to not cast light up or sideways, always casting light down as illustrated in Figure 2. For instance, the “Under Cap Lighting” is compliant as it is fully shielded based on the image.
  - a. *Required Action:* Please revised the lighting proposed to comply with the dark sky compliant requirements and fixture guidelines.
13. *Comment:* Stair tower lighting that must remain consistently illuminated 24 hours per day due to building code requirements must be mitigated with glazing or other treatments to windows that limit the amount of light emitting from the building overnight.
  - a. *Required Action:* Please provide clarity on whether any glazing is proposed for the central stair tower and whether consistent light will emit from this feature in all hours of the evening.
14. *Comment:* The street light illumination levels and placement of lights may not be in the correct location based on current discussions with the City Engineer and Planning departments.
  - a. *Required Action:* As this is a preapplication design review. No further action on street light location is required at this time, however, final street light location will be determined at the time of final design review if the project moves forward.

#### Design Review Comments

The following comments are provided for consideration by the applicant. Revisions to the plans are not required, but recommended, unless otherwise noted. If revisions are not made, the following comments will be provided to the Planning and Zoning Commission for their consideration and feedback.

1. *Comment:* Per KMC 17.96.060.B.2 and 3, “2. For nonresidential portions of buildings, front building facades and facades fronting a pedestrian walkway shall be designed with ground floor storefront windows and doors with clear transparent glass. Landscaping planters shall be incorporated into facades fronting pedestrian walkways.” and “3. For nonresidential portions of buildings, front facades shall be designed to not obscure views into windows.” These two standards serve to demonstrate the importance of creating an active and interesting pedestrian environment. Landscaping is encouraged, but not if it obscures views into windows. Staff has concerns that the ground floor façade of the building along Sun Valley Rd and the portion of N 1<sup>st</sup> Ave closest to Sun Valley Rd do not meet the intent of this standard as the architectural design of the project does not engage with pedestrians and serves more to privatize the space for residents and guests that create an environment that is active and interesting for pedestrians. More specifically, the landscape planter boxes that wrap the corner where the outdoor area is are 3-feet in height and the proposed plantings in the landscape boxes are shrubs and hedge like species that can grow quite tall over time. Additionally, the façade facing Sun Valley Rd has minimal storefront characteristics with transparent glass. Staff understands that the interior program of the building is driving the façade configurations, however, the proposed façade on the Sun Valley Rd side of the project does not meet the city’s design review objectives. Sun Valley Rd is one of our more heavily traveled corridors by pedestrians. This intersection is the location of two new projects in recent years that intensely serve to engage pedestrians with the Maude’s retail and coffee shop on one corner and a new office building on another that has well-articulated store front facades on both street frontages. The Commission will be keenly focused on continuing the design success of the other projects as this is such an important intersection within the downtown.
  - a. *Required Action:* Staff recommends the applicant consider revising the landscape planter and plantings proposed around the outdoor gathering area to create a more engaging, less

privatize program for the outdoor space. Additionally, staff recommends the applicant evaluate ways to integrate additional transparency onto the Sun Valley Rd side of the project. Staff recommends an evaluation of bringing the ground floor uses around to the Sun Valley Rd side of the building.

2. *Comment:* Per KMC 17.96.060.B.1 “Facades facing a street or alley or located more than five feet from an interior side property line shall be designed with both solid surfaces and window openings to avoid the creation of blank walls and employ similar architectural elements, materials, and colors as the front facade.” The Commission has paid special attention to interior walls that are exposed due to adjacent buildings that are of smaller scale than the proposed project. This is especially important when adjacent buildings are one-story structures adjacent to a three-story structure. Although staff believes the setback nature of the project mitigates some of these concerns, staff does have concern about the lack of material variation on the east elevation shown on Sheet A8. Include the outline of the adjacent buildings on the elevations for context
  - a. *Required Action:* As part of the resubmittal materials, please revise the elevation on Sheet A8 to show the outlined of the adjacent building for reference. Staff recommends the applicant consider some material variations to break up the east elevation portions of the building that are exposed.

#### Interim Ordinance Conformance

As you may know, the Ketchum City Council is reviewing an interim ordinance on Monday, September 19, 2022, to revise permitted uses and development standards in portions of the downtown. The project, as proposed, does not conform to many of the requirements of the new regulations. Although the ordinance has not been adopted and is not effective at this time, the project may not be exempt from the pending regulations depending on adoption timeframes and applicability as approved by City Council. The following items are provided as a courtesy for your information.

1. The proposed project exceeds the base FAR of 1.0. For projects that exceed the base FAR and receive a density bonus, a minimum number of residential units will be required. For a lot of this size, a 100% residential project would be required to provide a minimum of 21 residential units. Depending on the amount of commercial space, this number may decrease. Final determination of number of units required will depend on final use determination of the proposed ground floor use.
2. Ground floor residential uses with street frontage will no longer be permitted on this property and the ground floor will be required to have at least 55% of the GFA of the ground floor be commercial uses
3. No individual residential unit may exceed 3,000 square feet. The proposed units would not comply with this requirement.
4. The code will no longer allow the number of parking spaces to be more than what is required by the municipal code, therefore, the additional parking proposed by the project will not be permitted.
5. Projects subject to design review must show general conformance with the goals, policies, and objectives of the comprehensive plan. The purpose of the interim ordinance is to increase the supply of housing in the downtown and ensure vibrant and active uses on the ground floor. As proposed, staff does not believe this project forwards the goals and objectives of the comprehensive plan as the proposed project is a significant underutilization of a key piece of property in the downtown along one of our busiest vehicular and pedestrian corridors.

For some of the standards outlined above, relief can be granted through the Conditional Use Permit process per the interim ordinance. A separate application form and justification of how the project meets the Conditional Use Permit criteria will be required. Staff will provide an update to the applicant following the September 19, 2022 hearing as to remain transparent about applicability of the proposed ordinance.

### **Fire Department**

Please see the attached comments from the fire department. Additionally, our Fire Marshall is currently working remotely with limited download capabilities. He noted that a standpipe may be required for the project. These items can be addressed for final design review and building permit application, no revisions are required at this time.

### **Water and Sewer Departments**

The comments below can be addressed at the time of building permit, no revisions are required at this time.

Comments from Water Department

1. Comments were not received as of the date of this letter. Comments will be sent under separate cover.

Comments from Sewer

1. No comments.

### **Streets and Engineering**

Please see the attached memo with comments from the City Engineer. These comments are informational at this time and will need to be resolved for the final design review submittal if the project moves forward. No comments on the preapplication were received by the Streets department, however, additional comments from streets will be provided for final design review.

Please provide a revised plan set addressing all applicable comments as noted above. Please also provide a written response to each comment noting if and where changes on the plan set were made. Once revised application materials and a written response to questions above are received, staff will conduct another review to determine if the information provided is sufficient to deem the application complete.

Please do not hesitate to email or call should you have any questions.

Sincerely,



Morgan Landers, AICP  
Senior Planner  
City of Ketchum Department of Planning and Building

EXHIBIT 4



**CITY OF KETCHUM**  
**MEETING MINUTES OF THE CITY COUNCIL**  
Monday, September 19, 2022

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**CALL TO ORDER:** *(00:00:09 in video)*

Mayor Bradshaw called the meeting of the Ketchum City Council to order at 4:00 p.m.

**Roll Call:**

Mayor Neil Bradshaw  
Courtney Hamilton  
Michael David (via teleconference)  
Jim Slanetz  
Amanda Breen

**Also Present:**

Jade Riley - City Administrator  
Lisa Enourato – Interim City Clerk  
Shellie Gallagher – Treasurer  
Suzanne Frick – Director Planning and Building

**COMMUNICATIONS FROM MAYOR AND COUNCILORS:**

Mayor Bradshaw noted that over \$300,000 in cash and gift cards have been received for the victims of the Limelight Condo Fire. He also noted the work done by the Bald Mountain Stewardship Project to remove dead trees from the mountain, creating some new ski runs, reduce fire hazard, and creating a healthier forest.

**AMENDED AGENDA** *(00:02:30 in video)*

Agenda amended to add item 16 to the Consent Agenda.

**Motion to approve the Amended Agenda.**

Motion made by Amanda Breen; Seconded by Courtney Hamilton.

**Ayes:** Amanda Breen, Michael David, Courtney Hamilton, Jim Slanetz.

**Nays:** None

**CONSENT AGENDA:** *(00:03:22 in video)*

Council discussed heated driveways and energy usage.

**Motion to approve the Consent Agenda items 9, 10, 16.** *(00:16:33 in video)*

Motion made by Amanda Breen; Seconded by Michael David.

**Ayes:** Amanda Breen, Michael David, Neil Bradshaw

**Nays:** Courtney Hamilton, Jim Slanetz.

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**Motion to approve the Consent Agenda items 2 - 8 and 11 - 15. (00:35:05 in video)**

Motion made by Courtney Hamilton; Seconded by Jim Slanetz.

**Ayes:** Amanda Breen, Michael David, Courtney Hamilton, Jim Slanetz.

**Nays:** None

### **PUBLIC HEARING**

**17. Second Reading of Ordinance 1242, amending Chapter 10.05.03 (Traffic Authority) of the Ketchum Municipal Code (00:35:30 in video)**

Public Comment:

No Public Comments

**Motion to waive Third Readings of Ordinance 1242 and read by title only.**

Motion made by Jim Slanetz; Seconded by Amanda Breen.

**Ayes:** Amanda Breen, Michael David, Courtney Hamilton, Jim Slanetz.

**Nays:** None

Second Reading by Lisa Enourato. (00:38:12 in video)

**Motion to approve Ordinance 1242 and read by title only.**

Motion made by Courtney Hamilton; Seconded by Amanda Breen.

**Ayes:** Amanda Breen, Michael David, Courtney Hamilton, Jim Slanetz.

**Nays:** None

**18. Recommendation to hold a public hearing, review, and conduct a first reading of Interim Ordinance 1234 amending certain sections of Title 16 and Title 17 of the Ketchum Municipal Code. (00:38:47 in video)**

Public Comment:

Jim Laski (00:57:33 in video)

Brenda Moczygemba (01:01:20 in video)

Tom Drougas (01:04:22 in video)

**Motion to approve the First Reading of Interim Ordinance 1234 as read by Title only and schedule for second reading. (01:49:40 in video)**

Motion made by Courtney Hamilton; Seconded by Jim Slanetz.

**Ayes:** Amanda Breen, Michael David, Courtney Hamilton, Jim Slanetz.

**Nays:** None

First Reading by Lisa Enourato. (01:50:07 in video)

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**NEW BUSINESS:**

**EXECUTIVE SESSION** (01:51:01 in video)

**Motion to move to executive session pursuant to Idaho Code §74-206(1)(f) to communicate with legal counsel on pending, imminent, or threatened litigation.**

Motion made by Amanda Breen; Seconded by Jim Slanetz.

**Ayes:** Amanda Breen, Michael David, Courtney Hamilton, Jim Slanetz.

**Nays:** None

**ADJOURNMENT:**

**Motion to adjourn at 6:00 p.m.**

Motion made by Courtney Hamilton; Seconded by Amanda Breen.

**Ayes:** Amanda Breen, Michael David, Courtney Hamilton, Jim Slanetz.

**Nays:** None



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Mayor Neil Bradshaw



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Interim City Clerk Lisa Enourato

## EXHIBIT 5

Below is a partial transcript of the September 19, 2022 Council Meeting. Applicants have highlighted the speaker when possible and removed text in the interest of brevity.

760

00:38:41,300 --> 00:38:46,700

Okay. Nothing else required. Thank you. Okay, let's

761

00:38:46,700 --> 00:38:50,100

go on to public hearing item number 18

762

00:38:49,100 --> 00:38:52,800

recommendation to hold

763

00:38:52,800 --> 00:38:55,200

a public hearing review and conduct a first reading of

764

00:38:55,200 --> 00:39:00,100

interim Ordinance. One, two, three, four amending certain

765

00:38:59,100 --> 00:39:02,200

sections of title 16 and title 17.

766

00:39:02,200 --> 00:39:05,500

I'm going to turn it now over to Morgan

767

00:39:05,500 --> 00:39:07,600

take it from here. Thank you more than

Morgan Landers Comments

768

00:39:08,500 --> 00:39:11,400

Evening everyone. How are you Morgan Landers senior

769

00:39:11,400 --> 00:39:14,000

planner for the city of Ketchum. So we are back in front

770

00:39:14,100 --> 00:39:17,700

of you today with interim Ordinance. One, two, three four. I'm

771

00:39:17,700 --> 00:39:20,400

going to give kind of a high level overview of with what

772

00:39:20,400 --> 00:39:23,400

was included in the staff report, but I do have all of the background information

773

00:39:23,400 --> 00:39:26,300

if anyone has questions on what went to the Planning  
774

00:39:26,300 --> 00:39:28,500

and Zoning commission or anything that we talk about here today.  
775

00:39:30,100 --> 00:39:33,200

So what I will talk about is kind of a brief overview kind of  
776

00:39:33,200 --> 00:39:36,300

why we're here what we've done to date kind of the timeline where  
777

00:39:36,300 --> 00:39:39,300

we've come from what we've done and then I am  
778

00:39:39,300 --> 00:39:42,600

going to review some staff recommendations that are reflected in the interim ordinance,  
779

00:39:42,600 --> 00:39:45,300

and then we'll open it up for discussion. So I do want to be mindful  
780

00:39:45,300 --> 00:39:46,900

of time, but I also want to be thorough

Morgan Landers Comments

945

00:47:57,200 --> 00:48:00,000

you today to further kind of move the needle in the right direction.

Morgan Landers Comments

946

00:48:03,200 --> 00:48:06,400

So there are two areas in the interim ordinance that's  
947

00:48:06,400 --> 00:48:09,600

in front of you where staff is making a different recommendation than the  
948

00:48:09,600 --> 00:48:12,300

Planning and Zoning commission made and the Planning and Zoning  
949

00:48:12,300 --> 00:48:15,500

commission had a very robust and great dialogue around the interim ordinance.  
950

00:48:15,500 --> 00:48:18,200

They were very thoughtful the two areas where they really  
951

00:48:18,200 --> 00:48:21,600

kind of struggled a bit was the applicability of  
952

00:48:21,600 --> 00:48:23,900  
the ordinance as it relates to pre-applications.  
953

00:48:24,700 --> 00:48:27,300  
And the location of community housing units where  
954

00:48:27,300 --> 00:48:28,500  
those bits should be permitted.  
955

00:48:29,300 --> 00:48:32,500  
and so as an overview the commission has made the recommendation that  
956

00:48:32,500 --> 00:48:35,400  
the ordinance not be applicable to pre-applications that have  
957

00:48:35,400 --> 00:48:39,100  
been deemed complete as of the effective date but staff  
958

00:48:38,100 --> 00:48:41,600  
actually thinks that we should apply  
959

00:48:41,600 --> 00:48:44,600  
the interim ordinance to pre-applications if they haven't had  
960

00:48:44,600 --> 00:48:47,400  
one of review meeting with the commission prior to  
961

00:48:47,400 --> 00:48:49,300  
the effective date and I'll talk about why  
962

00:48:50,900 --> 00:48:53,300  
The location of community housing units the commission

#### Morgan Landers Comments

972  
00:49:22,200 --> 00:49:25,700  
So the first one under applicability for  
973

00:49:25,700 --> 00:49:28,200  
pre-application. So on the right hand side, I've just  
974

00:49:28,200 --> 00:49:31,600  
kind of done a little bit of a flow chart to show what pre-applications are  
975

00:49:31,600 --> 00:49:35,000

because we don't do them all the time in the  
976

00:49:34,400 --> 00:49:37,500

code. They are voluntary in certain instances  
977

00:49:37,500 --> 00:49:40,100

in the mountain overlay Zone District, or if you  
978

00:49:40,100 --> 00:49:43,200

have a project that's less than four stories or on a lot that's less  
979

00:49:43,200 --> 00:49:47,000

than 11,000 square feet. We do require pre-applications  
980

00:49:46,200 --> 00:49:49,500

for projects that are more than four stories or  
981

00:49:49,500 --> 00:49:52,300

more than 11,000 square feet. And that was actually a change  
982

00:49:52,300 --> 00:49:55,900

that we made a little bit earlier this year. When we adopted the  
983

00:49:55,900 --> 00:49:58,100

permanent ordinance for historic preservation. We also  
984

00:49:58,100 --> 00:50:00,100

made some tweaks to the pre-application requirements.  
985

00:50:01,200 --> 00:50:04,900

Once a project has gone through a pre-application design review the  
986

00:50:04,900 --> 00:50:06,100

Planning and Zoning Commission.  
987

00:50:07,400 --> 00:50:10,500

They may they make in kind of informal recommendations. So  
988

00:50:10,500 --> 00:50:13,800

pre-applications are providing guidance providing  
989

00:50:13,800 --> 00:50:16,800

feedback. There's no noticing.  
990

00:50:16,800 --> 00:50:19,200

It's not a public hearing. It's only a public meeting.  
991

00:50:20,200 --> 00:50:23,600

And the only time we notice pre-application design review  
992

00:50:23,600 --> 00:50:26,400

applications is in the

993

00:50:26,400 --> 00:50:29,500

mountain overlay Zone District. There's also no

994

00:50:29,500 --> 00:50:32,200

approval or no vesting of a project the Planning

995

00:50:32,200 --> 00:50:35,800

and Zoning commission doesn't make a decision. They provide that feedback and

996

00:50:35,800 --> 00:50:38,300

the only motion they make is to move the project through

997

00:50:38,300 --> 00:50:41,200

to a formal design review application. So there's

998

00:50:41,200 --> 00:50:43,300

no approval or denial at that point in time.

999

00:50:44,700 --> 00:50:47,700

so at the community at the commission discussion, they really

1000

00:50:47,700 --> 00:50:51,300

felt that we should be honoring developments in the process considering

1001

00:50:50,300 --> 00:50:53,300

the time and energy and investment that

1002

00:50:53,300 --> 00:50:56,500

is put into these applications and we certainly understand

1003

00:50:56,500 --> 00:50:59,700

the desire of providing that flexibility but staff

1004

00:50:59,700 --> 00:51:02,400

is making the recommendation that we should really be

1005

00:51:02,400 --> 00:51:05,400

using the pre-application design

1006

00:51:05,400 --> 00:51:09,900

review meeting with the commission as the Milestone because

1007

00:51:11,300 --> 00:51:14,600

just having an application that's deemed complete. The only feedback  
1008

00:51:14,600 --> 00:51:17,200

that an applicant is getting at that point in time is from staff  
1009

00:51:17,200 --> 00:51:20,800

and it's usually very preliminary in the beginning. It's really  
1010

00:51:20,800 --> 00:51:23,200

the commission that provides that feedback and really  
1011

00:51:23,200 --> 00:51:27,000

gives that substantive guidance to the applicant rather  
1012

00:51:26,200 --> 00:51:29,400

than just staff providing initial thoughts  
1013

00:51:29,400 --> 00:51:32,000

and concerns related to conformance with the zoning regulations.  
1014

00:51:32,800 --> 00:51:35,500

So as of right now staff is making the recommendation that  
1015

00:51:35,500 --> 00:51:38,300

we use the pre-application design  
1016

00:51:38,300 --> 00:51:41,500

review meeting as the Milestone rather than decent complete.  
1017

00:51:44,900 --> 00:51:47,100

So the second area where staff is making  
1018

00:51:47,100 --> 00:51:50,700

a different recommendation and the Planning Commission is in where location  
1019

00:51:50,700 --> 00:51:53,400

of community housing units can be had so

Jim Laski Comments

1134

00:57:32,500 --> 00:57:35,200

Okay, I'm Jim Laskey. I'm here on behalf of South  
1135

00:57:35,200 --> 00:57:40,000

tooth serenade leave. We are the only application that  
1136

00:57:39,200 --> 00:57:43,300



has been submitted to mandatory not  
1137

00:57:42,300 --> 00:57:45,800  
voluntary pre-application review  
1138

00:57:45,800 --> 00:57:48,400  
submitted prior to this ordinance going.  
1139

00:57:49,300 --> 00:57:53,300  
To the Planning and Zoning commission paid our  
1140

00:57:53,300 --> 00:57:56,200  
fees prior to this application going to the  
1141

00:57:56,200 --> 00:57:56,800  
Planning Commission.  
1142

00:57:57,600 --> 00:58:00,400  
The applicant the pre-app application is  
1143

00:58:00,400 --> 00:58:03,600  
exactly the same application as the design review applications.  
1144

00:58:03,600 --> 00:58:06,400  
Do this is what it is just received Friday  
1145

00:58:06,400 --> 00:58:09,800  
after hours notice that our application  
1146

00:58:09,800 --> 00:58:12,800  
was deemed the not complete. We'll  
1147

00:58:12,800 --> 00:58:13,400  
move forward with that.  
1148

00:58:14,100 --> 00:58:17,300  
So my comments on this as they were  
1149

00:58:17,300 --> 00:58:20,700  
at pnz deal with Section one as to  
1150

00:58:20,700 --> 00:58:22,600  
the application of this new ordinance.  
1151

00:58:23,600 --> 00:58:26,400  
It is my view and I know your  
1152

00:58:26,400 --> 00:58:27,900

council is on that.

1153

00:58:29,300 --> 00:58:32,400

The language. Well, first of all, the language is nothing

1154

00:58:32,400 --> 00:58:35,100

to do with teens what p and Z recommended so, I'm curious

1155

00:58:35,100 --> 00:58:38,900

why pn's even recommends if it's not going to be incorporated into

1156

00:58:38,900 --> 00:58:42,000

the proposal that you guys see but second

1157

00:58:41,100 --> 00:58:45,000

of all it's clearly violates Idaho

1158

00:58:44,500 --> 00:58:47,700

law citizens against Linscott

1159

00:58:47,700 --> 00:58:49,000

the Bonner and

1160

00:58:50,400 --> 00:58:53,400

Taylor V. Canyon County of which say

1161

00:58:53,400 --> 00:58:56,900

that a new ordinance is set in

1162

00:58:56,900 --> 00:59:00,200

comes into place at the time of the application not

1163

00:58:59,200 --> 00:59:02,200

at the time an application is

1164

00:59:02,200 --> 00:59:05,400

deemed complete by subjective staff or not

1165

00:59:05,400 --> 00:59:08,300

when a staff decides to put it on a meeting schedule

1166

00:59:08,300 --> 00:59:09,500

so that it could be

1167

00:59:10,200 --> 00:59:12,200

so I think there's a real problem if

1168

00:59:13,100 --> 00:59:16,600

you adopt the language in here and our project

1169

00:59:16,600 --> 00:59:18,700

is not exempt from this.

1170

00:59:19,600 --> 00:59:21,300

new ordinance

1171

00:59:22,700 --> 00:59:25,500

I think there's some other problems in the ordinance

1172

00:59:25,500 --> 00:59:29,200

the comp plan stuff. I would say is problematic

1173

00:59:28,200 --> 00:59:31,200

too. Because first you're comp plan

1174

00:59:31,200 --> 00:59:34,400

is dated in second of all, it was not written to being

1175

00:59:34,400 --> 00:59:37,400

incorporated as part of a coordinate. So if

1176

00:59:37,400 --> 00:59:40,600

you just take it general comp plan that wasn't designed to

1177

00:59:40,600 --> 00:59:43,600

be an ordinance and you say oh we can say this conforms

1178

00:59:43,600 --> 00:59:46,300

or doesn't form comp plan is written in ways that

1179

00:59:46,300 --> 00:59:49,600

has Alternatives and what have you so you can typically always

1180

00:59:49,600 --> 00:59:51,900

find something that conforms with the comp plan or doesn't

1181

00:59:52,600 --> 00:59:55,700

And I think that's a dangerous approach to

1182

00:59:55,700 --> 00:59:58,200

take in an ordinance and slipping in those

1183

00:59:58,200 --> 01:00:01,300

couple of words really gives a ton of authority to the planning and

1184

01:00:01,300 --> 01:00:01,500

zoning.

1185

01:00:04,100 --> 01:00:07,400

As a final statement, I think it's it's

1186

01:00:07,400 --> 01:00:10,400

sad that there's nobody really here commenting. I

1187

01:00:10,400 --> 01:00:13,300

don't know how many comments we might have online or not. But I feel

1188

01:00:13,300 --> 01:00:17,100

like the notice Provisions while I'm sure conform with law noticing

1189

01:00:16,100 --> 01:00:19,300

this hearing on a Thursday for a Monday.

1190

01:00:19,300 --> 01:00:22,700

So it misses the newspaper when you're considering an

1191

01:00:22,700 --> 01:00:25,500

ordinance that impacts a large number of property

1192

01:00:25,500 --> 01:00:28,200

owners and is going to make I don't

1193

01:00:28,200 --> 01:00:32,300

know if staff has has calculator or not, but dozens.

1194

01:00:31,300 --> 01:00:33,100

If not,

1195

01:00:34,200 --> 01:00:37,500

It's more than dozens of properties non-conforming properties, which

1196

01:00:37,500 --> 01:00:40,300

will make it impossible for them to get loans or difficult

1197

01:00:40,300 --> 01:00:43,400

for them to get loans and do all lots of problems. I think

1198

01:00:43,400 --> 01:00:46,400

you need to make sure that people are impacted by this ordinance

1199

01:00:46,400 --> 01:00:47,500

are aware of it.

1200

01:00:48,200 --> 01:00:51,900

So that they can come out and comment so limit my  
1201

01:00:51,900 --> 01:00:54,400  
comments to that. I love the opportunity to talk  
1202

01:00:54,400 --> 01:00:58,100  
to Matt about illegality of the applicability  
1203

01:00:57,100 --> 01:01:00,700  
of the ordinance and I certainly hope that you  
1204

01:01:00,700 --> 01:01:03,200  
don't wave readings of this because I think this is a really  
1205

01:01:03,200 --> 01:01:04,500  
important ordinance.  
1206

01:01:05,300 --> 01:01:08,100  
Yeah, thank you. Jim any other  
1207

01:01:08,100 --> 01:01:09,500  
comments people in the room?  
1208

01:01:11,800 --> 01:01:14,200  
Any other comments from people online?  
1209

01:01:16,100 --> 01:01:18,900  
We do we have one commenter Brenda. Go ahead.

1210  
01:01:19,900 --> 01:01:22,300  
Hi, can you hear me? Yeah, go ahead Brenda.

#### Commissioner Moczygemba Comments

1211  
01:01:23,200 --> 01:01:25,900  
Hi Brenda mocks again, but planning commissioner.

1212  
01:01:27,100 --> 01:01:30,700  
I would have to second what Mr. Lasky

1213  
01:01:30,700 --> 01:01:33,900  
had to say. I'm glad that staff pointed out the differences

1214  
01:01:33,900 --> 01:01:37,300  
between what staff how they

1215

01:01:37,300 --> 01:01:40,500  
are presenting this interim ordinance to city council  
1216

01:01:40,500 --> 01:01:43,600  
versus how the Planning and Zoning commission had  
1217

01:01:43,600 --> 01:01:46,400  
recommended or made the motion to recommend  
1218

01:01:46,400 --> 01:01:49,600  
with revisions. I think we as Morgan  
1219

01:01:49,600 --> 01:01:52,400  
said we beat this up pretty good. We went down one  
1220

01:01:52,400 --> 01:01:55,300  
by one and had very thorough conversations on  
1221

01:01:55,300 --> 01:01:59,300  
each of the sections and I the  
1222

01:01:58,300 --> 01:02:02,500  
main difference being in the applicability and  
1223

01:02:03,800 --> 01:02:06,500  
Again, we went round and round in this conversation, but  
1224

01:02:06,500 --> 01:02:09,900  
what it came down to was about  
1225

01:02:09,900 --> 01:02:13,100  
fairness and when  
1226

01:02:12,100 --> 01:02:15,800  
a project is submitted for pre-application  
1227

01:02:15,800 --> 01:02:18,800  
the city of Ketchum requirements for  
1228

01:02:18,800 --> 01:02:20,600  
pre-application designer review.  
1229

01:02:21,300 --> 01:02:24,300  
Are very much the exact same  
1230

01:02:24,300 --> 01:02:27,800  
as they are for a full-on design review. And  
1231

01:02:27,800 --> 01:02:30,300  
so the what was discussed is that  
1232

01:02:30,300 --> 01:02:33,300  
the time and money has been just has been  
1233

01:02:33,300 --> 01:02:36,700  
spent by the developer the property owner.  
1234

01:02:36,700 --> 01:02:39,400  
Whoever it may be for the  
1235

01:02:39,400 --> 01:02:43,300  
design team to develop architectural drawings.  
1236

01:02:44,200 --> 01:02:46,400  
civil drawings landscape drawings  
1237

01:02:47,300 --> 01:02:51,000  
lighting locations photometric studies  
1238

01:02:50,200 --> 01:02:53,400  
on and on it goes so while it  
1239

01:02:53,400 --> 01:02:56,700  
may be not a while. It  
1240

01:02:56,700 --> 01:03:00,800  
may be an informal recommendation and there's no vesting I  
1241

01:02:59,800 --> 01:03:02,900  
think out of fairness these  
1242

01:03:02,900 --> 01:03:04,100  
projects that have been  
1243

01:03:05,700 --> 01:03:08,300  
on someone's plate and time and money  
1244

01:03:08,300 --> 01:03:11,500  
spent for six to nine to maybe even 12 months.  
1245

01:03:13,500 --> 01:03:16,800  
In my mind, it was only fair to say. Hey pre-application  
1246

01:03:16,800 --> 01:03:19,900  
design review  
1247

01:03:19,900 --> 01:03:23,000  
applications that have been deemed complete should not  
1248

01:03:22,200 --> 01:03:23,800  
be under.  
1249

01:03:25,600 --> 01:03:26,900  
this interim ordinance  
1250

01:03:28,700 --> 01:03:31,500  
and then I was the sole  
1251

01:03:31,500 --> 01:03:35,600  
commissioner that was not entirely  
1252

01:03:35,600 --> 01:03:38,300  
convinced of the section talking about.  
1253

01:03:40,200 --> 01:03:43,900  
Being able to evaluate projects solely based on the comp  
1254

01:03:43,900 --> 01:03:46,500  
plan. I believe that's where we need to head in  
1255

01:03:46,500 --> 01:03:48,800  
restructuring our  
1256

01:03:50,800 --> 01:03:53,300  
Our entire zoning code, which is essentially where  
1257

01:03:53,300 --> 01:03:56,600  
where we're headed, but for the sake of this interim  
1258

01:03:56,600 --> 01:04:01,500  
ordinance, I just didn't think that it was appropriate to be  
1259

01:04:01,500 --> 01:04:05,000  
in this interim ordinance.  
1260

01:04:04,100 --> 01:04:06,800  
Good for one year. Thank you.

#### Councilwoman Hamilton Comments

1462  
01:14:16,400 --> 01:14:19,500  
is most important. So I like the idea of including  
1463



01:14:19,500 --> 01:14:22,800

that in this in this

1464

01:14:22,800 --> 01:14:25,200

ordinance in terms of

1465

01:14:25,200 --> 01:14:26,000

applicability.

1466

01:14:28,100 --> 01:14:32,600

I don't have a strong feeling when we are the other. I mean, I understand what

1467

01:14:31,600 --> 01:14:34,400

Brenda is saying Mr. Lasky. I

1468

01:14:34,400 --> 01:14:38,400

think that a lot of work has gone into projects that

1469

01:14:37,400 --> 01:14:39,100

being said.

1470

01:14:40,400 --> 01:14:43,100

This has been and this ordinance has been in the

1471

01:14:43,100 --> 01:14:46,400

public records since at least February. It's been

1472

01:14:46,400 --> 01:14:49,200

discussed since then. So I think that there is something to

1473

01:14:49,200 --> 01:14:52,200

be said about, you know projects who have been working.

1474

01:14:53,100 --> 01:14:53,400

in

1475

01:14:54,500 --> 01:14:58,300

potential conflict with this ordinance that

1476

01:14:57,300 --> 01:15:00,400

this this is been out

1477

01:15:00,400 --> 01:15:00,900

there for a while.

1478

01:15:02,600 --> 01:15:05,500

and that if they haven't had an opportunity to

1479

01:15:06,600 --> 01:15:09,500

How to take public comment or have  
1480

01:15:09,500 --> 01:15:13,100

public input via the pnz that  
1481

01:15:12,100 --> 01:15:15,300

they should be subject to this so I  
1482

01:15:15,300 --> 01:15:18,500

don't know I'm curious what the rest of the council has to say on the  
1483

01:15:18,500 --> 01:15:20,100

applicability standard.

#### Councilman Slanetz Comments

1561

01:19:24,400 --> 01:19:27,700

vision of the city is fresh. I think makes that  
1562

01:19:28,500 --> 01:19:32,400

a much better way to go about that as far  
1563

01:19:32,400 --> 01:19:36,700

as Mr. Lasky's things. I

1564

01:19:35,700 --> 01:19:38,200

guess that was the question comes down to  
1565

01:19:38,200 --> 01:19:41,400

whether you're doing it at the time of the pre-application or  
1566

01:19:41,400 --> 01:19:42,500

later on.

1567

01:19:44,700 --> 01:19:47,100

I guess my thing on that is can we you know  
1568

01:19:47,100 --> 01:19:51,200

set it up for future pre-application, but anyone that's been has, you  
1569

01:19:50,200 --> 01:19:51,600

know at the point.

1570

01:19:52,700 --> 01:19:55,300

That they're this far into it and you know changing the

1571

01:19:55,300 --> 01:19:59,400

changing the kind of the platform when they've  
1572

01:19:59,400 --> 01:20:02,300

already gone through a lot of the legwork I think is a little tricky.  
1573

01:20:02,300 --> 01:20:05,300

I'm not sure if we can get to the point where we can say like  
1574

01:20:05,300 --> 01:20:08,500

in the future, you know, we're gonna look at it from at  
1575

01:20:08,500 --> 01:20:12,100

the pre-application level and make  
1576

01:20:11,100 --> 01:20:14,500

decisions based on  
1577

01:20:14,500 --> 01:20:17,800

that. But if the projects  
1578

01:20:17,800 --> 01:20:20,500

already in the works, I don't know how that works. Maybe Morgan  
1579

01:20:20,500 --> 01:20:20,800

has a  
1580

01:20:21,600 --> 01:20:23,300

Suzanne has an idea, you know.  
1581

01:20:24,300 --> 01:20:27,400

I guess it's kind of like a great. It's kind of a grandfather didn't think

Mayor Bradshaw Comments

1582

01:20:27,400 --> 01:20:30,400

if they really don't depend all it is an incredibly  
1583

01:20:30,400 --> 01:20:33,700

if I'm wrong. It's or it depends whether they're in application or  
1584

01:20:33,700 --> 01:20:36,200

pre-application if then pre-application that  
1585

01:20:36,200 --> 01:20:39,600

is not considered a you know  
1586

01:20:39,600 --> 01:20:42,900  
could be and again it's a policy call. It could  
1587  
01:20:42,900 --> 01:20:47,000  
be that they've not really applied and only  
1588  
01:20:45,300 --> 01:20:49,200  
have they deemed applied  
1589  
01:20:48,200 --> 01:20:52,100  
if they've gone a full application and  
1590  
01:20:51,100 --> 01:20:54,300  
Dean complete that's kind of  
1591  
01:20:54,300 --> 01:20:58,500  
would be our recommendation. But you  
1592  
01:20:58,500 --> 01:21:01,600  
know others who have projects in the work are arguing  
1593  
01:21:01,600 --> 01:21:04,700  
that the determination or policy core that makes  
1594  
01:21:04,700 --> 01:21:07,600  
it earlier and that'll be  
1595  
01:21:07,600 --> 01:21:12,900  
a council decision. Again, our  
1596  
01:21:11,900 --> 01:21:14,400  
recommendation is that once  
1597  
01:21:14,400 --> 01:21:18,500  
a project is only deemed applied  
1598  
01:21:17,500 --> 01:21:19,900  
for once. It's actually  
1599  
01:21:21,400 --> 01:21:24,700  
Put in full and formal application not  
1600  
01:21:24,700 --> 01:21:28,200  
pre-application, which tends to be losing? Yeah.

Morgan Landers Comments

1601

01:21:29,600 --> 01:21:32,600

And pardon me for my Interruption council members, but  
1602

01:21:32,600 --> 01:21:35,500

just to clarify mayor Bradshaw. We are  
1603

01:21:35,500 --> 01:21:38,900

kind of trying to kind of split the baby a little bit with what  
1604

01:21:38,900 --> 01:21:42,400

the Planning Commission recommended and what we initially proposed  
1605

01:21:41,400 --> 01:21:44,300

to the Planning Commission. And so  
1606

01:21:44,300 --> 01:21:47,100

the initial ordinance took a much harder line that said  
1607

01:21:47,100 --> 01:21:50,300

basically if you have a pre-application that doesn't count  
1608

01:21:50,300 --> 01:21:53,400

at all and it really only final design review  
1609

01:21:53,400 --> 01:21:53,900

count.

1610

01:21:54,200 --> 01:21:57,100

So what we're proposing here is that if you  
1611

01:21:57,100 --> 01:22:00,400

have a pre-application that's in process and that you've had your  
1612

01:22:00,400 --> 01:22:03,400

pre-application review with the commission meaning that they've  
1613

01:22:03,400 --> 01:22:06,200

given substantial feedback. You've gotten your guidance. You've had that  
1614

01:22:06,200 --> 01:22:09,700

informal review that that would be the Milestone by  
1615

01:22:09,700 --> 01:22:12,300

which you get grandfathered and the new ordinance would not apply  
1616

01:22:12,300 --> 01:22:15,700

to you. Does that help clarify kind of yeah, that's better.

Councilwoman Breen Comments

1842

01:33:24,400 --> 01:33:24,400

Um

1843

01:33:25,900 --> 01:33:26,100

the

1844

01:33:28,300 --> 01:33:30,000

the issue about when it's applicable.

1845

01:33:31,100 --> 01:33:34,300

I see Brenda's point about all

1846

01:33:34,300 --> 01:33:37,800

of the work that's put in that you know, I think.

1847

01:33:39,500 --> 01:33:42,200

You have to remember that it is there's a ton of work put in just to get there

1848

01:33:42,200 --> 01:33:45,500

on pre-app design review. And so that's

1849

01:33:46,700 --> 01:33:49,600

I haven't come to a fast decision on that yet whether I

1850

01:33:49,600 --> 01:33:51,500

agree with the staff's recommendation on.

1851

01:33:52,500 --> 01:33:55,500

on waiting on saying it has to be that a

1852

01:33:55,500 --> 01:33:56,000

meeting is actually

1853

01:33:56,800 --> 01:33:56,900

happened

1854

01:33:59,700 --> 01:34:02,100

so I just like to think about that a little more I you know,

Councilman David Comments

1877

01:35:10,200 --> 01:35:12,000

specifically to the applicability

1878

01:35:13,400 --> 01:35:17,100

I was kind of hoping that Amanda was  
1879

01:35:16,100 --> 01:35:20,200

gonna have some more legal words of wisdom or Matt.  
1880

01:35:19,200 --> 01:35:22,200

Maybe can chime in a little bit more. I  
1881

01:35:24,400 --> 01:35:25,200

I think that.  
1882

01:35:27,800 --> 01:35:30,000

As Courtney pointed out. This has been  
1883

01:35:30,100 --> 01:35:33,500

in the works for quite a while and hopefully that people  
1884

01:35:33,500 --> 01:35:33,800

that were  
1885

01:35:35,100 --> 01:35:38,500

Were had an application at that point  
1886

01:35:38,500 --> 01:35:40,800

or talking to staff about it.  
1887

01:35:43,200 --> 01:35:46,200

But maybe it's maybe there's a line that can be drawn.

1888

01:35:49,200 --> 01:35:50,500

I'm not sure.

Morgan Landers Comments

2022

01:42:43,300 --> 01:42:47,200

well. So for instance if we had an application in process and  
2023

01:42:46,200 --> 01:42:49,300

we determined that the  
2024

01:42:49,300 --> 01:42:52,900

milestone for pre-applications to be kind of  
2025

01:42:52,900 --> 01:42:55,300

grandfathered in is that meeting with the Planning

2026

01:42:55,300 --> 01:42:58,300

Commission and pre-application hasn't made

2027

01:42:58,300 --> 01:43:01,400

that Milestone yet. They could apply for a conditional use permit

2028

01:43:01,400 --> 01:43:05,100

if they're not meeting the the ordinance Provisions. So

2029

01:43:04,100 --> 01:43:07,600

maybe they don't want to meet the minimum density

2030

01:43:07,600 --> 01:43:10,200

requirements for whatever reason or the square

2031

01:43:10,200 --> 01:43:13,400

footage of the units. So that off-ramp is available for more

2032

01:43:13,400 --> 01:43:16,200

than just those new Provisions too. So and I think sometimes that

2033

01:43:16,200 --> 01:43:16,500

gets

2034

01:43:16,700 --> 01:43:19,400

A little bit and the other piece that

2035

01:43:19,400 --> 01:43:22,700

I would mention about the comprehensive plan is that we

2036

01:43:22,700 --> 01:43:25,600

already provide a comprehensive plan analysis

2037

01:43:25,600 --> 01:43:28,300

for most projects just as a courtesy for the Planning Commission.

#### Commissioner Hamilton Comments

2142

01:49:03,300 --> 01:49:06,800

motion. So just to clarify just I'm kind of the topics of

2143

01:49:06,800 --> 01:49:09,400

consideration that we've discuss tonight the ordinance as it's

2144

01:49:09,400 --> 01:49:12,600

written and presented in our packet includes the



2145

01:49:12,600 --> 01:49:16,400

applicability that staff recommends prior

2146

01:49:15,400 --> 01:49:20,300

to or after pre-application

2147

01:49:18,300 --> 01:49:20,600

review.

2148

01:49:22,500 --> 01:49:24,900

But it prohibits basement.

2149

01:49:25,900 --> 01:49:29,100

Deed restricted units and it includes a

2150

01:49:28,100 --> 01:49:31,000

comprehensive plan. That's correct. Okay.

2151

01:49:31,600 --> 01:49:33,500

yeah, good summary the

2152

01:49:34,100 --> 01:49:35,400

Thanks, Courtney.

2153

01:49:37,600 --> 01:49:40,700

I moved to approve the first reading of

2154

01:49:40,700 --> 01:49:43,500

interim ordinance number one, two, three four as

## EXHIBIT 6



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**Motion to approve the Consent Agenda items 3-11, 13-16 (00:14:33 in video)**

Motion made by Amanda Breen; Seconded by Michael David.

**Ayes:** Amanda Breen, Michael David, Neil Bradshaw

**Nays:** Courtney Hamilton, Jim Slanetz.

**Motion to approve the Consent Agenda items 12 (00:14:44 in video)**

Motion made by Courtney Hamilton; Seconded by Amanda Breen

**Ayes:** Amanda Breen, Michael David, Courtney Hamilton

**Nays:** Jim Slanetz

**Motion to approve the Consent Agenda items 17 (00:15:17 in video)**

Motion made by Jim Slanetz; Seconded by Amada Breen

**Ayes:** Amanda Breen, Michael David, Jim Slanetz

**Nays:** None

**Recused:** Courtney Hamilton

### **NEW BUSINESS**

**18. Update on Highway 75 (Elkhorn Rd. to River Street) design and transportation improvements – City Administrator Jade Riley and Idaho Transportation Department Project Manager Nathan Jerke (00:15:40 in Video)**

Mayor Neil Bradshaw expressed disappointment in direction the Deputy Director of transportation is going and will continue to push for a safe alternative and aesthetic option for our town's transportation. Council members commented and discussed the updated information. A reminder about the Public Feedback and Open house on October 11 at the Limelight was brought up. (00:23:08 in video)

**19. Presentation and discussion regarding Warm Springs and Main Street transportation improvements – City Administrator Jade Riley, Brett Kohring (Cameron Waite HDR) (00:50:24 in video)**

**Council -Comments and discussion**  
(01:01:36 in video)

**20. Recommendation to Approve Easement and Encroachment Agreement 22790 for the dedication of a 15-foot public access and utility easement and placement of driveway pavers with snowmelt in said easement at 203 Garnet Street. – Senior Planner Morgan Landers (2:16:29 in video)**

**Motion to approve** made by: Amanda Breen: Seconded by: Courtney Hamilton

**Ayes:** Michael David, Jim Slanetz, Amanda Breen, Courtney Hamilton,

**Nays:** none

**21. Monthly Housing Update – Housing Strategist Carissa Connelly (02:29:53 in video)**

**PUBLIC HEARING**

**22. Recommendation to hold a public hearing, and approve the Warm Springs Ranch Lot 10A Lot Line Shift Final Plat & Findings of Fact, Conclusions of Law, and Decision – Associate Planner Adam Crutcher (02:27:40 in video)**

**Public Comment:**

None

**Motion to approve** made by Courtney Hamilton; Seconded by Jim Slanetz

**Ayes:** Michael David, Courtney Hamilton, Jim Slanetz.

**Nays:** None

**Recused:** Amanda Breen

**23. Recommendation to hold a public hearing, review and conduct a second reading of Interim Ordinance 1234 amending certain Sections of Title 16 and Title 17 of the Ketchum Municipal Code -Senior Planner Morgan Landers (01:45:56 in video)**

City Attorney Matt Johnson spoke on proposed amendment regarding ordinance 1234 (01:46:32 in video)

**Public Comment:**

Janet (1:50:16 in video)

Jim Lasky (01:54:18 in video)

**Council -Comments, Questions and Discussion**

(01:56:42 in video)

**Motion to approve the 2<sup>nd</sup> reading of Interim Ordinance 1234 by title only, and schedule the 3<sup>rd</sup> reading for October 17<sup>th</sup>, 2022 (2:14:44 in video)**

Motion made by: Courtney Hamilton; Seconded by: Michael David

**Ayes:** Jim Slanetz, Amanda Breen, Courtney Hamilton, Michael David

**Nays:** none

Second Reading by Lisa Enourato (02:15:07 in video)

**ADJOURNMENT:**

**Motion to adjourn at 7:09:55 PM**

Motion made by Courtney Hamilton; Seconded by Amanda Breen.

**Ayes:** Amanda Breen, Michael David, Courtney Hamilton, Jim Slanetz.

**Nays:** None

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Mayor Neil Bradshaw



Interim City Clerk Lisa Enourato

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## EXHIBIT 7

Below is a partial transcript of the October 3, 2022 P&Z Meeting.  
Applicants have highlighted the speaker when possible and removed text in  
the interest of brevity.

1996

01:45:55,200 --> 01:45:58,500

Okay, we're gonna go to public hearing

1997

01:45:58,500 --> 01:46:01,300

item 23 recommendation to hold a public hearing

1998

01:46:01,300 --> 01:46:04,300

review and conduct second reading of interim Ordinance. One,

1999

01:46:04,300 --> 01:46:07,800

two, three, four amending certain sections of title

2000

01:46:07,800 --> 01:46:10,400

16 and 17 of the kitchen municipal code.

2001

01:46:10,400 --> 01:46:13,300

Am I going to turn it over to Morgan and then you can

Morgan Landers Comments

2002

01:46:13,300 --> 01:46:16,600

take it from there. Thanks more than thank you mayor Morgan Landers

2003

01:46:16,600 --> 01:46:19,200

city planner for the city of Ketchum. We don't

2004

01:46:19,200 --> 01:46:22,300

have new information to provide you today, but our City

2005

01:46:22,300 --> 01:46:25,200

attorney Matt Johnson does have something to speak with

2006

01:46:25,200 --> 01:46:28,500

you all about on a proposed amendment to the draft that you all reviewed

2007

01:46:28,500 --> 01:46:31,200

at the last meeting. So I will now kick it over to

2008

01:46:31,200 --> 01:46:31,500

Matt.

City Attorney Comments

2009

01:46:34,500 --> 01:46:37,300

Mayor council, thanks and thanks

2010

01:46:37,300 --> 01:46:42,200



for accommodating. Sorry for the scheduling difficulty today. So Jim  
2011  
01:46:41,200 --> 01:46:44,200  
Laskey made some comments at the  
2012  
01:46:44,200 --> 01:46:48,400  
last public hearing raised some legal cases. I did  
2013  
01:46:48,400 --> 01:46:51,200  
some follow-up with him. We did some research on our  
2014  
01:46:51,200 --> 01:46:54,500  
own based on that some of some of Jim's  
2015  
01:46:54,500 --> 01:46:58,300  
comments were were well taken from the legal side regarding  
2016  
01:46:57,300 --> 01:47:00,700  
Wayne essentially  
2017  
01:47:00,700 --> 01:47:03,700  
an application's consider vested. And  
2018  
01:47:03,700 --> 01:47:07,100  
so the change I think is pretty simple in  
2019  
01:47:06,100 --> 01:47:09,600  
section. One of the interim ordinance titled  
2020  
01:47:09,600 --> 01:47:12,400  
applicability. There was a second sentence that  
2021  
01:47:12,400 --> 01:47:15,700  
it originally been added to clarify about when the  
2022  
01:47:15,700 --> 01:47:18,800  
inner or more than this should be applicable to applications that  
2023  
01:47:18,800 --> 01:47:22,300  
had been submitted for for pre design  
2024  
01:47:21,300 --> 01:47:24,200  
review, but did not  
2025  
01:47:24,200 --> 01:47:27,700  
yet had a hearing before PNC and that they would fall under  
2026  
01:47:27,700 --> 01:47:30,900  
the intermittance not be considered as vested just  
2027  
01:47:30,900 --> 01:47:34,200  
recommending the leading that sentence which  
2028  
01:47:34,500 --> 01:47:37,700

Will leave the first sentence making clear that any application that's

2029

01:47:37,700 --> 01:47:41,000

been submitted across a variety carrier areas

2030

01:47:40,700 --> 01:47:43,400

that steam substantially complete will be

2031

01:47:43,400 --> 01:47:46,200

considered under the ordinance applicable at that time

2032

01:47:46,200 --> 01:47:49,300

pretty simple change. I think it's one that

2033

01:47:49,300 --> 01:47:53,100

we can make between the second and third readings

2034

01:47:52,100 --> 01:47:55,400

and bring back to you but one to clarify for that

2035

01:47:55,400 --> 01:47:58,600

as it got directly to Jim's comments from last meeting

2036

01:47:58,600 --> 01:48:02,200

and I imagine he's there tonight to potentially comment

2037

01:48:01,200 --> 01:48:02,900

further as well.

Mayor Bradshaw Comments

2038

01:48:04,100 --> 01:48:08,200

Yes, thanks for that. Clarification Matt. Yeah, so

2039

01:48:08,200 --> 01:48:13,800

the your recommending a change in applicability which

2040

01:48:12,800 --> 01:48:16,000

means that someone's basically wants

2041

01:48:15,100 --> 01:48:18,900

a deemed complete a substantially complete even

2042

01:48:18,900 --> 01:48:23,300

though they haven't necessarily had the pnz and meeting

2043

01:48:22,300 --> 01:48:25,300

on that so Morgan, I'll

2044

01:48:25,300 --> 01:48:28,800

let you paraphrase that into English. So we're

2045

01:48:28,800 --> 01:48:31,700

clear and in terms of what the  
2046  
01:48:31,700 --> 01:48:34,300  
council's considering. I think it's also important to  
2047  
01:48:34,300 --> 01:48:37,400  
note that with that change or potential  
2048  
01:48:37,400 --> 01:48:40,400  
change of adopted by the council that we should  
2049  
01:48:40,400 --> 01:48:44,000  
then do a third. You know, we talked potentially about  
2050  
01:48:43,400 --> 01:48:46,600  
wrapping at second and third reading together, but I  
2051  
01:48:46,600 --> 01:48:49,300  
think we should have a third reading at a later date  
2052  
01:48:49,300 --> 01:48:51,600  
more than over to you.

Morgan Landers Comments

2053  
01:48:52,400 --> 01:48:55,400  
Thank you mayor. I think that that was a good paraphrase of  
2054  
01:48:55,400 --> 01:48:58,300  
use. So just more specific reference in section. One of the  
2055  
01:48:58,300 --> 01:49:01,700  
ordinance the first sentence would remain which  
2056  
01:49:01,700 --> 01:49:04,700  
is the applicability Clause basically stating that building  
2057  
01:49:04,700 --> 01:49:08,100  
permits pre-application design review final design  
2058  
01:49:07,100 --> 01:49:11,100  
review subdivision or cup application  
2059  
01:49:10,100 --> 01:49:13,200  
deemed complete after the effective date  
2060  
01:49:13,200 --> 01:49:16,200  
would be subject to the interim ordinance and then  
2061  
01:49:16,200 --> 01:49:19,400  
the following sentence pre-application design review and  
2062  
01:49:19,400 --> 01:49:22,800

Mountain overlay pre-application design review applications that  
2063  
01:49:22,800 --> 01:49:25,100  
have been reviewed by the Planning Commission Planning and  
2064  
01:49:25,100 --> 01:49:28,500  
Zoning commission at one review meeting prior to the effective date are  
not subject  
2065  
01:49:28,500 --> 01:49:31,200  
that statement would be removed from  
2066  
01:49:31,200 --> 01:49:34,400  
the ordinance for the third reading so as Matt  
2067  
01:49:34,400 --> 01:49:37,400  
mentioned a pretty simple change what that provides  
2068  
01:49:37,400 --> 01:49:40,600  
is a clear delineation, that's defensible as far  
2069  
01:49:40,600 --> 01:49:43,200  
as who falls under the interim ordinance and who does not  
2070  
01:49:43,200 --> 01:49:44,600  
from an application standpoint.  
2071  
01:49:45,300 --> 01:49:48,300  
Okay. So Morgan, is there  
2072  
01:49:48,300 --> 01:49:51,200  
anything else you want to say before? I turn it over to the public  
hearing portion?  
2073  
01:49:52,400 --> 01:49:55,300  
We don't have any additional comments at this time. Okay, great. So  
2074  
01:49:55,300 --> 01:49:58,500  
I'm gonna open it up for public hearing. So  
2075  
01:49:58,500 --> 01:50:01,300  
if there's anyone from the public either online or  
2076  
01:50:01,300 --> 01:50:04,400  
in this room who wants to make a comment at this time, feel free  
2077  
01:50:04,400 --> 01:50:05,500  
to come up and  
2078  
01:50:06,900 --> 01:50:08,600  
state your name and make your comment.  
2079  
01:50:09,600 --> 01:50:09,900  
Thank you.

Jim Laski Comments

01:54:17,100 --> 01:54:21,500

Hi, I'm Jim Lasky here again. Whoops. I just  
2161

01:54:21,500 --> 01:54:24,800

want to point out that your attorney Matt  
2162

01:54:24,800 --> 01:54:25,200

said.

2163

01:54:26,300 --> 01:54:29,900

That the second son just should say deemed

2164

01:54:29,900 --> 01:54:32,600

substantially complete as you pointed out Mr. Mayor not

2165

01:54:32,600 --> 01:54:35,400

just deemed complete which is the language in that sentence

2166

01:54:35,400 --> 01:54:38,800

and that deemed substantially complete is consistent

2167

01:54:38,800 --> 01:54:41,700

with the Idaho case law deemed complete.

2168

01:54:42,600 --> 01:54:45,200

I think but let the different

2169

01:54:45,200 --> 01:54:49,200

meeting. Let's just clarify that because is it

2170

01:54:48,200 --> 01:54:51,400

deemed substantially complete or deemed complete?

City Attorney Comments

2171

01:54:54,400 --> 01:54:57,300

Is Matt still online? Yeah me mayor. Council

2172

01:54:57,300 --> 01:55:00,300

Morgan. I can take this one mayor. So the the

2173

01:55:00,300 --> 01:55:03,200

term substantially complete would be what we

2174

01:55:03,200 --> 01:55:06,300

would use going forward. The key

2175

01:55:06,300 --> 01:55:09,800

is based on some Idaho case law if an

2176

01:55:09,800 --> 01:55:12,700  
application has more or less submitted everything  
2177

01:55:12,700 --> 01:55:15,700  
it needs to and its application fee. That's what's  
2178

01:55:15,700 --> 01:55:18,300  
termed substantially complete at times.  
2179

01:55:18,300 --> 01:55:21,200  
It's about Matt. Just just be clear.  
2180

01:55:21,200 --> 01:55:24,800  
Are you saying we using the words substantially complete we  
2181

01:55:24,800 --> 01:55:27,800  
will use substantially complete for the  
2182

01:55:27,800 --> 01:55:30,700  
third reading. Yes. Yeah. So does  
2183

01:55:30,700 --> 01:55:33,800  
that help clarify it that does help clarify it perfect. Sorry  
2184

01:55:33,800 --> 01:55:36,600  
for that misunderstanding that okay. So  
2185

01:55:36,600 --> 01:55:39,400  
substantially complete will be in there is anything  
2186

01:55:39,400 --> 01:55:42,500  
else? Sorry Jim you wanted to say that was  
2187

01:55:42,500 --> 01:55:46,600  
just okay anything else any  
2188

01:55:45,600 --> 01:55:48,900  
other comments in the room? Are they  
2189

01:55:48,900 --> 01:55:50,500  
any comments online? No?  
2190

01:55:52,100 --> 01:55:55,300  
Okay. All right, then I will  
2191

01:55:55,300 --> 01:55:57,200  
close public hearing and then  
2192

01:55:59,700 --> 01:56:03,800  
turn it over to council for  
2193

01:56:03,800 --> 01:56:06,300  
any comments you may have again this  
2194

01:56:06,300 --> 01:56:07,200  
process has.  
2195  
01:56:07,900 --> 01:56:10,800  
Been quite exhaustive. We went initially  
2196  
01:56:10,800 --> 01:56:13,600  
with an emergency ordinance a number of  
2197  
01:56:13,600 --> 01:56:16,200  
months back which and now  
2198  
01:56:16,200 --> 01:56:19,800  
we're at an interim or so, it's been in the public domain for quite  
2199  
01:56:19,800 --> 01:56:22,500  
some time it and so had  
2200  
01:56:22,500 --> 01:56:25,600  
a chance to to review many aspects  
2201  
01:56:25,600 --> 01:56:26,100  
of this.

#### Mayor Bradshaw Comments

2202  
01:56:27,500 --> 01:56:30,800  
So with that clarification that legal clarification  
2203  
01:56:30,800 --> 01:56:33,900  
which does  
2204  
01:56:33,900 --> 01:56:37,200  
shift, you know, the what is  
2205  
01:56:36,200 --> 01:56:39,800  
grandfathered and what is not a little  
2206  
01:56:39,800 --> 01:56:40,000  
bit.  
2207  
01:56:42,100 --> 01:56:46,100  
I want to now turn it over to council for any other comments or thoughts  
2208  
01:56:45,100 --> 01:56:49,400  
or questions. You may have of Morgan or Suzanne  
2209  
01:56:48,400 --> 01:56:51,200  
or Jade or anyone else or the  
2210  
01:56:51,200 --> 01:56:51,300  
team.

## EXHIBIT 8



## Mac Moriarty

---

**From:** Matthew A. Johnson <mjohnson@WHITEPETERSON.com>  
**Sent:** Tuesday, October 11, 2022 11:07 AM  
**To:** Jim Laski  
**Subject:** RE: Ketchum Ordinance 1234

Jim –

I checked in with Morgan. She said she's currently reviewing all the resubmitted items this week and will be issuing a completeness letter based on that submittal.

For the Council meeting next Monday there will be a clearer revised version of the interim ordinance that clarifies the distinction that was discussed at the last meeting in response to your comments. That revision will make clear vesting is based on an application being "substantially complete."

So I believe in combination those two items will address your request.

Matt

Matthew A. Johnson  
WHITE PETERSON GIGRAY & NICHOLS, P.A.  
Canyon Park at the Idaho Center  
5700 E. Franklin Rd., Ste. #200  
Nampa, ID 83687-7901  
208.466.9272 (tel)  
208.466.4405 (fax)  
[mjohnson@whitepeterson.com](mailto:mjohnson@whitepeterson.com)

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**From:** Jim Laski <jrl@lawsonlaski.com>  
**Sent:** Tuesday, October 11, 2022 9:42 AM  
**To:** Matthew A. Johnson <mjohnson@WHITEPETERSON.com>  
**Subject:** RE: Ketchum Ordinance 1234

Hi Matt – would it be possible to get conformation that my client's application ( at 260 N 1<sup>st</sup> Ave) is substantially complete and will be reviewed under the presently existing ordinance, rather than the proposed new ordinance 1234? I written statement to that effect would be much appreciated.

Thank you  
Jim

LAWSON LASKI CLARK

**JAMES R. LASKI**

Lawson Laski Clark, PLLC  
675 Sun Valley Road, Suite A  
PO Box 3310  
Ketchum, ID 83340

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**From:** Matthew A. Johnson <[mjohnson@WHITEPETERSON.com](mailto:mjohnson@WHITEPETERSON.com)>  
**Sent:** Monday, October 03, 2022 11:06 AM  
**To:** Jim Laski <[jrl@lawsonlaski.com](mailto:jrl@lawsonlaski.com)>  
**Subject:** RE: Ketchum Ordinance 1234

Jim –

We will be tweaking the applicability language; I'm still working on the specifics. With respect to your clients' project specifically, the practical effect is that your preliminary design review application (which it sounds like is substantially completed) would be vested under the current ordinance – not the interim.

Matt

Matthew A. Johnson  
WHITE PETERSON GIGRAY & NICHOLS, P.A.  
Canyon Park at the Idaho Center  
5700 E. Franklin Rd., Ste. #200  
Nampa, ID 83687-7901  
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[mjohnson@whitepeterson.com](mailto:mjohnson@whitepeterson.com)

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**From:** Jim Laski <[jrl@lawsonlaski.com](mailto:jrl@lawsonlaski.com)>  
**Sent:** Saturday, October 1, 2022 6:42 AM  
**To:** Matthew A. Johnson <[mjohnson@WHITEPETERSON.com](mailto:mjohnson@WHITEPETERSON.com)>  
**Subject:** RE: Ketchum Ordinance 1234

Hi Matt –

I was hoping I might get some feedback regarding your thoughts on the proposed language relating to the applicability of the new ordinance on pending applications before Monday's meeting as we discussed. Please let me know where you stand so I can prepare my comments for city council.

Thanks  
Jim

## EXHIBIT 9



City of Ketchum  
Planning & Building

October 17, 2022

Thielsen Architects  
Attn: Dave Thielsen - Architect

Galena Engineering  
Attn: Matt Smithman – Civil Engineer

[Sent via email]

Re: 260 N 1<sup>st</sup> Ave – Preapplication Design Review - Completeness Review

Dear Mr. Thielsen and Mr. Smithman,

The City of Ketchum Planning and Building Department received your resubmittal of the preapplication Design Review application on October 10, 2022. The resubmittal was in response to comments issued by city staff on September 16, 2022. At this time, the application has been deemed complete and will be scheduled for the next available hearing. Please see below for comment resolution documentation and additional comments from the city's water department.

### Planning Department

#### General Zoning Comments

1. *Comment:* Based on the slope of the lot, it is correct to apply the term “basement” to the project and remove that square footage from the building. However, staff will need to verify that the methodology used for establishing what area falls under the definition of “basement” is correct.
  - a. *Required Action:* Please provide a diagram in schematic or plan and section views showing how the invisible plane was delineated and what square footage is included in the “basement” definition and what constitutes the 954.16 SF of gross floor area remaining.
  - b. *Staff Response: Comment resolved. Staff reviewed the overlap of the “Basement” definition with the “Underground Parking” definition and have determined that the calculation conducted by the applicant is correct.*
2. *Comment:* The Gross Floor Area (GFA) and Net Floor Area (NFA) calculations on Sheet A1.1 don't appear to match the net and gross SF outlined on Sheets A1.2-A1.4. For the ground level, the gross floor area on Sheet A 1.1 and A1.2 indicate a net floor area of 5,680 SF, however it is unclear what that square footage includes. Also, for Sheets A1.3 and A1.4, the GFA outlined is consistent with Sheet A1.1 but it is unclear what constitutes the NFA for these levels and what has been removed since the stair tower and elevator have already been removed.
  - a. *Required Action:* Please provide Floor Area diagrams for each floor that outlines what is included in the GFA and what is not. The best way to show this is by using shading or coloring to color code each area. In the diagrams, please also include square footages.
  - b. *Staff Response: Comment Resolved.*
3. *Comment:* Sheet A1.1 shows GFA of the building, however, specific square footage of each unit and each space on the ground floor is necessary to verify parking requirements for all uses.
  - a. *Required Action:* Please revised Sheet A1.1 to include a summary of square footages by use that outlines each residential unit, parking, storage, The Commons, and the Commons Court and Event Space
  - b. *Staff Response: Comment Resolved.*

4. *Comment:* The cover letter submitted as part of the project outlines that the intent of the ground floor Commons and Commons Court and Event Center is to be a “gathering place...which would be used for fundraising and philanthropic events”. The letter does not address the use of the space when those events are not happening. Staff presumes this space would be for the benefit of the residents, family and guests but not the public, however, this is a deduction based on the cover letter and clarification is necessary. Staff is also unclear whether the fundraising and event space is only the Commons Court and Event Space, or if it includes the Commons as well. Additionally, Sheet A1.1 outlines under “Required Parking” that the space is classified as “Food Service”. Staff does not believe the proposed use meets the definition of food service, but rather an “Assembly, place of”. The floor plans do not show a location within the space where food is being prepared. This is a key element of a “Food Service” use. The definitions of referenced uses are noted below:

**Food service:** An establishment where food and drink are prepared, served and consumed on site with associated outdoor dining, or distributed to customers through take out, delivery or catering. Typical uses include, but are not limited to restaurants, cafes, delis, catering services and brewpubs that do not distribute beer produced for off-site consumption.

**Assembly, place of:** The use of land for a meeting place where persons gather together for purposes of attending civic, social, religious functions, recreational events or entertainment performances on a regular or recurring basis including, but not limited to, religious institutions, banquet facilities, funeral homes, theaters, conference centers, stadiums, or indoor or outdoor recreational facilities, but excludes a "cultural facility" as defined by this chapter. A gathering of less than 25 persons shall not be considered a place of assembly provided the gathering is accessory and incidental to the principal use.

Assembly uses require the approval of a Conditional Use Permit in the CC-2 zone district to ensure any impacts from events held in the space are mitigated through certain conditions.

- a. Required Action:* Please provide an expanded narrative as to the function of the ground floor space and justification for its classification as Food Service. Please provide clarity on the function of the space when not being used for events. Please also provide clarity on what portion of the space will be used for events. Once additional information is provided, staff will make a determination on the use proposed.
- b. Staff Response: Comment Resolved.*
5. *Comment:* It generally appears that the project is in conformance with setback requirements, however, the methodology used appears that there may be area where square footage is calculated toward both facades’ setback square footage, which is not the correct methodology. In general, square footage should be counted toward one side other the other using reasonable extensions of the building façade to delineate space. Please see the attached example from another project for reference. The front façade along 1<sup>st</sup> Ave had a portion of the building on the south end significantly set back from the street. In this instance, the main edge of the building façade was carried to the property line to delineated what was included in the setback square footage (area in black). As you can see, the two setback calculations do not overlap (black and red areas).
- a. Required Action:* Please revise Sheets A1.2-1.4 delineate the square footage calculation with independent calculations for each façade. Staff has provided an attached draft of how the calculations should be delineated for the ground floor.
- b. Staff Response: Comment Resolved.*
6. *Comment:* Sheet A7 outlines the proposed building height at the front and the rear of the building and the guardrail that extends above the 42-foot height maximum. Although the code reference in Note 10 is correct in relation to height, the city categorizes “perimeter walls that enclose roof top decks that exceed the maximum building height limit as a “fixed amenity” that must be set back 10 feet from the building façade per KMC 17.12.040. Built-in hot tubs are also considered “fixed amenities” that must be set back. It is unclear from Sheet A6 what the setback is to the hot tub from the building façade at that location.

- a. *Required Action:* Please revise the plans to reflect the required setback for all roof top decks. Please also revise Sheet A6 to provide a dimension from the building façade to the hot tub location.
  - b. *Staff Response: Comment Resolved.*
- 7. *Comment:* The 3-foot setback along the alley shows wood fencing to screen the transformer and condensers, electric meters/CT panel, and raised landscape bed. The 3-foot setback is intended to be a clear zone to assist in snow management operations in the winter, therefore these items need to be relocated from within the 3 feet setback along the alley.
  - a. *Required Action:* Please revise the site plans to reflect revisions as noted above to avoid future unintended damage of property due to snow management operations. Please also provide a letter from Idaho Power approving the location of the transformer with associated clearances and proposed electric meters.
  - b. *Staff Response: Comment Resolved.*
- 8. *Comment:* Depending on final use determination for the ground floor space, the dumpster and one recycling bin will not likely be adequate for the proposed use when special events occur. Once a use determination is made for the ground floor space, a letter of approval of the garbage service based on the use will be required from Clear Creek Disposal.
  - a. *Required Action:* This comment is for information only; no action is required at this time. Upon use determination, please provide a letter from Clear Creek Disposal approving the garbage configuration.
  - b. *Staff Response: Comment Resolved.*
- 9. *Comment:* Sheet A2 shows the dimensions of the parking garage area including dimensions of the parking spaces and width of the drive aisle, however, the dimensions of the 5 spaces on the Sun Valley Rd side of the parking area are noted to not meet minimum requirements and the drive aisle width does not appear to meet the 24-foot minimum between the stair and bump out where the "Trolley" area is noted. Drive aisle between stairwell and trolley/bump out area needs to also be 24 feet. Compact spaces are only permitted with certain types of uses and only when the total number of required spaces is 10 or more. If parking is proposed, it must meet the minimum dimensional standards.
  - a. *Required Action:* Please revise the ground floor layout to demonstrate that all parking spaces meet the minimum dimensional standards and that the drive aisle width of 24 feet can be met for the full length of the drive aisle.
  - b. *Staff Response: Comment Resolved.*
- 10. *Comment:* Construction Management Plans (CMP) are no longer required at the time of design review. Staff has not reviewed the submitted CMP. Comments on the CMP are provided at the time of building permit application for a project.
  - a. *Required Action: No action required at this time, this comment is for information only.*
- 11. *Comment:* Sheets EL5-8 show the foot candles at the property boundary, however, the sheets do not show foot candles outside the property line. Staff is concerned that there may be light trespass across the property boundary into the public right-of-way as there are numerous locations along the perimeter that have medium to high foot candle measures. For instance, foot candles measuring 1.0 and 2.8 adjacent to the north property boundary and alley measurements of 9.1 and 8.8. There may be no light trespass across the property boundary per KMC 17.132.030 stating "All existing and/or new exterior lighting shall not cause light trespass and shall protect adjacent properties from glare and excessive lighting." Figure 1 in the KMC only refers to light emitting from inside buildings, not exterior lighting.
  - a. *Required Action:* Please revise the photometric study to include foot candle measurements just outside the property boundary for verification there is no light trespass. Please note that all exterior lighting including planter, tree, and water feature lights should be included in the calculations.
  - b. *Staff Response: Comment Resolved.*
- 12. *Comment:* Per KMC 17.132.030.F "Uplighting. Uplighting is prohibited in all zoning districts, except as where permitted in this chapter." Staff does not believe that the "Lip of Planter" lighting or the water

feature lighting fully complies with the limitation on uplighting. As outlined in KMC 17.132.030.H.2 “All exterior lighting fixtures shall be full cutoff fixtures with the light source fully shielded, except as exempted in this chapter.” As such, light fixtures must be fully shielded as to not cast light up or sideways, always casting light down as illustrated in Figure 2. For instance, the “Under Cap Lighting” is compliant as it is fully shielded based on the image.

- a. *Required Action:* Please revised the lighting proposed to comply with the dark sky compliant requirements and fixture guidelines.
  - b. *Staff Response: Comment Resolved.*
13. *Comment:* Stair tower lighting that must remain consistently illuminated 24 hours per day due to building code requirements must be mitigated with glazing or other treatments to windows that limit the amount of light emitting from the building overnight.
- a. *Required Action:* Please provide clarity on whether any glazing is proposed for the central stair tower and whether consistent light will emit from this feature in all hours of the evening.
  - b. *Staff Response: Comment Resolved.*
14. *Comment:* The street light illumination levels and placement of lights may not be in the correct location based on current discussions with the City Engineer and Planning departments.
- a. *Required Action:* As this is a preapplication design review. No further action on street light location is required at this time, however, final street light location will be determined at the time of final design review if the project moves forward.
  - b. *Staff Response: Comment Resolved.*

#### Design Review Comments

The following comments are provided for consideration by the applicant. Revisions to the plans are not required, but recommended, unless otherwise noted. If revisions are not made, the following comments will be provided to the Planning and Zoning Commission for their consideration and feedback.

1. *Comment:* Per KMC 17.96.060.B.2 and 3, “2. For nonresidential portions of buildings, front building facades and facades fronting a pedestrian walkway shall be designed with ground floor storefront windows and doors with clear transparent glass. Landscaping planters shall be incorporated into facades fronting pedestrian walkways.” and “3. For nonresidential portions of buildings, front facades shall be designed to not obscure views into windows.” These two standards serve to demonstrate the importance of creating an active and interesting pedestrian environment. Landscaping is encouraged, but not if it obscures views into windows. Staff has concerns that the ground floor façade of the building along Sun Valley Rd and the portion of N 1<sup>st</sup> Ave closest to Sun Valley Rd do not meet the intent of this standard as the architectural design of the project does not engage with pedestrians and serves more to privatize the space for residents and guests that create an environment that is active and interesting for pedestrians. More specifically, the landscape planter boxes that wrap the corner where the outdoor area is are 3-feet in height and the proposed plantings in the landscape boxes are shrubs and hedge like species that can grow quite tall over time. Additionally, the façade facing Sun Valley Rd has minimal storefront characteristics with transparent glass. Staff understands that the interior program of the building is driving the façade configurations, however, the proposed façade on the Sun Valley Rd side of the project does not meet the city’s design review objectives. Sun Valley Rd is one of our more heavily traveled corridors by pedestrians. This intersection is the location of two new projects in recent years that intensely serve to engage pedestrians with the Maude’s retail and coffee shop on one corner and a new office building on another that has well-articulated store front facades on both street frontages. The Commission will be keenly focused on continuing the design success of the other projects as this is such an important intersection within the downtown.
- a. *Required Action:* Staff recommends the applicant consider revising the landscape planter and plantings proposed around the outdoor gathering area to create a more engaging, less privatize program for the outdoor space. Additionally, staff recommends the applicant evaluate ways to integrate additional transparency onto the Sun Valley Rd side of the project. Staff recommends an evaluation of bringing the ground floor uses around to the Sun Valley Rd side of the building.

- b. *Staff Response: No further action at this time, staff will highlight the comment to the Planning and Zoning Commission for discussion.*
2. *Comment:* Per KMC 17.96.060.B.1 “Facades facing a street or alley or located more than five feet from an interior side property line shall be designed with both solid surfaces and window openings to avoid the creation of blank walls and employ similar architectural elements, materials, and colors as the front facade.” The Commission has paid special attention to interior walls that are exposed due to adjacent buildings that are of smaller scale than the proposed project. This is especially important when adjacent buildings are one-story structures adjacent to a three-story structure. Although staff believes the setback nature of the project mitigates some of these concerns, staff does have concern about the lack of material variation on the east elevation shown on Sheet A8. Include the outline of the adjacent buildings on the elevations for context
- a. *Required Action:* As part of the resubmittal materials, please revise the elevation on Sheet A8 to show the outlined of the adjacent building for reference. Staff recommends the applicant consider some material variations to break up the east elevation portions of the building that are exposed.
- b. *Staff Response: No further action at this time, staff will highlight the comment to the Planning and Zoning Commission for discussion.*

As a follow-up to the completeness letter issued on September 16, 2022, staff received confirmation from the water department reviewed the proposed plans and provides the following comments:

- A fire line and two separate services off the fire line will be required. The services must be engineered for sizing.
- The project is also required to abandon the existing service in the alley behind the Durance training building.

No action is required at this time, these comments are for informational purposes.

Please do not hesitate to email or call should you have any questions.

Sincerely,



Morgan Landers, AICP  
Senior Planner  
City of Ketchum Department of Planning and Building



EXHIBIT 10

On Tue, Oct 18, 2022 at 4:08 PM Abby Rivin <[ARivin@ketchumidaho.org](mailto:ARivin@ketchumidaho.org)> wrote:

Hey Carson and Broderick,

The City Council approved the third reading of Interim Ordinance 1234 during their meeting yesterday. The Perry Building project may be vested under the current zoning ordinance provided that you've filed the final Design Review application for the project and paid the required fees within 180 calendar days from the date the Planning and Zoning Commission reviewed the Pre-Application pursuant to section 3 of the interim ordinance.

Section 3. Developments subject to Design Review approval pursuant to KMC 17.96 – Design Review or 17.104 – Mountain Overlay Zoning District that have conducted a preapplication design review meeting with the Commission, as required or voluntary, must file a complete Design Review Permit application and pay all required fees within 180 calendar days of the last review meeting on the preapplication with the Commission, otherwise the preapplication review will become null and void.

The Planning and Zoning Commission reviewed the Pre-Application for the Perry Building project and moved to advance the project to final Design Review during their special meeting on August 23<sup>rd</sup>, 2022. You will need to file a complete Design Review application and pay all required fees within the 6-month window no later than February 17<sup>th</sup>, 2022 in order to be vested under the current zoning ordinance. If you file the complete Design Review application and pay the required fees within this 6-month window, then the Perry Building project would be vested under the current zoning ordinance and not subject to the interim ordinance standards.

Please don't hesitate to holler if you have any questions.

Have a wonderful rest of your week!

Best,

Abby

**ABBY RIVIN, AICP | CITY OF KETCHUM**

Senior Planner

P.O. Box 2315 | 191 5<sup>th</sup> Street W | Ketchum, ID 83340

office: 208-726-7801 | direct: 208-727-5082

[arivin@ketchumidaho.org](mailto:arivin@ketchumidaho.org) | [www.ketchumidaho.org](http://www.ketchumidaho.org)

EXHIBIT 11

**From:** [Abby Rivin](#)  
**To:** [Chris Ensign](#)  
**Subject:** RE: 4th & Main Mixed-Use Building Design Review, Lot Consolidation, & Condominium Subdivision Preliminary Plat  
**Date:** Tuesday, October 18, 2022 3:53:08 PM  
**Attachments:** [image001.png](#)

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Hey Chris,

I reviewed the revised project plans that were submitted on Saturday, October 15<sup>th</sup>.

The gross floor area calculation discrepancy on Sheet CD1.1 has been corrected. Sheet CD1.0 has been revised but the dimensions for the the proposed off-street parking spaces have been removed. The project plans must provide the stall dimensions for all parking spaces provided on site to satisfy the project's parking demand. Minimum dimensions for parking stalls are specified in Ketchum Municipal Code §17.125.030.A. 90-degree-angle spaces must be a minimum of 9 by 18 feet.

One other item to address is that the site photometric plan on Sheet E101A still includes both the streetlights in the public ROW and the exterior lighting fixtures proposed for the mixed-use building. You've submitted a photometric study prepared by MH companies for the streetlights. We'll continue to work through the streetlight placement and illuminance levels prior to the public hearing. The photometric study for the mixed-use building should only show the exterior lighting fixtures proposed for the mixed-use building without the streetlights. The photometric study on Sheet E101A shows significant light trespass over the rear property line (2.3 footcandles maximum), which is out of compliance with the City's Dark Skies Ordinance. The photometric study for the exterior lighting fixtures proposed for the 4th & Main Mixed-Use Development must show zero footcandles at all property boundaries to demonstrate that the proposed lighting complies with the City's standards prohibiting light trespass.

The City Council approved the third reading of Interim Ordinance 1234 during their meeting yesterday. You are vested under the current zoning ordinance pursuant to Sections 3 of the interim ordinance.

Section 3. Developments subject to Design Review approval pursuant to KMC 17.96 – Design Review or 17.104 – Mountain Overlay Zoning District that have conducted a preapplication design review meeting with the Commission, as required or voluntary, must file a complete Design Review Permit application and pay all required fees within 180 calendar days of the last review meeting on the preapplication with the Commission, otherwise the preapplication review will become null and void.

The Planning and Zoning Commission reviewed the Pre-Application Design Review for the 4<sup>th</sup> & Main Mixed-Use Building and moved to advance the project to final Design Review during their regular meeting on May 10<sup>th</sup>, 2022. You filed a complete Design Review application and paid the required fees within the 6-month window, a little over 3 months after the Commission reviewed the Pre-Application for the project. Since you filed your complete Design Review application and paid the required fees within the 6-month window, your project is vested under the current zoning ordinance and is not subject to the interim ordinance standards.

Please don't hesitate to email or call if you have any further questions.

Best,

Abby

**ABBY RIVIN, AICP | CITY OF KETCHUM**

Senior Planner

P.O. Box 2315 | 191 S<sup>2nd</sup> Street W | Ketchum, ID 83340

office: 208-726-7801 | direct: 208-727-5082

[arivin@ketchumidaho.org](mailto:arivin@ketchumidaho.org) | [www.ketchumidaho.org](http://www.ketchumidaho.org)

**From:** Abby Rivin

**Sent:** Wednesday, October 12, 2022 4:03 PM

**To:** Chris Ensign <[chris@solsticedev.com](mailto:chris@solsticedev.com)>

**Subject:** 4th & Main Mixed-Use Building Design Review, Lot Consolidation, & Condominium Subdivision Preliminary Plat

Hi Chris,

Sorry for my delay in following up with you—it has been one of those weeks where I've been in a marathon of meetings.

I reviewed your revised submittal and have just two minor clean-up items for you all address in order to certify your applications as complete.

It looks like a dimension note may have been added to Sheet CD1.0 of the project plans in response to Comment No. 3 of the completeness review letter, but it is challenging to read. Please clearly specify the dimensions of the off-street parking spaces so that it is easy to read.

The Summary Table on Sheet CD1.1 indicates that proposed FAR is 2.18 (24,003 gross square feet/11,000 square-foot-lot-area). The calculations noted above this Summary Table indicate that the proposed FAR is 2.07 (23,905 gross square feet/11,000 square-foot-lot-area). This discrepancy needs to be resolved.

Your applications will be certified as complete once you've resolved these two items, but before the public hearing for the project there are a couple of items I'd like to work with you and your design team to address—streetlights and meeting with Mountain Rides to discuss improvements for the bus stop along Main Street. I've also got some more comments and recommendations related to more subjective Design Review criteria that I'd like to review with you before the public hearing for the project. I'll give you a call to chat about all of this further.

Sorry again for my delay!

Best,

Abby

**ABBY RIVIN, AICP | CITY OF KETCHUM**

Senior Planner

P.O. Box 2315 | 191 5<sup>th</sup> Street W | Ketchum, ID 83340

office: 208-726-7801 | direct: 208-727-5082

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EXHIBIT 12



CITY OF KETCHUM  
MEETING MINUTES OF THE  
PLANNING AND ZONING COMMISSION  
Tuesday January 24, 2023

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**CALL TO ORDER:** (00:00:45 in video)

Neil Morrow called to order at 4:30 p.m.

**Roll Call:**

Neil Morrow

Susan Passovoy

Brenda Moczygemba

Tim Carter

Spencer Cordovano

**Also Present:**

Morgan Landers – Director of Planning and Zoning

Dan Goodman – Legal Counsel or City of Ketchum

Abby Rivin – Senior Planner

Adam Crutcher – Associate Planner

Paige Nied – Associate Planner

Heather Nicolai – Planning Technician

**COMMUNICATIONS FROM THE COMMISSIONERS:**

None

**CONSENT AGENDA:** (00:01:20 in video)

1. **ACTION ITEM:** Approval of the January 10, 2023 Minutes (00:01:35 in video)

**Motion:** Motion made by Brenda Moczygemba to approve the January 10, 2023 Minutes;

Seconded by Spencer Cordovano. (video recording issues)

**Ayes:** Neil Morrow, Susan Passovoy, Brenda Moczygemba, Tim Carter, Spencer Cordovano

**Nays:** None

**PUBLIC HEARING:** (00:01:45 in video)

2. **ACTION ITEM:** Recommendation to conduct a public hearing, review, and provide feedback on the Design Review amendment and Development Agreement amendment for the Appellation Sun Valley hotel project at 300 E River Street.

- Staff Report: Morgan Landers – Senior Planner (00:02:03 in video)
- Applicant Team



- Architect: John C. Davis, AIA – Hornberger + Worstell, Inc. (00:23:45 in video)
- Landscape Architect: Rob King – Landwork Studio (00:32:05 in video)
- Architect: John C. Davis, AIA – Hornberger + Worstell, Inc. (00:37:18 in video)
- Louis Kaufman – Architect, de Reus Architects (00:47:10 in video)
- Architect: John C. Davis, AIA – Hornberger + Worstell, Inc. (00:55:40 in video)
- Commission Questions/Comments for Applicant: (00:56:20 in video)
- Public Comment (01:05:29 in video)
  - No public comment
- Commission Deliberations, feedback & direction for applicant: (01:06:00 in video)
- Applicant requested recess to determine next steps (01:50:15 in video)
- Meeting Resumed (01:50:23 in video)
- Morgan Landers – Senior Planner (01:50:30 in video)
- Applicant/Managing Member: Jack E. Bariteau, Jr. (01:50:55 in video)
- Commission Responses to Applicant (02:02:05 in video)
- Legal Council for Applicant: Ed Lawson (02:05:03 in video)
- Applicant/Investor: Andy Blank (02:11:58 in video)

Commission recommended to continue the Appellation Sun Valley hotel project, located at 300 E River Street, design review and development agreement to a special hearing to Tuesday, 1/31/23. (02:20:40 in video)

**Motion:** Motion made by Susan Passovoy, requesting to continue this to a special hearing to Tuesday, 1/31/23. Second by Tim Carter (02:20:50 in video)

**Ayes:** Neil Morrow, Tim Carter, Spencer Cordovano, Brenda Moczygemba, Susan Passovoy

**Nays:** None

3. **RECESS:** 15 Minute Break (02:21:18 in video)

4. **ACTION ITEM:** Recommendation to review and provide feedback on the Pre-Application Design Review application for the Sawtooth Serenade project at 260 N 1st Ave. (02:21:35 in video)

- Staff Report: Morgan Landers – Senior Planner (02:21:58 in video)
- Applicant Team
  - Legal Council for Applicant: Jim Laski (02:21:58 in video)
  - Architect: David Thielsen, AIA – Thielsen Architects (02:44:35 in video)
- Commission Deliberations, feedback & direction for applicant: (03:31:20 in video)
- Architect: David Thielsen, AIA – Thielsen Architects (03:56:45 in video)
- Morgan Landers – Senior Planner (04:01:00 in video)
- Commission Comments (04:02:30 in video)

Commission recommended to advance the Sawtooth Serenade project at 260 N 1st Ave to Design Review. (04:05:15 in video)

**Motion:** Motion made by Susan Passovoy, to advance the Sawtooth Serenade project at 260 N 1st Ave to Design Review. Second by Tim Carter (04:05:47 in video)

**Ayes:** Neil Morrow, Tim Carter, Brenda Moczygemba, Susan Passovoy

**Nays:** Spencer Cordovano

**NEW BUSINESS:** (04:06:07 in video)

**None**

**ADJOURNMENT:**

Motion to adjourn at 9 pm (04:06:15 in video)

**Motion** made by Neil Morrow to adjourn the meeting; Seconded by Spencer Cordovano.

**Ayes:** Neil Morrow, Susan Passovoy, Tim Carter, Spencer Cordovano, Brenda Moczygemba

**Nays:** None



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Commissioner Neil Morrow



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Morgan Landers – Director of Planning & Building

EXHIBIT 13



City of Ketchum  
Planning & Building

STAFF REPORT  
KETCHUM PLANNING AND ZONING COMMISSION  
REGULAR MEETING OF JANUARY 24, 2023

**PROJECT:** Sawtooth Serenade

**FILE NUMBER:** P22-056

**APPLICATION:** Pre-Application Design Review

**PROPERTY OWNER:** McCaw Nell Elizabeth Trustee, Distrustful Ernest Revocable Trust U/A/D 02/03/16

**REPRESENTATIVE:** Dave Thielsen, Thielsen Architects (Architect)

**LOCATION:** 260 N 1<sup>st</sup> Ave (KETCHUM TOWNSITE LOT 5A BLK 38)

**ZONING:** Community Core – Subdistrict 2 Mixed Use (CC-2)

**OVERLAY:** None

**REVIEWER:** Morgan Landers, AICP – Director of Planning and Building

**NOTICE:** As a courtesy, a public meeting notice for the project was mailed to all owners of property within 300 feet of the project site and all political subdivisions on January 4, 2023. The notice was published in the Idaho Mountain Express on January 4, 2023. A notice was posted on the project site and the city’s website on January 17, 2023. Story poles were verified on the subject property on January 17, 2023.

**INTRODUCTION AND BACKGROUND**

The applicant is proposing a 23,942 gross square foot multi-family development located at 260 N 1<sup>st</sup> Ave (the “subject property”) in the Community Core Subdistrict 2 – Mixed Use (CC-2) zone district. The project includes two residential dwelling units, ground floor private recreation space, garage parking for five vehicles, and storage for the two units. The subject property is three vacant Ketchum Townsite

lots totaling 16,507 SF on the east corner of N 1<sup>st</sup> Ave and Sun Valley Rd (Figure 1) south of the new 1<sup>st</sup> and Sun Valley office building, diagonal from the mixed-use building where Maude's is located.

The project proposes to take advantage of the Floor Area Ratio (FAR) bonus in exchange for community housing, mitigating the additional floor area by making a community housing in-lieu payment of \$568,804. The total FAR for the project is 1.45, where 1.0 is permitted by right. The application is not subject to Interim Ordinance 1234 as the application was deemed complete prior to the effective date of the ordinance. Staff has provided an analysis (Attachment D) of how the project would conform to the interim ordinance for your reference and information only.

Figure 1: Subject Property 260 N 1st Ave



The subject property is 16,507 square feet, three Ketchum Townsite lots. Per Ketchum Municipal Code (KMC) 17.96.010.C.1, new developments on lots totaling 11,000 square feet require a pre-application design review with the Planning and Zoning Commission. The Preapplication review is an opportunity for the Commission to give the applicant feedback on the proposed project. This preliminary review allows the Commission to ask questions, identify code compliance issues or design concerns, and provide recommendations to the applicant.

## ANALYSIS

Per KMC 17.96.050.A. *Criteria*. The Commission shall determine the following before approval is given for design review:

1. The project does not jeopardize the health, safety or welfare of the public.
2. The project conforms to all applicable standards and criteria as set forth in this chapter, this title, and any other standards as adopted or amended by the City of Ketchum from time to time.

Criteria 1 evaluates the project's impact on the community through its alignment with the goals and policies of the city's currently adopted plans as related to public health, safety, and welfare. Criteria 2 above relates to the project's conformance with the city's zoning ordinance such as permitted uses, dimensional limitations, parking, dark skies, and the design review improvements and standards listed in 17.96.060 and 17.96.070. During department review, city staff reviewed the project against the city's adopted plans (criteria 1) and for all applicable zoning requirements including conformance with all applicable design review standards outlined in KMC §17.96.060 – *Improvements and Standards* and KMC §17.96.070 – *Community Core (CC) Projects*.

In the staff report below, staff has provided an overview of items the Commission may want to provide feedback on regarding the project and its conformance with the criteria. Through the preapplication and final design review process, the Commission will need to answer the questions of 1) does the

project jeopardize the health, safety, or welfare of the public and does the project meet all of the applicable standards and criteria of the municipal code.

### ***Criteria 1: Health, Safety, and Welfare of the Public***

The 2014 Comprehensive Plan outlines 10 core values that drive our vision for the future including a strong and diverse economy, vibrant downtown, community character, and a variety of housing options. The built environment within the downtown plays a key role in materializing these values to achieve the city's vision. The 2014 Comprehensive Plan designates the future land use for the subject property as "mixed-use commercial" where, according to the plan, "New structures in existing mixed-use areas should be oriented to streets and sidewalks and contain a mix of activities. Mixed-use development should contain common public space features that provide relief to the density and contribute to the quality of the street." Primary uses include offices, medical facilities, health/wellness-related services, recreation, government, residential, and services.

These desired qualities of mixed-use commercial stated in the plan directly relate to how new developments interface with the street and enhance the health, safety, and welfare of the public by supporting a vibrant downtown and a strong economy. The comprehensive plan acknowledges that Ketchum has high-quality public spaces including streets and plazas that contribute to our current success and, as noted above, new mixed-use developments should contain public spaces that provide relief from the bulk and mass of structures that contain higher densities. Although this is a low-density development, the bulk and mass of the project is that of a higher density development and should seek to achieve the same design objectives. As outlined further below in this report, the design of the outdoor space seems to be closed off and privatized. Staff acknowledges the space provides value to the quality of the street due to the increased landscaping and setback of the building, however, the applicant should consider designing the space to be more open to the street or making the space available to the public as there is extensive private space on decks and patios throughout the project.

Policy CD-1.3 of Chapter 4 of the comprehensive plan states that "Infill and redevelopment projects should be contextually appropriate to the neighborhood and development in which they occur. Context refers to the natural and manmade features adjoining a development site; it does not imply a certain style." As noted below, staff has concerns about the project's southeast facing façade as the adjacent property has only one-story structures with a single material blank wall. The transition between buildings is a key design element and has the potential to impact the perceived cohesiveness of the downtown and can impact the way residents and visitors experience a place.

The 2022 Housing Action Plan (HAP) emphasizes the importance of increased housing supply for long-term residents in Ketchum. The comprehensive plan identifies the downtown as being an appropriate place for that density due to proximity of jobs and transportation options as a direct correlation to vibrancy of the downtown and support of a strong economy. Goal #1 of the HAP is to produce and preserve housing. Ketchum needs to build, preserve, or convert approximately 100 residential housing units a year to keep up with demand. That demand is for households in all income categories. The subject property is three Ketchum Townsite lots that are already consolidated. The siting of two residential dwelling units on the subject property is an underutilization of a key piece of property in Ketchum's downtown and has the potential to impact downtown vibrancy in this area as the subject property is located on a block that is currently redeveloping with many active spaces and uses. As noted below, the building is somewhat closed off to the public at the ground floor on the corner which

is out of context with the rest of the intersection. There are design opportunities that can be considered to encourage better interface between the building and the public realm and provide additional activation on a key corner.

Finally, if the community is not able to produce the amount of housing needed, the community's health, safety, and welfare is challenged. Not only is the vibrancy of our downtown and our economy in jeopardy, but we also face increased severity of substandard living conditions from overcrowding and we will continue to see the number of community members who are unhoused increase. Research shows the negative impacts of housing instability for families and individuals. Housing instability means that the family or individual is at risk of displacement or has experienced eviction, frequently moves in one year, and homelessness. One study by Boston Medical Center on 22,324 families confirms that housing instability has physical and mental health impacts on affected individuals.<sup>1</sup> It increases the likelihood of depression and suicide in adults and disrupts development and immune system responses in children, increasing their likelihood of hospitalization. Overcrowding increases the risk of spreading infectious diseases.<sup>2</sup> At a community level, those with long commutes are less able to actively participate in the community or be productive at work, and see physical health declines.<sup>3</sup>

**Criteria 2: Applicable Standards and Criteria**

*Zoning and Dimensional Standards*

In general, the property appears to be in conformance with the zoning and dimensional standards. Final confirmation of all zoning and dimensional standards will be conducted at the time of final design review. Below are specific items of note that are uniquely applicable to this project.

*Front Lot Line* - Per KMC 17.08.020, the front lot line of corner lots is the shorter street frontage unless otherwise determined by the administrator based on the orientation and layout of the lot and surrounding neighborhoods. Based on staff review of the orientation of the lot and the surrounding neighborhood, staff determined that it be more appropriate for the front lot line to be along N 1<sup>st</sup> Ave rather than Sun Valley Rd. This is because most of the developed lots in the immediate vicinity are single or double Ketchum Townsite lots that orient to the Avenues rather than the Streets in the downtown.

*Building Height* - Building height in the Community Core is calculated differently than in the other zone districts within the city. Per KMC 17.08.020, building height in the CC is calculated based on the average grade of the front and rear lot lines. Side facades are permitted to step up or down to transition from the front to back provided that the transition happens more than 40 feet from the front and more than 35 feet from the back. As shown on the West Elevation on Sheet A7 of Attachment B, the average grade of the front lot line is approximately 5 feet lower than the average grade of the rear property line, therefore the side facades are required to step back as shown on the elevation.

<sup>1</sup> Megan Sandel, Richard Sheward, Stephanie Ettinger de Cuba, Sharon M. Coleman, Deborah A. Frank, Mariana Chilton, Maureen Black, Timothy Heeren, Justin Pasquariello, Patrick Casey, Eduardo Ochoa, Diana Cutts; Unstable Housing and Caregiver and Child Health in Renter Families. *Pediatrics* February 2018; 141 (2): e20172199. <https://doi.org/10.1542/peds.2017-2199>

<sup>2</sup> Nkosi, V., Haman, T., Naicker, N. et al. Overcrowding and health in two impoverished suburbs of Johannesburg, South Africa. *BMC Public Health* 19, 1358 (2019). <https://doi.org/10.1186/s12889-019-7665-5>

<sup>3</sup> Philips, S. (2014, February 14). *Drive till you disqualify: Will businesses continue hiring super-commuters?* Planetizen Blogs. Retrieved January 18, 2023, from <https://www.planetizen.com/node/67379?fbclid=IwAR3vtggmRVHfeaLWY7J4OqJqWvqz010gN6wKTTCUofD52st99PFlald14>; Robert Wood Johnson Foundation. County Health Rankings 2012. [www.countyhealthrankings.org](http://www.countyhealthrankings.org).

*Gross Floor Area Calculation* - As noted above, the subject property has a unique configuration as the lot slopes diagonally downward as you move north from the back corner of the property at the alley. Per KMC 17.08.020, the gross floor area of a project includes the horizontal area of a building “not including basements, underground parking areas or open unenclosed decks”. The proposed project is unique as the ground floor includes habitable space that falls under the definition of basement and underground parking that counts toward gross floor area because of the ceiling height. Per KMC 17.04.040 – *Interpretation* in the instance of overlapping regulations covering the same subject matter, “the more restrictive or higher standards or requirements shall govern”. As such, there is 954 SF of habitable square feet not exempt as a basement and 4,698 SF of underground parking that is not exempt. Sheet A1.2 of Attachment B shows the lower-level gross floor area calculation in plan view for explanation.

### *Design Review Standards*

In general, the proposed project meets many of the design review standards as outlined in the two subsections. Staff has concerns related to a few of the standards, as outlined below.

*Activation of Ground Floor* - Per KMC 17.96.060.B.2 and 3, “2. For nonresidential portions of buildings, front building facades and facades fronting a pedestrian walkway shall be designed with ground floor storefront windows and doors with clear transparent glass. Landscaping planters shall be incorporated into facades fronting pedestrian walkways.” and “3. For nonresidential portions of buildings, front facades shall be designed to not obscure views into windows.” These two standards serve to demonstrate the importance of creating an active and interesting pedestrian environment. Staff has concerns that the ground floor façade of the building along Sun Valley Rd and the portion of N 1st Ave closest to Sun Valley Rd do not meet the intent of this standard as the architectural design of the project does not engage with pedestrians and serves more to privatize the space for residents and guests than create an environment that is active and interesting for pedestrians.

Staff understands that the interior program of the building is driving the façade configurations, however, the proposed façade on the Sun Valley Rd side of the project does not meet the city’s design review objectives. The proposed façade does not include any significant fenestration, only small windows at the top of the ground floor which do not resemble storefront like windows. Sun Valley Rd is one of our more heavily traveled corridors by pedestrians. This intersection is the location of three new projects that intensely serve to engage pedestrians with the Maude’s retail and coffee shop on one corner, a new office building on another that has well-articulated store front facades on both street frontages, and the relocation of GLOW café to a new building on Sun Valley Rd across from Maude’s.

On the corner of the proposed development, the private patio has a solid stone veneer seat wall that is approximately 36 inches high at the tallest point and doubles as a planter. The proposed vegetation per Sheet L3.0 indicates flowering crab trees with a variety of shrub species in between. Staff has concerns related to the type of shrub species as some can grow to be very tall if unattended, specifically the Peking Cotoneaster and the Snowberry which can grow between 3-6 feet. The Flowering Crab trees, although very beautiful, are not very tall. These trees, combined with the height of the wall and recommended planting scheme could result in a tall hedge like row along the ground floor in this area which would obscure views in the windows of the ground floor. KMC 17.124.130 outlines that in the CC zone district “fences, hedges and walls shall not exceed four feet in height when located less than 30 feet from the front lot line and shall not exceed six feet in height when located more than 30 feet from the front lot line.”



Staff believes additional consideration should be given to how the building and exterior spaces interfaces with the street. Staff believes the outdoor space on the corner is a huge asset, but would encourage the applicant consider a public plaza rather than private outdoor space. This would engage pedestrians and provide patrons of the surrounding businesses additional seating opportunities on a key intersection of the downtown.

*Bulk and Flatness of the Building (N 1<sup>st</sup> Ave)* - As the subject property is three Ketchum Townsite lots, and the building is maximizing the allowable north/south footprint, the resulting building is 165 feet long on the N 1<sup>st</sup> Ave side. KMC Criteria 17.96.050.F.5 states "Building walls shall provide undulation/relief, thus reducing the appearance of bulk and flatness". Staff acknowledges that the building steps back from N 1<sup>st</sup> Ave to the alley at each level in a wedding cake fashion, however, the N 1<sup>st</sup> Ave façade appears very large and flat due to the length of the building and the repetitive nature of the architectural design on the 2<sup>nd</sup> and 3<sup>rd</sup> levels. Additionally, the sides of the building do not step in which accentuates the bulk of the building. At the 3<sup>rd</sup> level specifically, the pattern of windows are identical and run from one end of the façade to the other with little separation or break except for the center staircase. Even with the center staircase and its architectural emphasis, the building still carries a significant amount of bulk because of the identical form of each side. Fenestration is generally encouraged in buildings, particularly on ground floors. However, the amount of fenestration in this building is significant which diminishes opportunities for undulation or relief.

The flat roof form is also identical on both sides with the only variation in the center where the roof drops slightly and there is a transparent railing along the rooftop deck. The roof design, coupled with the repetitive consistent windows, makes the building still feel large even with the step back of the façade. A standard Ketchum Townsite lot is about 55 feet wide, which when developed individually, creates a unique built environment as each building is a little different with changes in materials, architectural elements, style, and building height. The proposed building lacks some of this differentiation that is key to reducing the bulk and flatness of the upper floors. Staff believes further consideration of the undulation and relief of the building is important to reduce the bulk and flatness of the building.

*Bulk and Flatness of the Building (East Elevation - Interior Lot Line)* - The Commission has paid special attention to interior walls that are exposed due to adjacent buildings that are of smaller scale than the proposed project. This is especially important when adjacent buildings are one-story structures adjacent to a three-story structure. Although staff believes the step back nature of the project mitigates some of these concerns, staff does have concern about the lack of material variation on the east elevation shown on Sheet A8. The grey metal paneling proposed is an extension of the material on the front face of the 2<sup>nd</sup> floor deck and used as an accent on the some of the window projections on the Sun Valley Rd side of the building. Staff recommends more variation in materials or a step back of the third floor of the building on the east side to reduce the flatness of the façade at that location.

*Materials Palette* - KMC standard 17.96.060.E.1 states "The project's materials, colors and signing shall be complementary with the townscape, surrounding neighborhoods and adjoining structures". Staff acknowledges that many of the proposed materials such as stone veneer, wood siding, and metal paneling are represented in projects in adjoining structures that existing or are under construction. However, many of the surrounding buildings have a warmer color palette and/or accents of warm wood elements that soften the appearance of the building. As mentioned above, the N 1<sup>st</sup> Ave façade seems to have little variation due to the amount of fenestration and the building feels long and bulky. The project does propose a cedar wood siding on the underside of the 2<sup>nd</sup> floor balcony, however, this

element is understated and could be highlighted on other portions of the façades to lighten the size of the building. For instance, some of the more recent buildings have beam accents on balcony railings, under awnings, or vertical elements at corners. Staff recommends consideration of additional wood elements on the facades.

**Staff Recommendation**

After considering the application materials provided as attachments, the applicant’s presentation, and any public comment received, staff recommends the Commission provide feedback to the applicant on the proposed Sawtooth Serenade project.

**Attachments:**

- A. Application Materials and Applicant Narrative
- B. Design Review Plan Set
- C. Story Pole and Staking Diagram
- D. Interim Ordinance 1234 Analysis
- E. Public Comment

EXHIBIT 14



**CITY OF KETCHUM | PLANNING & BUILDING**

Morgan Landers, AICP | Director  
direct: 208.727.5085 | office: 208.726.7801  
mlanders@ketchumidaho.org  
P.O. Box 2315, 191 5th Street West, Ketchum, ID 83340  
ketchumidaho.org

Thielsen Architects  
Attn: Robert Connor  
720 Market Street, Suite C  
Kirkland, WA 98033  
*[via email]*

August 24, 2023

Planning Administrator Determination: Applicability of Section 3 of Interim Ordinance 1234 to the Sawtooth Serenade development located at 260 N 1<sup>st</sup> Ave.

Dear Mr. Connor-

The City of Ketchum received a Final Design Review application for the Sawtooth Serenade development located at 260 N 1<sup>st</sup> Ave, Ketchum, ID 83340, on August 7, 2023. Upon receipt, I notified the applicant via email that the application had not been received within the required 180 calendar day requirement for Final Design Review applications outlined in Section 3 of Interim Ordinance 1234. That email also outlined that the application could be processed as a new pre-application, if that was the desire of the applicant. Following that email, I received a response requesting further consideration of the determination. Per your request, I have further reviewed Interim Ordinance 1234, other applicable code provisions in the Ketchum Municipal Code, and consulted with the city attorney.

Based on my further review, I find that Section 3 of the interim ordinance does apply to the Sawtooth Serenade development as justified by the following:

1. Preapplication Design Review and Final Design Review applications are separate and distinct applications, each with their own application form, submittal requirements, fees, and processes. Section 1 of the interim ordinance states that the ordinance applies to "to any Building Permit, Pre-Application Design Review, Design Review, Subdivision, or Condition Use Permit application deemed complete for vesting purposes after the effective date of this Ordinance filed pursuant to Title 16 – Subdivision Regulations and Title 17 – Zoning Regulations". The ordinance clearly delineates between Pre-Application Design Review and Design Review as two separate applications. Although the preapplication was deemed complete prior to the effective date, the Final Design Review application has not been deemed complete as of the date of this letter which is after the effective date of the interim ordinance.

**MAYOR** Neil Bradshaw | **COUNCIL** Amanda Breen Michael David Courtney Hamilton Jim Slanetz

**SMALL TOWN. BIG LIFE.**

2. Initial drafts of the interim ordinance did not provide any grace period to preapplications as Preapplication Design Review does not provide for any vesting of development rights. Pursuant to KMC section 17.96.010.C.2, the purpose of the preapplication is to exchange ideas and give direction to the applicant on the "design concept". The preapplication design review step is not designed to vest any specific rights or design. There is no vote of approval, approval with conditions, or denial and no Findings of Fact and Conclusions of Law are issued. Based on feedback from the development community at the time of review and adoption of the interim ordinance, the City Council acknowledged that there are investments made during the preapplication process and in the interim those developments should be provided a grace period provided they continue to timely move through the process. This led to the addition of a 180-day grace period as described below.
  
3. Section 3 of the interim ordinance states "Design Review or 17.104 – Mountain Overlay Zoning District that have conducted a preapplication design review meeting with the Commission, as required or voluntary, must file a complete Design Review Permit application and pay all required fees within 180 calendar days of the last review meeting on the preapplication with the Commission, otherwise the preapplication review will become null and void". The purpose of Section 3 of the interim ordinance was to provide a reasonable grace period for developments that began the multiple steps of the development approval process prior to adoption of the interim ordinance and to avoid a barrage of applications being submitted to the city prior to the effective date. This grace period was set by the interim ordinance and, upon expiration of the grace period, subject applications became "null and void." The Planning Department was not delegated any authority to extend or waive the grace period. The 180-calendar deadline has been applied to all applications with preapplications deemed complete prior to the effective date of the interim ordinance, including two others in addition to the Sawtooth Serenade development. Had the Final Design Review application been submitted within that grace period timeframe, staff would accept and process the application accordingly with Section 3 of the interim ordinance. It was not.

Thank you for your time and attention to this matter. As noted in my email dated August 8, 2023, the city can process this as a new application, starting with a new pre-application. This letter constitutes a final Administrator Determination with respect to this submission. This Determination may be administratively appealed under Ketchum Municipal Code 17.144. Please be advised, if desired, an appeal of this Determination must be filed within 15 days pursuant to KMC 17.144.030.

Please advise as to how you would like to proceed. You can reach me at [mlanders@ketchumidaho.org](mailto:mlanders@ketchumidaho.org) or at 208-727-5085.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Morgan Landers', with a long horizontal flourish extending to the right.

Morgan Landers, AICP  
Director of Planning and Building

CC: Matthew Johnson, City Attorney  
Jim Laski, Lawson Laski Clark, PLLC

EXHIBIT 15

JAMES R. LASKI  
MEMBER

JRL@LAWSONLASKI.COM



City of Ketchum  
Planning & Zoning Commission  
c/o Morgan Landers, Planning Director  
191 5th Street West,  
Ketchum, ID 83340

**By Hand Delivery and Email:** *MLanders@ketchumidaho.org*

September 7, 2023

Re: Appeal of Administrative Determination  
Sawtooth Serenade Project  
Our File No.: 12690-001

Ladies and Gentlemen:

We represent Scott and Julie Lynch, Yahn Bernier and Beth McCaw, and Distrustful Ernest Revocable Trust ("Applicants") with respect to the Design Review Application for the Sawtooth Serenade development located at 260 N First Avenue, in Ketchum, Idaho. This letter will serve as to supplement the Notice of Appeal filed on behalf of the Applicants with respect to the Planning Administrator Determination made August 24, 2023 ("Determination Letter") regarding the applicability of Interim Ordinance 1234 (in particular Section 3) to the Sawtooth Serenade Development ("Project").

As you are aware, the Project vested prior to the adoption of Ordinance 1234 and thus, Ordinance does not apply to the Project. However, the Planning Administrator determined that Ordinance 1234 does apply to the Project and that the Applicants' Design Review Application, submitted on behalf of the Applicants on August 7, 2023, was not timely filed. This determination came after Applicant's Preapplication Design Review was "deemed complete" and not within the purview of the interim ordinance on October 17, 2022. The determination concludes that the required step of preapplication design review does not vest any specific rights and that requires preapplication design review is a wholly separate and unrelated application for design review in Ketchum's permitting scheme. As such, she concluded that Applicants' Design Review application would not be considered by the City as it was not submitted to the City with 180



September 7, 2023

calendar days of the last Preapplication Design Review meeting of the Commission, which she calculated to be Friday July 21, 2023.<sup>1</sup>

Applicant appeals the Administrative Determination on the grounds that it:

- violates the law regarding vesting of applications;
- is contrary to the express provisions of Ordinance 1234;
- is contrary to the prior written and stated actions of the City;
- is made based on unlawful procedure
- is arbitrary and capricious and an abuse of discretion; and
- is in excess of the authority of the Administrator.

The basis for the foregoing are set forth below.

### **A. Legal Standards**

Pursuant to Title 17 of City of Ketchum Zoning Code (hereinafter referred to as the "Ordinance"), the authority of the Commission in this hearing on appeal is to consider the determination of the Administrator and the notice of appeal as well as the oral and written legal arguments of the Appellant and the Administrator. The Commission may then affirm, reverse or modify, in whole or in part, the decision of the Administrator. See Ketchum Code § 17.144.010.

In considering this appeal, it should be noted that the enabling legislation for the Commission, and Ketchum's Zoning Ordinance itself, is the Local Land Use Planning Act, I.C. § 67-6501 et seq. ("LLUPA"). The first listed purpose of the LLUPA is to "protect property rights while making accommodation for other necessary types of development . . . ." I.C. § 67-6502(a) (emphasis added). Among the statutory duties of the Commission is to insure that "land use policies, restrictions, conditions and fees do not violate private property rights, adversely impact property values, or create unnecessary technical limitations on the use of property . . . ." I.C. § 67-6508(a).

### **B. Applicant's Project Vested Prior to the Adoption of Ordinance 1234; therefore Ordinance 1234 Does Not Apply**

In its Determination Letter, the City contends that Ordinance 1234 applies to the current Application because "Preapplication Design Review and Final Design Review applications are separate and distinct applications, each with their own application form, submittal requirements, fees and processes." However, the Design Review Chapter of the Zoning Code **requires** Preapplication Design Review on any lot or lots totaling 11,000 square feet or more. Code §17.96.10.C.1. Accordingly, for the Sawtooth Serenade Project, Preapplication Design Review was the first required step to achieving Design Review Approval and a subsequent Building Permit. While each of these steps

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<sup>1</sup> The Administrator's determination was first emailed to the Development team on August 8, 2023. Following communication with the City Attorney, Matthew Johnson, it was agreed a more formal determination would be prepared, ultimately resulting in the August 24, 2023 determination letter which is the subject of this Appeal.

require separate applications<sup>2</sup> and fees, they are all a continuation of the same permitting process for the Project. As such, if Ordinance 1234 does not apply to one stage, it does not apply to any stage of the permitting process.

Idaho law is clear that a land use applicants rights are “measured under the law in effect at the time of the application.” *Citizens Against Linscott/Interstate Asphalt Plant v. Bonner County*, 168 Idaho 705, 717(2021) quoting *S. Fork Coal. v. Bd. of Comm'rs of Bonneville Cnty.*, 117 Idaho 857, 861, 792 P.2d 882, 886 (1990) (citations omitted); see also *Taylor v. Canyon Cnty. Bd. of Comm'rs*, 147 Idaho 424, 436, 210 P.3d 532, 544 (2009).

The policy undergirding this rule is “to prevent local authorities from delaying or withholding action on an application in order to change or enact a law to defeat the application.” *Taylor*, 147 Idaho at 436, 210 P.3d at 544 (citation omitted). Thus, the rule is an outgrowth of the well-established principle that legislation does not ordinarily have retroactive effect. See *Cooper v. Bd. of Cnty. Comm'rs of Ada Cnty.*, 101 Idaho 407, 412, 614 P.2d 947, 952 (1980); see also *Ben Lomond, Inc. v. City of Idaho Falls*, 92 Idaho 595, 601, 448 P.2d 209, 215 (1968) (reasoning that the rule to apply the ordinance in effect at the time of the application is “in accord with the general rule that legislation generally acts prospectively only”). *Id.*

Despite the fact of a separate application form, for a project like Sawtooth Serenade, Preapplication Design Review is a required, necessary part of the Design Review Approval Process, and as such, vests the Application. Indeed, the submittal requirements for Preapplication Design Review are identical to those of Design Review. Code §17.96.10.C.3. Acknowledging that the permitting process consists of a continuum of applications, the Administrator, in her presentation to the Commission on January 24, 2023, advised your Commission that “***this project does not come under the purview of the interim ordinance because it was deemed substantially complete prior to the effective date.***” (Transcript of January 24, 2023 Commission Meeting at 2:31:11 – 22). Because Ordinance 1234 did not apply Applicant’s Preapplication Design Review Application, it does not apply to the entire Design Review process, as they are both required steps in the same permit application process.

Notwithstanding the foregoing, and despite acknowledging on the record that the Project does not come under the purview of Ordinance 1234, in point 2 of the Determination Letter, the Administrator argues that “the preapplication design review step is not designed to vest any specific right or design.” (Determination Letter at ¶2). This is purportedly because there is no vote for approval made by the Commission. While this may make some sense for an applicant who chooses to proceed with voluntary preapplication design review, it is not only illogical, but contrary to the law where

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<sup>2</sup> It should be noted that the Preapplication Design Review application form and the Design Review application form are identical. For this Project, the City staff hand wrote “pre-app” on the printed Design Review application to make the distinction.

Preapplication Design Review is a required and necessary step in the Design Review Approval Process. Further, as the minutes for the January 24, 2023 Commission meeting show, the Commission did take action on the Application by voting to recommend that the Application proceed to Design Review.

In the Determination Letter, the Administrator characterizes the newly adopted 180 period to file a Design Review Application set forth in Section 3 of Ordinance 1234 as a “grace period”, apparently applicable to previously recommended (but apparently not vested) Preapplication Design Review Applications (§3 of the Determination Letter).

But, to the extent the 180 day “grace period” described in Section 3 of Ordinance 1234 applied to a Preapplication Design Review Application, it follows that the Preapplication Design Review Application did actually “vest” specific rights, at least for 180 days under the Interim Ordinance. Thus, the Administrator’s argument supporting the application of Ordinance 1234 actually supports the conclusion, consistent with the City’s prior statements, that the Project was vested under the law in effect prior to the Interim Ordinance.

Further, there is absolutely nothing in Section 3 of Ordinance 1234 that specifies or even implies that the 180-day period was meant to be a “grace period” applicable to “developments”<sup>3</sup> deemed complete prior to the adoption of the Ordinance. Rather, the only logical (and legal) interpretation of Section 3 of the Interim Ordinance is that a development that (i) is deemed complete for vesting purposes after the effective date of Ordinance 123, and (ii) is required to (or chooses to) go through the preapplication design review process must then submit their design review application within 180 days of the last Commission review meeting.

With respect to the present Project, the Project’s (or development’s) application was deemed complete prior to the effective date of Ordinance 1234. Accordingly, as a matter of law, the 180-day time limit for filing a Design Review Application following Preapplication Design Review does not apply.

**C. The City has Confirmed Several Times on the Record that Ordinance 1234 Did Not Apply to the Project**

As this Commission is well aware, Applicants tracked the adoption of Interim Ordinance 1234 as well as the Planning Department’s confirmation of the “completeness” of their Preapplication Design Review application in advance of the City’s adoption of the Interim Ordinance. It is fair to say that the vesting provisions of the new ordinance were drafted with this Project in mind.

Section 1 of Ordinance 1234 expressly states: “The following interim regulations and standards apply to any Pre-Application Design Review . . . deemed complete for vesting purposes **after** the effective date of this Ordinance . . .”. Ordinance 1234 § 1.

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<sup>3</sup> “Developments” is the term used in Section 3 of Ordinance 1234.

September 7, 2023

Applicant's Preapplication Design Review was "deemed complete" on October 17, 2022, prior to the effective date of Ordinance 1234.

At this time, the application has been deemed complete and will be scheduled for the next available hearing.

(See Completeness Review Letter attached as Exhibit 1).

The issue of substantial completion and vesting was also confirmed through email correspondence between City Attorney Matt Johnson and me in the days leading up to the adoption of Ordinance 1234:

Jim –

I checked in with Morgan. She said she's currently reviewing all the resubmitted items this week and will be issuing a completeness letter based on that submittal.

For the Council meeting next Monday there will be a clearer revised version of the interim ordinance that clarifies the distinction that was discussed at the last meeting in response to your comments. That revision will make clear vesting is based on an application being "substantially complete."

So I believe in combination those two items will address your request.

Matt

Matthew A. Johnson  
WHITE PETERSON GIGRAY & NICHOLS, P.A.  
Canyon Park at the Idaho Center  
5700 E. Franklin Rd., Ste. #200  
Nampa, ID 83687-7901  
208.466.9272 (tel)  
208.466.4405 (fax)  
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**From:** Jim Laski <[jrl@lawsonlaski.com](mailto:jrl@lawsonlaski.com)>  
**Sent:** Tuesday, October 11, 2022 9:42 AM  
**To:** Matthew A. Johnson <[mjohnson@WHITEPETERSON.com](mailto:mjohnson@WHITEPETERSON.com)>  
**Subject:** RE: Ketchum Ordinance 1234

Hi Matt – would it be possible to get conformation that my client's application ( at 260 N 1<sup>st</sup> Ave) is substantially complete and will be reviewed under the presently existing ordinance, rather than the proposed new ordinance 1234? I written statement to that effect would be much appreciated.

Thank you  
Jim

LAWSON LASKI CLARK

**JAMES R. LASKI**

Lawson Laski Clark, PLLC  
675 Sun Valley Road, Suite A  
PO Box 3310  
Ketchum, ID 83340  
208-725-0055 Phone  
208-725-0076 Fax

(See email correspondence attached as Exhibit 2).

September 7, 2023

Even more clear and succinctly, the Staff Report for the Preapplication Design Review Meeting held January 24, 2023, issued on or about January 19, 2023, states that this application is not subject to Interim Ordinance 1234:

The application is not subject to Interim Ordinance 1234 as the application was deemed complete prior to the effective date of the ordinance.

(Staff Report for January 24, 2023 Meeting at Pg. 2, attached as Exhibit 3).

Finally, and to the point that required Preapplication Design Review vests the entire Design Review Application Process, 2 hours and 31 minutes into the Preapplication Design Review Meeting of January 24, 2023, Planning Administrator Morgan Landers states:

“ . . . Staff also provided a review of the project's compliance with interim ordinance 1234. ***This Project does not come under the purview of the interim ordinance because it was deemed substantially complete prior to the effective date . . .***”

(Transcript of January 24, 2023 Commission Meeting at 2:31:11 – 22).

Quite simply, if Ordinance 1234 does not apply to this Project, then the 180-day provision in Section 3 of the Ordinance also does not apply.

Based on the forgoing, it is abundantly clear that the Project (or Development) was vested under the Zoning Code in effect on October 17, 2022 (prior to the adoption of Ordinance 1234). Under the Design Review provisions in effect at the time Applicant's Preapplication Design Review was deemed complete, there was no time limitation for the filing of a Design Review Application following the Commission's recommendation to advance the Project to Design Review.

#### **D. City is Estopped From Changing Its Position re Vesting**

As outlined above, the Determination Letter is clearly at odds with the position taken by the City earlier in the Design Review Application Process with respect to the vesting of the Project to the detriment of the Applicants, which is contrary to law on the grounds of promissory estoppel.

“Quasi-estoppel prevents a party from changing its legal position and, as a result, gaining an unconscionable advantage or imposing an unconscionable disadvantage over another.” *Hollingsworth v. Thompson*, 168 Idaho 13, 22–23, 478 P.3d 312, 321–22 (2020); *Garner v. Bartschi*, 139 Idaho 430, 437, 80 P.3d 1031, 1038 (2003). “Unlike equitable estoppel, quasi-estoppel does not require an undiscoverable falsehood, and it requires neither misrepresentation by one party nor reliance by the other.” *Hollingsworth*, 168 Idaho at 23, 478 P.3d at 322. Quasi-estoppel applies when:

- (1) the offending party took a different position than his or her original position and
- (2) either (a) the offending party gained an advantage or caused a

September 7, 2023

disadvantage to the other party; (b) the other party was induced to change positions; or (c) it would be unconscionable to permit the offending party to maintain an inconsistent position from one he or she has already derived a benefit or acquiesced in.

*Id.* (quoting *Trumble v. Farm Bureau Mut. Ins. Co. of Idaho*, 166 Idaho 132, 136, 456 P.3d 201, 215 (2019)).

The facts here are in line with *Hollingsworth*, where the Court found quasi-estoppel applied when a hospital changed its position by holding itself out as a private corporation in its business filings with the Idaho Secretary of State, but then later claimed it was a governmental entity when sued. The public filings led the plaintiffs to believe the hospital was a private corporation, causing them to disregard the ITCA notice deadline to the benefit of the hospital. 168 Idaho at 23, 478 P.3d at 322. Likewise, in the present situation, the City cannot now change its position regarding vesting to preclude Applicant from proceeding under the under the prior Code provisions.

**E. Even if Ordinance 1234 Did Apply, the 17-Day Delay in Meeting the Deadline Should Be Excused as It Was Caused in Part by Delays in Receiving Responses From the City and Its Agents**

It should be noted that policy behind project vesting in Idaho is designed specifically to prevent the types of action on display from staff in the processing of this application.

The policy undergirding this rule is “to prevent local authorities from delaying or withholding action on an application in order to change or enact a law to defeat the application.” *Taylor, Supra*.

With respect to the present Project, in which Design Review was submitted 197 days following the Commission’s recommendation to proceed to Design Review. It doesn’t take a conspiracy theorist to be skeptical as to the unexplained delays in scheduling meetings with staff due to staff unavailability, three weeks in April and May (April 24 to May 17) and in receiving required responses from City’s contractors – four weeks with Michael Decker re street lighting and seven weeks with Clear Creek Disposal (June 16 to August 2) re garbage pickup location, despite diligent efforts by the Applicant team.

Given that Applicant’s submittal was less than three weeks after the alleged “180-day grace period,” the fourteen weeks of delays experienced by Applicant’s development team raise legitimate concerns of abuse of process should the City not reconsider its position on the applicability of Ordinance 1234.

**Conclusion**

Based on the foregoing, it is clear the Administrative Determination violates Idaho law regarding the vesting of land use permits, is contrary the express provisions

September 7, 2023

of Ordinance 1234 and the prior written and stated actions of the City with respect to this Project. Combined with the foregoing, the unexplained delays create an unlawful procedure in the processing of Permit Application. As such the Administrator's action in making the determination is arbitrary and capricious and a clear abuse of discretion – designed to stop the Project. As such, we respectfully urge the Commission to reverse the Administrative Determination and proceed with Design Review.

Thank you for your consideration.

Sincerely,

LAWSON LASKI CLARK, PLLC

A handwritten signature in blue ink, appearing to read "JRL", is positioned below the firm name.

James R. Laski

Cc: clients

Matthew A. Johnson, Esq. (by email: [mjohnson@whitepeterson.com](mailto:mjohnson@whitepeterson.com))

EXHIBIT 16





## **CITY OF KETCHUM**

Planning & Building  
office: 208.726.7801  
planningandbuilding@ketchumidaho.org  
P.O. Box 2315, 191 5th Street West, Ketchum, ID 83340  
ketchumidaho.org

### **MEMORANDUM**

**To:** City of Ketchum Planning and Zoning Commission  
**From:** Morgan Landers, AICP – Director of Planning and Building  
**Date:** November 3, 2023  
**Re:** Administrator Reply Brief for the Sawtooth Serenade Appeal of Administrative Determination

---

This memorandum serves as the reply brief to the Appeal of Administrative Determination letter received by Mr. Jim Laski, of Lawson, Laski, Clark, on September 7, 2023. As noted in Mr. Laski's letter, an Administrative Determination was made as to whether a Final Design Review application could be filed and processed with the city based on the ordinance in effect at the time of the application. Below is a response to Mr. Laski's letter for consideration by the Planning and Zoning Commission during your review of the appeal.

#### **Vesting and Application Types**

As noted in the determination letter to the Applicant, dated August 24, 2023, staff outlined that pre-applications are separate applications with separate fees and separate processes as outlined in the Ketchum Municipal Code. As such, staff reviews each application separately upon submittal of all required application materials. Applicant's Letter of Appeal from their counsel Jim Laski, dated September 7, 2023, outlines that the determination violates the project's vesting under the various legal cases referenced in the letter and notes that applications should be reviewed under the ordinances "in effect at the time of the application". City staff have done just that. At the time of the review of the pre-application, the application was reviewed under the ordinances and regulations in effect at the time the pre-application was deemed complete. City staff reviewed the pre-application for conformance with the regulations in effect at the time, and as Mr. Laski notes, reiterated multiple times to the fact that the interim ordinance was not applicable to the pre-application.

The action in question, and what is being appealed, is the determination of the Final Design Review, not the pre-application. As stated above, the pre-application was accepted and processed according to the ordinance in effect at the time. The preapplication process concluded with the January 24, 2023, meeting of the Commission. Upon receipt of the final design review application in September 2023, staff reviewed the application according to the processes and ordinances in effect at the time of the final design review application (not pre-application), which was Interim Ordinance 1234.

Section 3 of Interim Ordinance 1234 states that developments that have conducted a voluntary or required pre-application "must file a complete Design Review Permit application and pay all

required fees within 180 calendar days of the last review meeting on the preapplication with the Commission, otherwise the preapplication review will become null and void". Because the application was not submitted within the 180 calendar days, the preapplication became null and void and any allegation of vesting provided with the preapplication under Section 1 of the Interim Ordinance was dissolved.

Mr. Laski represents that the preapplication and final design review applications are a linked application process for one development and therefore both applications should be vested. Section 1 of Interim Ordinance 1234 specifically references each permit and application type separately, not "developments", therefore vesting of a pre-application is only upheld when the processes and timeframes outlined in the ordinance is followed. As noted above, the application was not filed within the required timeframe and therefore the pre-application is null and void and a new pre-application is required. Staff provided the option to the applicant to move forward with a new pre-application, which they declined.

### **Consistent Treatment of Applicants**

If the applicant had submitted the final design review application in the required timeframe, the two applications would have been treated as timely in succession under the previous ordinance. Mr. Laski states that the actions of staff were arbitrary and capricious. Staff treated the Sawtooth Serenade project the same way as two other development projects moving through the process at similar timeframes. The Perry Building development and 4<sup>th</sup> and Main development both had pre-applications, that were required and deemed complete prior to the effective date of the interim ordinance. Applicant representatives from both developments reached out to city staff for clarification of Section 3 of the interim ordinance. Staff communicated to the applicants that Section 3 did apply to their developments and that they would need to submit within the 180 calendar days to avoid being subject to the development standards of the interim ordinance. Both projects submitted within the required timeframes to retain their vesting under the 180-day grace period.

### **Delays Caused by City**

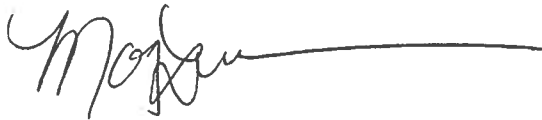
Finally, Mr. Laski's letter makes the accusation that explicit actions of the city delayed the applicant's ability to submit the application within 180 calendar days. The letter outlines delays from staff, Michael Decker, and Clear Creek Disposal. It should be noted that of the three-week delay from city staff, staff were on vacation for one full week of the stated timeframe. The applicants requested a meeting with the Director of Planning and Building, of which a two-week response time for requests is common due to workload and capacity. Michael Decker and Clear Creek Disposal staff are not employees or contractors of the City of Ketchum and city staff have no control or management over these entities and their response times. Also, city staff does not control the point at which applicants decide to provide information to and request feedback from those entities, which could have been done sooner than it was based on Mr. Laski's letter and the level of design of the project at pre-application.

## **Conclusion**

Based on the information provided above, staff believes that we upheld the vesting of applications provided by the ordinances in effect at the time of applications, processed the pre-application thoroughly and fairly according to the law, and based the determination of the Final Design Review application within the bounds of the procedures as written in law. Staff prides themselves on treating all applicants and applications fairly and consistently to avoid accusations of arbitrary and capricious actions and have demonstrated how we have done that in this case. As the Director of Planning and Building, I serve as the Administrator of Title 17 of the Ketchum Municipal Code and have acted well within the authority of the role by providing options to the applicant for consideration to move the application through the required process.

Thank you for your time and consideration of this matter.

Regards,

A handwritten signature in black ink, appearing to read 'Morgan Landers', followed by a long horizontal line extending to the right.

Morgan Landers, AICP  
Director of Planning and Building

EXHIBIT 17

November 9, 2023

City of Ketchum  
Planning & Zoning Commission  
c/o Morgan Landers, Planning Director  
191 5th Street West,  
Ketchum, ID 83340

**By Email:** [MLanders@ketchumidaho.org](mailto:MLanders@ketchumidaho.org)

Re: Appeal of Administrative Determination  
Sawtooth Serenade Project  
Applicants Response Memorandum  
Our File No.: 12690-001

Ladies and Gentlemen:

On behalf of Scott and Julie Lynch, and Yahn Bernier and Beth McCaw and Distrustful Ernest Revocable Trust (“Applicants”), this letter will serve as a Response to the Planning Director’s Reply Brief in accordance with the Scheduling Notice issued by the City Attorney on November 3, 2023.

In her brief, the Planning Director does not contest that the Applicant’s Pre-Application Design Review Application vested under the City Code in effect prior to Ordinance 1234. She does contend, however, that the language of Ordinance 1234, which did not apply to the Mandatory Pre-Application Design Review, does apply to the next step in the Design Review process, under Ketchum City Code 17.96.010, the Design Review Application, but includes a 180-day “grace period” which would maintain the Pre-Application Design Review vesting status for 180 days under Section 3 of Ordinance 1234.

However, Section 3 is not written as a “grace period” for preapplications submitted prior to the ordinance, but rather as a provision to keep the Design Review Application Process under 17.96.010 moving forward for Preapplication Design Review Applications processed AFTER Ordinance 1234 was adopted. As stated clearly in our September 7, 2023 appeal letter, Ordinance 1234 cannot both apply in part and not apply in part to the same Project or Development. In other words, either ordinance 1234 applies in whole, or it does not apply at all, and under Idaho law and as the City has stated on numerous occasions, it does not apply.

November 9, 2023

A review of the revisions to Section 1 of proposed draft Ordinance 1234 regarding vesting, all of which came after public comment, is illustrative. The first draft of the Ordinance, reviewed by P&Z on August 16, 2022, stated the following:

Pre-application Design Review Applications deemed complete prior to the effective date of this ordinance, *that do not have a subsequent Design Review application deemed complete*, are subject to the provisions contain [sic] herein.

Following public comment and citation to legal authority, the P&Z Commission recommended changing Section 1 to have vesting upon receipt of the completed Pre-application Design Review application as it would likely only impact a single project.

Despite P&Z's recommendation, staff revised sentences highlighted above in Section 1 to the following:

Pre-application Design Review and Mountain Overlay Preapplication Design Review applications *that have been reviewed by the Planning and Zoning Commission at one review meeting* prior to the effective date of this ordinance are not subject to the provisions contained herein.

In discussing this revision with the City Council at its initial hearing on draft Ordinance 1234 on September 19, 2022, Ms. Landers interrupted the Mayor to state the following:

***And pardon me for interruption council members, but just to clarify Mayor Bradshaw, we are kind of trying to split the baby a little bit with what the Planning Commission recommended and what we initially proposed to the Planning Commission. And so the initial ordinance took a much harder line that said basically if you have a pre-application, that doesn't count at all and it [sic] really only final design review count. So what we're proposing here is that if you have a pre-application that's in process and you've had your preapplication review with the commission meaning that they've given substantial feedback. You've gotten your guidance. You've had that informal review that would be the Milestone by which you get grandfathered and the new ordinance would not apply to you. (City Council meeting Transcript, September 19, 2022 at 1:21:24 – 1:22:09)***

Following public objection the requirement of a P&Z meeting prior to vesting and citation to Idaho law confirming a project is vested when an application is substantially complete, at the next City Council meeting, held on October 3, 2022, City Attorney

November 9, 2023

Matthew Johnson recommended removing the clause “that have been reviewed by the Planning and Zoning Commission at one review meeting “ and replacing that with “*deemed complete for vesting purposes*.” (City Council Meeting Transcript, October 3, 2022 at 1:46:31 - 1:48:12; 1:54:54 – 1:55:30). This is the language ultimately incorporated into Ordinance 1234.

None of the discussion at City Council regarding the vesting of a project prior to Ordinance 1234 related at all to nor even referenced the 180-day provision in Section 3. There was never any discussion or suggestion that, somehow, Section 3 of Ordinance 1234 was meant to apply only to applications for Pre-application Design Review that had been deemed complete prior to the adoption of Ordinance 1234. If the 180-day period in Section 3 was meant to limit vesting on applications for Projects that vested prior to the adoption of the Ordinance, one would think it would have been discussed at the Council level as the language regarding vesting was addressed at length.

This makes sense because under chapter 17.96 of the Ketchum Ordinance related to Design Review, Subsection C, Preapplication Design Review, is a necessary, required step in the Design Review Process for specific types of Developments or Projects. As a necessary step, it triggers the vesting for the Project, as city staff has repeatedly stated on the record in both the process of adopting Ordinance 1234 and in the Pre-application Design Review process as noted in our letter of September 7, 2023.

Quite simply, either Ordinance 1234 applies or it doesn't apply to the Sawtooth Serenade Project. The City previously stated that it did NOT apply and proceeded with Pre-application Design Review, the initial stage of the Design Review Process, under the prior ordinances. It cannot now argue that Pre-application Design Review was not part of the Design Review process required for this Project. This position is even more surprising given the recent decision in *Bracken v. City of Ketchum*, Docket No. 48721 September 15, 2023, wherein the Idaho Supreme Court, citing the same law cited in our September 7 letter, concluded that the developer's rights vested under the ordinance in effect at the time it first filed an application, which the City refused to accept, and that Bracken's “rights could not be taken away by Ketchum's enactment of a new ordinance [thereafter] ...” Bracken at 12. The Court then, citing *Ben Lomond, Inc. v. City of Idaho Falls*, 92 Idaho 595, 602 (1968), pointed out the City of Ketchum's “bad faith conduct” stating:

[T]o hold for the City in the present case would mean that a city, merely by withholding action on an application for a permit, could change or enact a zoning law to defeat the application. It could, in substance, give immediate effect to a future or proposed zoning ordinance before that ordinance was enacted by proper procedure.

The City planning staff's actions with respect to the present Project seem eerily similar.

As a final matter, the Director questions the delays pointed out in our September 17, 2023 letter in receiving responses from city contractors, including Clear Creek

November 9, 2023

Disposal (the city's garbage franchisee) and The MH Companies (the city's sole street lighting consultant) which impacted the timing of submitting a completed application. To make sure the record is complete, attached as Exhibit A to this letter is a Timeline of Delays experienced by Thielsen Architects in working through the necessary steps to bring this Project from Pre-application Design Review to Design Review. Each of these communications can be confirmed by email.

Based on the foregoing, and the facts and arguments set forth in our letter of September 7, 2023, we respectfully urge the Commission to honor the City's word, stand by the written record before you regarding the vesting of the Sawtooth Serenade Project, reverse the Administrative Determination and proceed with Design Review.

Thank you for your consideration.

Sincerely,

LAWSON LASKI CLARK, PLLC



James R. Laski

Cc: Matthew A. Johnson, Esq. (by email: [mjohnson@whitepeterson.com](mailto:mjohnson@whitepeterson.com))  
clients



# **EXHIBIT A**

## Timeline of Delays - Sawtooth Serenade

### **1<sup>st</sup> Collaborative design Meeting with Morgan Landers, Director of Planning and Building**

2/11/23 Dave Thielsen (DT) of Thielsen Architects emails Morgan Landers (ML) asking for collaborative design meeting.

2/14/23 DT emails ML again asking for collaborative design meeting.

2/14/23 ML responds that she is booked for the rest of the week.

2/22/23 First collaborative design meeting between ML and TA.

*Total of eleven (11) days from meeting request to the 1<sup>st</sup> meeting.*

### **2<sup>nd</sup> Collaborative design Meeting with Morgan Landers, Director of Planning and Building**

4/26/23 Robert Connor (RC) of Thielsen Architects emails ML requesting a second collaborative design meeting and receives an autoreply from ML that she is out of the office until 5/1/23.

5/1/23 RC emails ML for second collaborative design meeting.

5/1/23 DT emails ML asking for collaborative design meeting to be the week of the 8<sup>th</sup>.

5/8/23 RC emails ML asking again to schedule a collaborative design meeting.

5/8/23 ML responds that this week is full for her. Proposes the following week.

5/9/23 DT emails ML proposing meeting times.

5/9/23 ML responds that proposed times do not work for her.

5/9/23 DT emails ML proposing other times.

5/10/23 DT emails ML again attempting to secure meeting time.

5/11/23 ML responds that 5/17/23 will work.

5/17/23 Second collaborative design meeting between ML and TA.

*Total of seventeen (17) days from meeting request after ML's return from vacation to the 2<sup>nd</sup> meeting.*

### **The MH Companies**

5/25/23 RC emails architectural drawings and the previous street lighting plan to the previous contact at The MH Companies. RC receives notice that the previous contact has left the company and that the message has been forwarded to a new contact who will respond shortly.

**Sawtooth Serenade**  
**Timeline of Delays**  
**Page 2 of 3**

5/31/23 RC calls The MH Companies and learns that the new contact is Mike Decker (MD). RC brings MD up to speed on the project.

5/31/23 RC emails drawings and the previous street lighting plan to MD.

6/9/23 RC emails MD to check status. MD can't access any of their previous work on the project and does not have good information on what Ketchum's requirements are for the project. MD tells RC he will contact the City of Ketchum to get more information.

6/14/23 MD emails RC an update. MD is still working on the project but promises something very soon.

6/20/23 MD emails RC an update. MD is still working on the project and hopes to have something soon.

6/21/23 MD emails RC a drawing, but MD has moved the streetlight from in front of the exit door into a required street tree.

6/22/23 RC and MD exchange emails and MD revises the drawing. MD moves the streetlight back in front of the exit door. RC responds asking it to be moved away from the door. MD moves the streetlight back into the street tree. RC responds that it is back in the street tree and needs to move further west to be out of the street tree and not in front of the door. MD provides a drawing with the streetlighting in a workable location.

24 total emails, plus phone calls, required to get small adjustments to the location of two streetlights. *Total of twenty-eight (28) days to receive requested minor adjustment from City required vendor.*

**Trash Collection/Clear Creek Disposal**

6/16/23 Jeff Loomis (JL) of Galena-Benchmark emails Mike Goitiandia (MG) to review trash collection access.

6/21/23 Email from JL to Thielsen Architects (TA) stating JL is still waiting to hear back from MG on a question he asked him regarding trash collection in alley.

6/23/23 JL calls MG.

6/23/23 RC emails MG asking that he return JL's call.

6/27/23 RC calls and leaves a voicemail for MG.

6/28/23 RC calls and leaves a voicemail for MG.

6/29/23 RC emails MG drawings for his review.

6/30/23 JL and MG speak on the phone.

**Sawtooth Serenade**  
**Timeline of Delays**  
**Page 3 of 3**

7/3/23 DT emails MG.

7/6/23 DT calls MG.

7/11/23-7/17/23 TA revises drawings based on civil design work which JL reviewed with MG.

7/17/23 RC emails MG asking for memo.

7/18/23 MG emails response to RC, JL, and DT.

7/18/23 RC replies to MG with revised drawings based MG's email

7/25/23 RC calls and leaves a voicemail for MG asking for a response.

7/25/23 RC emails MG asking for a response.

7/26/23 RC and MG speak on the phone.

7/26/23 RC emails MG revised drawings based on phone conversation.

7/31/23 RC emails MG asking for a response.

8/1/23 RC emails MG asking for a response.

8/1/23 RC asks Jim Laski to contact MG to get things moving.

8/2/23 MG sends approval memo to City of Ketchum and project team.

8/7/23 Final design Review Application is transmitted to City of Ketchum.

*Total of forty-seven (47) days to receive feedback and approval from City required vendor.*

EXHIBIT 18

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City of Ketchum  
Planning and Zoning Commission Meeting  
November 14, 2023

1 CHAIRMAN NEIL MORROW: Our new business  
 2 is review and make a determination of  
 3 administrative appeal for the processing of final  
 4 design review application for the Sawtooth  
 5 Serenade Development, located at 260 North 1st  
 6 Avenue.  
 7 CITY ATTORNEY MATTHEW JOHNSON:  
 8 Commissioner, it's Matt Johnson, City Attorney.  
 9 I'm going to go into a little detail because  
 10 we've got a couple of these administrative  
 11 appeals coming up. And I know it's not something  
 12 that we've had come before you a lot. The code  
 13 provides for certain decisions to be at the  
 14 council level, certain decisions to be at the P&Z  
 15 commission level, and certain decisions to be at  
 16 the department Director level. And included  
 17 within that is an administrative appeal process,  
 18 which allows those decisions that may be  
 19 delegated to a "lower body" to be appealed up to,  
 20 with the Council being the ultimate arbiter of  
 21 anything.  
 22 What we have today is a decision or  
 23 determination that was made at the Director  
 24 level, that in this case the Applicant is  
 25 disputing that interpretation, that

Page 2

1 determination, and has administratively appealed  
 2 that determination to you. So, you are in the  
 3 position or being in a quasi-judicial role, in  
 4 fact a particularly quasi-judicial role. You can  
 5 put on your robes and your fancy white wigs for  
 6 this one. You're essentially acting as judges in  
 7 looking at the issues raised by the Applicant,  
 8 who is the Appellant, versus the response from  
 9 the Planning Director, and applying your  
 10 determination, and judging that, how to  
 11 interpret, how code applies in this situation.  
 12 So, that's kind of the basics of  
 13 process. Your decision is in turn appealable up  
 14 to City Council, by either the Applicant or the  
 15 Planning Director, if they were to so choose,  
 16 after you make your decision today.  
 17 So, you've received briefs from the  
 18 party. Typically, what we do in these  
 19 administrative appeals is I work with the counsel  
 20 for the parties who are involved, and work on a  
 21 schedule. Thankfully, in this case, Mr. Laskey  
 22 and his client were kind enough to help keep us  
 23 on schedule by coordinating. That's why you  
 24 didn't see the scheduling notice for this in  
 25 advance. But that was approved. They were aware

Page 3

1 of the date and are fully prepared to argue  
 2 today.  
 3 We have the briefing schedule, where  
 4 both sides submitted briefs or memos to you to  
 5 kind of outline. And that always follows a  
 6 pattern of the Appellant files a brief, a  
 7 response from the other party or the Planning  
 8 Department, as that may be, and then a final  
 9 rebuttal brief from the Appellant.  
 10 And then we hold the hearing, which is  
 11 oral arguments from those same individuals, with  
 12 the same order. So, it'll be Mr. Laskey on  
 13 behalf of the Appellant, will have his chance to  
 14 make argument, raise issues for you, then the  
 15 response from the Planning Director, and then  
 16 ultimately a rebuttal from the Appellant, Mr.  
 17 Laskey. You've got a fair amount of discussion  
 18 to ask questions, as you see fit during that  
 19 process or at the end, as you go into your  
 20 deliberations and apply how you feel.  
 21 I did provide you kind of a process  
 22 memo that provides more detail on this. The  
 23 biggest thing I want to really focus your  
 24 attention on, because it often becomes an  
 25 important question in these administrative

Page 4

1 appeals is from the legal side what we call the  
 2 standard of review. And that's essentially, are  
 3 you reviewing is just based on the information  
 4 that's already occurred, or are you allowed to  
 5 bring in new information? And so, on that  
 6 process memo from me, you'll see that  
 7 highlighted. And I pulled the section directly  
 8 from City Code on that. So, you're considering  
 9 the determination in this case to the  
 10 administrator. And you're not to consider any  
 11 new facts or evidence at this point. So, you're  
 12 just looking at what was in place at the time. I  
 13 don't think this will be much of an issue in this  
 14 particular case.  
 15 After you've considered that, after  
 16 you've done your deliberation, you can either  
 17 affirm the determination of the Director, you can  
 18 reverse it, or you can modify reverse it, or  
 19 remand it back to the Director with direction to  
 20 apply in a certain way.  
 21 That decision is formalized in writing.  
 22 We do have to issue that written decision within  
 23 30 days of whatever your direction is at the  
 24 meeting tonight.  
 25 So, any questions on process?

Page 5

1 COMMISSIONER TIM CARTER: Can you just  
2 review, Matt, our options on the decisions there?  
3 It sounds like there are four options.  
4 CITY ATTORNEY MATTHEW JOHNSON: Yeah,  
5 so, you've got affirm. So, essentially, if you  
6 agree with the determination. Reverse, find an  
7 issue, you could reverse it, say the opposite.  
8 You could modify, in part, if there's some issue.  
9 Or you can remand. That is to say, Director, we  
10 want you to re-evaluate this determination based  
11 upon certain inputs, direction, if you didn't  
12 want to do it yourself. So, that would be a  
13 remand.  
14 COMMISSIONER TIM CARTER: Thank you.  
15 VICE-CHAIRPERSON BRENDA MOCZYGEMBA:  
16 Matt, real quick. Is there a good time -- if we  
17 have questions, when is the best time to ask  
18 those or not?  
19 CITY ATTORNEY MATTHEW JOHNSON: Yeah,  
20 I'd say definitely, I would encourage you to let  
21 them kind of get through the argument first. And  
22 then maybe depending on your question, either --  
23 but then the one thing I would be careful of with  
24 questions from your side is we do want to be  
25 careful that the Appellant, who is also the

1 Laskey. I'm here on behalf of Scott and Julie  
2 Lynch, Jah Bernier and Beth McCaw, and the  
3 Distrustful Ernest Revocable Trust, who are the  
4 Applicants for the Sawtooth Serenade Development  
5 Project, located at 260 1st Avenue. Also, Dave  
6 Thielsen and Robert Conner from Thielsen  
7 Architects are here, who have designed the  
8 development project.  
9 I think the written materials are  
10 actually pretty good at setting forth the two  
11 perspectives in this issue. So, I'll try to keep  
12 my statements relatively brief.  
13 We contend that our development, vested  
14 under the prior ordinance because we have a  
15 completeness letter from staff, saying that it  
16 did, because we were told by staff repeatedly,  
17 just as you were told during your design review  
18 meeting -- that it was, and because it's  
19 consistent with the law that we raised in all the  
20 meetings leading up to the adoption of Ordinance  
21 1234 and the vesting of it.  
22 The Director contends the development  
23 is not vested because pre-app does not vest  
24 anything. But now that the Ordinance 1234 is in,  
25 has been adopted, it somehow gave us a 180-day

1 Applicant in this case, get a final chance to  
2 kind of give the final rebuttal. So, if you were  
3 to ask a question, for instance to the Planning  
4 Director, after all of the parts of the argument  
5 are already done, that would encourage, at least  
6 give Mr. Laskey a chance to perhaps respond to  
7 that answer if there's some issues.  
8 COMMISSIONER SPENCER CORDOVANO: This  
9 might be for Morgan. But what's the difference  
10 in price for the Applicant, for an appeal to P&Z,  
11 and an appeal to Council? Is there any  
12 difference in there?  
13 PLANNING DIRECTOR MORGAN LANDERS: Our  
14 fee schedule does not differentiate. So, it's  
15 the same flat fee, just an appeal fee. And right  
16 now, with our current fee schedule, it's 5,000.  
17 COMMISSIONER SPENCER CORDOVANO: Thank  
18 you.  
19 PLANNING DIRECTOR MORGAN LANDERS: Yep.  
20 CITY ATTORNEY MATTHEW JOHNSON: So, if  
21 there's no other questions, then at this time,  
22 you'd go --  
23 CHAIRMAN NEIL MORROW: No. We can go  
24 with the Applicant. Thank you.  
25 JIM LASKEY: Thank you. This is Jim

1 grace period within which to submit our design  
2 review application. In which case, we must have  
3 been vested, which is sort of the rub here.  
4 The Director's contention on its face  
5 would require the retroactive application of the  
6 new ordinance to our development, which violates  
7 Idaho law. Cunningham v. Twin Falls, 125 Idaho  
8 776, expands on the South Fork Coalition case  
9 that was referenced in our paper, in our letter,  
10 and as well as the cases that I referenced before  
11 P&Z and City Council, when we were talking about  
12 vesting. And it basically says that post filing  
13 changes to and -- of an ordinance do not affect  
14 the filing, regardless of whether they benefit or  
15 adversely impact an Appellant's rights.  
16 So, you can't say that an ordinance did  
17 not impact an Appellant's rights and now it does  
18 impact them by applying the 180-day grace period  
19 included in that ordinance that never applied to  
20 it in the first place.  
21 It's as simple as that. But it seems  
22 like to try to explain it is hard. So, I'm going  
23 to try a couple of different ways. And  
24 hopefully, something makes sense. It's Section 3  
25 of the ordinance, which the Director relies on to



1 support her position is not written as a grace  
2 period that would be applicable to the few  
3 existing applications in the pipeline at the time  
4 the ordinance was adopted. It's rather written  
5 as a timeframe, within which the continuum of the  
6 application process must take place under the new  
7 ordinance. It says, for developments subject to  
8 design review approval after the last pre-app  
9 design review meeting, you have 180 days to  
10 submit for design review, or your pre-app design  
11 review expires. If the pre-app didn't invest  
12 something, what would expire? This actually  
13 ratifies the tie between the pre-app design  
14 review in the development permitting process.  
15 The pre-app is an integral part of the process,  
16 particularly when it's a required part of the  
17 process, as it is with our development project.  
18 Stated another way, on one hand, the pre-app  
19 doesn't invest any right. And on the other hand,  
20 staff acknowledges that under the new ordinance,  
21 the pre-app design review process does vest the  
22 development right for 180 days.  
23 Under the original ordinance, there was  
24 no time limit on the pre-app design review  
25 vesting. That didn't mean that we didn't vest.

Page 10

1 It just means that the vesting didn't expire  
2 prior to the design review application, which we  
3 submitted 197 days after the P&Z vote to move the  
4 development to design review. We're not talking  
5 a huge timeframe here. We're talking a  
6 technicality.  
7 So, what is a pre-app design review  
8 application? Chapter 17.96 sets out design  
9 review requirements for certain development  
10 projects. For our development project,  
11 17.96.10.1, pre-app design review is the required  
12 step, first required step in the design review  
13 process that requires completion of the exact  
14 same form as design review. An Applicant can't  
15 process with design review until the P&Z vote to  
16 allow them to move forward with the process. As  
17 such, pre-app design review and design review are  
18 part and parcel of the same permit application  
19 process.  
20 In fact, we discussed this issue at  
21 length before you while you were reviewing the  
22 ordinance. Although, I have to say I was cut off  
23 at three minutes. But you guys discussed it  
24 in your August 2022 meeting when you reviewed and  
25 recommended the interim ordinance to the City

Page 11

1 Council, including changes to vesting language.  
2 There was a focus on vesting at that meeting  
3 because the original ordinance that was brought  
4 before you said that pre-application design  
5 review applications deemed complete after the  
6 effective date of the ordinance that did not have  
7 a subsequent design review application deemed  
8 complete, were subject to the provisions  
9 contained herein. Under that language, vesting  
10 would happen at design review, not pre-app design  
11 review. That would have excluded our project  
12 from having any chance of being under the old  
13 ordinance.  
14 Despite that fact -- so, you guys  
15 recommended -- I cited case law at that meeting.  
16 And same, similar case law to what I cited in my  
17 appeal letter. And you guys deliberated about  
18 vesting. And you all recommended that, as this  
19 would only impact a few number of applications,  
20 and probably only ours, that vesting, in -- the  
21 vesting language in the ordinance should be  
22 revised to say that pre-app design review  
23 applications, it would be -- that vesting would  
24 occur when pre-app design review applications  
25 were deemed complete, that you then recommended

Page 12

1 that I go to City Council with that language.  
2 Despite your recommendation, that's not  
3 the language that staff proposed to City Council  
4 in the next draft of the ordinance. The  
5 ordinance went to City Council on your  
6 recommendation. But the proposed language then  
7 said that design review applications that had  
8 been reviewed by the Planning and Zoning  
9 Commission at least one meeting would be subject  
10 under -- to the new ordinance.  
11 So, they didn't move it back to deemed  
12 complete on the application. But they said you  
13 had to have at least one meeting before P&Z.  
14 That language survived for two meetings at the  
15 City Council level. And there was back and forth  
16 between Matt and me. And we came to every single  
17 meeting on this issue. And ultimately, at the  
18 second meeting before City Council approved it,  
19 they listened to -- Matt called in from his car -  
20 - because I watched it last week. And after  
21 reviewing the case law I provided to him, he  
22 recommended changing the language to vesting to  
23 saying that the ordinance would apply to a pre-  
24 application, design review application deemed  
25 complete for vesting purposes. And I think I

Page 13

1 said that backwards.  
2 So, the ordinance would apply only to  
3 applications deemed complete for vesting purposes  
4 after the new ordinance came into place. So, if  
5 it was deemed for vesting purposes before the new  
6 ordinance came into place, the new ordinance  
7 wouldn't apply. He, at that point, they removed  
8 the phrase, and review by P&Z at one review  
9 meeting, from the draft. And that was the  
10 language that ultimately was adopted.  
11 So, that's the language we're working  
12 with. It says if we were deemed complete for  
13 vesting purposes after the new ordinance, the new  
14 ordinance would apply. If we were deemed for  
15 vesting purposes before the new ordinance, the  
16 new ordinance wouldn't apply. And we were deemed  
17 complete before the new ordinance.  
18 Thus, once our required pre-application  
19 design review application was deemed complete, we  
20 were good, and Ordinance 1234 didn't apply to our  
21 development project at all. We were not just  
22 grandfathered for 180 days.  
23 That's the crux of the legal argument.  
24 And that's the argument that I think if you don't  
25 agree with, we'll ultimately prevail on, as we

Page 14

1 move, if we have to move up the chain on this.  
2 At the end of the day, all my clients are looking  
3 for here is to be treated by the City with  
4 honesty, integrity and fairly under the law.  
5 The Director says that the pre-app  
6 design review and the design review aren't  
7 linked. Under 17.96 of the City Code, they  
8 clearly are. And under the language that was  
9 adopted in Section 3 of 1234, ratifies the fact  
10 that they were linked. The Director says we  
11 should have asked about the meaning of Section 3.  
12 But why would need to? Because under the law, we  
13 proceeded under the prior ordinance, where  
14 therefore, the new ordinance didn't apply to our  
15 development project.  
16 On top of that, I would say also, we  
17 were in a lot of communication with staff and  
18 with legal counsel. And nobody suggested that  
19 that's how this ordinance would ever be attempted  
20 to be applied. The Director reiterated the  
21 position that this project was vested in her  
22 staff report and pre-application design review,  
23 and on the record in her description of this  
24 project to your commission during the pre-  
25 application meeting. The Director didn't say it

Page 15

1 was good for 180 days. The Director said we were  
2 vested.  
3 The Director says that delays in  
4 getting responses from City vendors aren't her  
5 fault. They're not her fault. But -- and I  
6 don't want to get into a back and forth on this,  
7 but I think I need to make a record because I  
8 don't know how you guys are going to make a  
9 determination today.  
10 So, we provided a timeline of delays  
11 prepared by Thielsen Architects, which I think  
12 rebuts any contention that the Applicant team  
13 wasn't diligent in pursuing the City's designated  
14 vendors, Clear Creek Disposal and MH Companies,  
15 both of whom have contractual relationships with  
16 the City. Clear Creek is the City's franchisee  
17 for waste disposal, and you need to work with  
18 them. MH Companies, lighting design people, you  
19 need to work with them.  
20 Based on the foregoing and the written  
21 materials submitted and on the record of this  
22 development, we hope that it will head down the  
23 rabbit hole of the Bracken decision, and rather  
24 respectfully request that you exercise your  
25 authority to reverse the administrative

Page 16

1 determination and proceed with design review. We  
2 think this is the fair approach to this project.  
3 I'm happy to answer any questions you have.  
4 David and Robert can answer any questions you  
5 have if you have any technical questions as well.  
6 Thank you.  
7 CHAIRMAN NEIL MORROW: Thank you.  
8 Questions? Or would you guys like to move to --  
9 no questions. No questions, Susan?  
10 COMMISSIONER SUSAN PASSOVOY: I would  
11 like to wait until all the presentations have  
12 been made.  
13 CHAIRMAN NEIL MORROW: Okay. We'll do  
14 that, and then we'll give Applicant a chance to  
15 rebut. Thank you. Okay.  
16 PLANNING DIRECTOR MORGAN LANDERS:  
17 Great. Thank you, everyone. So, in keeping with  
18 Mr. Laskey's approach, I will be fairly brief.  
19 Because I don't think that there's a lot more to  
20 add from a color perspective on what's in your  
21 packet and what's been already noted.  
22 A couple of things I would like to  
23 disclose today. I did have a brief conversation  
24 with Commissioner Moczygemba and also Commission  
25 Carter. They had both called me ahead of this

Page 17

1 meeting just to ask a couple of questions.  
 2 Brenda's conversation, a question to me  
 3 was getting some recollection on what kind of  
 4 occurred between the P&Z meeting and the City  
 5 Council meeting. And so basically, what I kind  
 6 of recalled to her was that you all, in your  
 7 discussions at the P&Z meeting, made that  
 8 recommendation, as Mr. Laskey notes. The piece  
 9 that Mr. Laskey does not note to you all is that  
 10 you made that recommendation that you should  
 11 grandfather projects in provided they had a  
 12 timeframe.  
 13 So, there was a pretty extensive  
 14 discussion during that P&Z meeting, that said,  
 15 hey, yes, we want to grandfather, but we don't  
 16 have to grandfather in pre-apps and have them sit  
 17 for two to three years, and still be able to come  
 18 in with those future projects. So, I think  
 19 that's a little bit of the piece of discussion  
 20 that is left out on that. So, I just wanted to  
 21 make that note. So, I kind of reiterated that to  
 22 Commissioner Moczygemba.  
 23 And then Tim had called me asking for  
 24 clarification on the process. So, he said, you  
 25 know, depending on what we decide tonight, what

Page 18

1 is the next step for them. And I clarified for  
 2 him that if you uphold the Director  
 3 determination, they could appeal that to City  
 4 Council. If you remand it, then they can move  
 5 forward with design review. So, I wanted to put  
 6 those two items on the record.  
 7 I appreciate Mr. Laskey's request that  
 8 he be treated with honesty, fairness, and  
 9 integrity. I think that that is what our  
 10 department does on a daily basis with everyone.  
 11 And when we approach determinations  
 12 from an administrator standpoint, we do so with  
 13 two things in mind. One is what is the intent of  
 14 what we're trying to achieve, and are we being  
 15 consistent in that determination? We all know  
 16 our Zoning Code. It's part of the reason why  
 17 we're launching into an update of the entire  
 18 thing because it's not always straightforward.  
 19 Right?  
 20 Myself, as the director, has the  
 21 ability to make determinations when things maybe  
 22 aren't as clear as they were intended, or how to  
 23 apply those ordinances and codes moving forward.  
 24 So, we do try and do that. And that's what I  
 25 kind of put in my response memo to you all.

Page 19

1 You know, the intent of this really was  
 2 to make sure that we gave those pre-applications  
 3 that were in process time to move through under  
 4 our previous ordinances. There was a lot of  
 5 discussion about fairness, and that you all  
 6 wanted to make sure that those projects who had  
 7 vested a lot of time and money, that they can  
 8 move through the process and still get to kind of  
 9 the final design review stage without having to  
 10 redesign their projects.  
 11 In that discussion between P&Z and  
 12 going to City Council, that was when we  
 13 introduced the 180-day clause. So, when we were  
 14 then revising Section 1 of the language, you  
 15 know, we said fine, pre-app for vesting purposes,  
 16 because we had Section 3 as well. And I think we  
 17 mentioned in kind of the response letter that  
 18 pre-application and final design review are all  
 19 separate applications, separate processes, with  
 20 separate fees.  
 21 I think, to the last piece of this, you  
 22 know, I agree that we don't need to get into the  
 23 back and forth of, you know, delays and things  
 24 like that. A couple of things to note on that  
 25 front, as Mr. Laskey mentioned, yes, MH Companies

Page 20

1 and Clear Creek are franchisee companies and  
 2 designated entities. But those franchisee  
 3 agreements do not actually include turnaround  
 4 time targets or requirements. So, we as staff  
 5 have no control over that. And we also have no  
 6 control over when the Applicant actually submits  
 7 that information and those requests to those  
 8 entities.  
 9 So, with that, I will leave it up to  
 10 questions. Happy to answer any questions you may  
 11 have.  
 12 CHAIRMAN NEIL MORROW: Questions for  
 13 staff? Spencer? Brenda? Susan?  
 14 COMMISSIONER SUSAN PASSOVOY: As  
 15 before, I'd like to wait until all the  
 16 presentations have been made.  
 17 CHAIRMAN NEIL MORROW: I think that's  
 18 it. We will get a -- as Matt said, if we ask  
 19 questions after the rebuttal, then we have to go  
 20 through the process again essentially. So,  
 21 everyone has presented once now. Correct? So,  
 22 this would be the time if you had something.  
 23 COMMISSIONER SUSAN PASSOVOY: Okay.  
 24 CHAIRMAN NEIL MORROW: And I'm not  
 25 sure. While you're figuring this out, Susan, I'm

Page 21

1 not sure how much -- maybe this is more for  
2 discussion after this. But we will have a  
3 deliberation period after this. So, maybe that's  
4 more for that.  
5 COMMISSIONER SUSAN PASSOVOY: I do have  
6 some questions.  
7 CHAIRMAN NEIL MORROW: We're ready for  
8 you.  
9 COMMISSIONER SUSAN PASSOVOY: Okay.  
10 Okay.  
11 Okay. Honey, could you --  
12 MAN 1: (Indiscernible) keep going.  
13 COMMISSIONER SUSAN PASSOVOY: I told  
14 you I could while -- unless I'm talking. I'm  
15 sorry. We have a little background noise I need  
16 to eliminate.  
17 With respect -- this is for the  
18 Planning Department, for Morgan. With respect to  
19 the delays caused by the utilities or the  
20 franchisees, could an Applicant submit -- in  
21 order -- let's say they're saying, look, we're up  
22 against this deadline, we don't want to be  
23 delayed beyond the deadline. Can we submit our  
24 final review application, so that we are within  
25 the parameters of the deadline, subject to things

1 project vested, or their application, or -- I  
2 mean, these terms have been, as you point out in  
3 your materials, a little interchangeable. And  
4 that's unfortunate but it's human. You know, not  
5 everyone in this process has the same training  
6 that you do, or that I do.  
7 Would -- are you asserting a vesting of  
8 a right to build as your clients have designed  
9 it? Or does the vesting only refer to the  
10 ability to file a final design review  
11 application? Am I being clear, or do I need to  
12 rephrase it?  
13 JIM LASKEY: No, I think I understand  
14 your question. What we're asking for is to  
15 proceed with the process. We believe we're  
16 vested to proceed through the design review  
17 process based on our pre-application design  
18 review application being deemed complete prior to  
19 the ordinance.  
20 The design review process is one  
21 section of the code. And that's the section of  
22 code where are looking to get our title and  
23 permit.  
24 COMMISSIONER SUSAN PASSOVOY: Okay.  
25 And you've used the terminology that the -- that

1 that are beyond either one of our controls, which  
2 is responses from the waste management company  
3 and the lighting company. Where would we be if  
4 that would have been done?  
5 PLANNING DIRECTOR MORGAN LANDERS: So,  
6 there are instances where we do provide for  
7 deferred submittals of some of those items. As  
8 Mr. Laskey I'm sure knows, the will-serve letters  
9 from the utility companies are not an itemized  
10 submittal item in our design review checklist.  
11 And we do sometimes get requests to say, hey,  
12 we're ready to submit but we're waiting on this  
13 thing. Can we do that? You know, can we submit  
14 this in a future point and time? We evaluate  
15 those on a case-by-case basis. Ultimately, the  
16 Director has the discretion to make a decision on  
17 whether we can accept deferred application  
18 submittals or not. In this instance, that  
19 request for submittal without those items was  
20 never made to staff.  
21 COMMISSIONER SUSAN PASSOVOY: Right.  
22 Okay. Second question is for Jim Laskey. I just  
23 want some clarification on your interpretation of  
24 the term vesting. Generally, the term -- are you  
25 asserting, is your client asserting that their

1 it's, 17 days late is not material. Do you have  
2 an opinion as to what could be material? I mean  
3 --  
4 JIM LASKEY: Well, our position  
5 primarily is that the 180 days didn't apply. So,  
6 I'm just saying if you're going to apply 180  
7 days, and you look at the delays particularly  
8 caused by Clear Creek, where we were working for,  
9 if I look -- wait a sec. I want to get the right  
10 number.  
11 COMMISSIONER SUSAN PASSOVOY: Well,  
12 it's okay. It doesn't have to be exact. It's --  
13 I'm just --  
14 JIM LASKEY: Yeah, it took us 47 days  
15 to get a response from Clear Creek. And that was  
16 in response to a specific request from the  
17 Planning Director, that we have that addressed in  
18 our planning -- or our design review application.  
19 COMMISSIONER SUSAN PASSOVOY: Okay.  
20 JIM LASKEY: So, I mean, what is a good  
21 -- what would be reasonable and what wouldn't be  
22 reasonable? Obviously, people can --  
23 COMMISSIONER SUSAN PASSOVOY: Can  
24 differ, yeah.  
25 JIM LASKEY: -- differ as to what that

1 would be, I guess. 17 days in my perspective on  
2 this, given the fact that I would say the  
3 application of this provision is questionable at  
4 best, seems, if you then just weigh the  
5 imbalance, the equities on this thing, you could  
6 -- 17 days shouldn't be balance it in favor of  
7 not reviewing the application.  
8 COMMISSIONER SUSAN PASSOVOY: Okay.  
9 JIM LASKEY: You still have the  
10 opportunity to review the application under the  
11 design review guidelines.  
12 COMMISSIONER SUSAN PASSOVOY: Do you  
13 agree or disagree with Morgan Lander's statement  
14 that you're -- neither you nor your Applicant  
15 requested the ability to submit the application  
16 pending response from the -- from Clear Creek,  
17 just as a factual matter?  
18 JIM LASKEY: As a factual matter, we  
19 didn't ask.  
20 COMMISSIONER SUSAN PASSOVOY: Okay.  
21 Yeah, I don't mean to put you in a difficult or  
22 awkward position. I'm not trying to position  
23 you. I'm just trying to get some clarification.  
24 Also, you, there are a couple of  
25 assertions in your materials that I wonder if

Page 26

1 you're -- if you really mean them, and if so,  
2 what is the basis for the assertions?  
3 One is that the ordinance, the 1234 was  
4 adopted with your client's application in mind.  
5 And the second one is that the 180 days was  
6 solely for your client's benefit. I'm just --  
7 I'm not sure where those statements come from.  
8 But I'm curious as to why you think they are  
9 appropriate assertions in your materials.  
10 JIM LASKEY: So, I think -- and without  
11 going back to my letters -- I'm not exactly sure  
12 I stated it. But certainly, as this, as  
13 Ordinance 1234 was being adopted, was going  
14 through the Planning and Zoning and City Council  
15 review process, our project was at the forefront  
16 because we were racing to get our pre-app design  
17 review in and accepted. We had gotten it in and  
18 not accepted once. We were at every single  
19 meeting. There was not a lot of public comment  
20 at those meetings, as you might recall. But I  
21 was at the one P&Z meeting you guys had, and then  
22 the two City Council meetings.  
23 So, we were certainly in the  
24 background. I'm not saying necessarily that this  
25 ordinance was adopted solely to stop what we were

Page 27

1 planning to do. But we were certainly aware of  
2 it. And you were aware of the project that was  
3 in the wings.  
4 The second question was -- what was  
5 your second question again?  
6 COMMISSIONER SUSAN PASSOVOY: Well,  
7 there -- my second question was -- in other words  
8 that you stick by your characterization of the  
9 adoption, of a downtown core ordinance was aimed  
10 solely -- and I think the words you used, with  
11 the, to prevent this project.  
12 And my next question was that you are  
13 asserting that the staff deliberately delayed the  
14 work on the application. I'm wondering do you  
15 stick by that assertion?  
16 JIM LASKEY: Well, I think what I said  
17 is it doesn't take a conspiracy theorist to put  
18 two and two together. I don't know if there was  
19 a delay or not. I don't know why it took that  
20 long for Clear Creek to respond, for us to get a  
21 letter that -- I just don't know why. So, I  
22 think it is interesting that it took that long.  
23 And again, I think if you balance the  
24 equities, I think the appropriate thing is to  
25 move this project forward through your process,

Page 28

1 so you can apply the criteria you have rather  
2 than come up with some technicality that may or  
3 may not be legal to knock it off the tracks.  
4 COMMISSIONER SUSAN PASSOVOY: Okay.  
5 Thank you. Those were my questions.  
6 COMMISSIONER SPENCER CORDOVANO: Jim,  
7 Mr. Laskey, if I can get clear on a couple of  
8 things. You're talking about the adoption of  
9 1234 at the beginning of the interim ordinance,  
10 or the codification of 1249?  
11 JIM LASKEY: The adoption of 1234.  
12 COMMISSIONER SPENCER CORDOVANO: Okay.  
13 JIM LASKEY: Well, I think to be clear,  
14 we're talking about our project, our development  
15 project vested prior to 1234, and prior to  
16 anything after that. Because it gets confusing.  
17 I understand.  
18 COMMISSIONER SPENCER CORDOVANO: So,  
19 your application was complete prior to the  
20 adoption of 1234, which would negate the 180-day  
21 clause?  
22 JIM LASKEY: Exactly. If -- the 180-  
23 day clause wouldn't apply to our application  
24 because our application vested before that  
25 ordinance was adopted.

Page 29

1 COMMISSIONER SPENCER CORDOVANO: And  
2 the definition of vesting, in the City's opinion,  
3 prior to 1234, in regards to pre-app versus the  
4 design review, was updated with 1234, or the  
5 same?  
6 PLANNING DIRECTOR MORGAN LANDERS: The  
7 question of vesting from -- as a defined term,  
8 does not change. So, vesting, the way that the  
9 City looks at it, is always when an application  
10 is deemed complete.  
11 COMMISSIONER SPENCER CORDOVANO: And  
12 your application, or the City's application,  
13 Clear Creek being contacted, was after the  
14 adoption of 1234?  
15 JIM LASKEY: Yeah. So, our pre-  
16 application design review application was deemed  
17 complete. The City adopted Ordinance 1234. We  
18 came after the City adopted Ordinance 1234. We  
19 came and had a meeting before you guys. You guys  
20 voted at that meeting to recommend that we can  
21 proceed with design review. That is when we then  
22 put together a design review application, which  
23 ultimately was submitted 197 days after that  
24 meeting.  
25 COMMISSIONER SPENCER CORDOVANO:

1 Including contacting Clear Creek, which we feel  
2 like was delayed?  
3 JIM LASKEY: They're in the middle of  
4 that, yeah.  
5 COMMISSIONER SPENCER CORDOVANO:  
6 Question for staff. Have other projects inquired  
7 about this 180-day timeline?  
8 PLANNING DIRECTOR MORGAN LANDERS: Yes,  
9 at the time of the adoption of Interim Ordinance  
10 1234, we had three projects that were all in the  
11 pre-application stage. So, it was this project,  
12 of Sawtooth Serenade, it was the Perry Buildings  
13 Project, and it was Fourth and Main.  
14 And so, both of those projects were  
15 also referenced during the Planning and Zoning  
16 Commission's discussion around how to treat  
17 vesting of projects and pre-apps. Both of those  
18 applications inquired to staff, following  
19 adoption of 1234, on whether that provision of  
20 Section 3 applied. And staff responded to both  
21 of those applications that it did. And they  
22 proceeded to submit those applications within  
23 that 180 days.  
24 COMMISSIONER SPENCER CORDOVANO: And  
25 those projects were also not subject to the 1234?

1 PLANNING DIRECTOR MORGAN LANDERS:  
2 That's correct. They were both deemed complete  
3 prior to the adoption of Ordinance 1234. And  
4 those applications, both of those were also  
5 required to have pre-applications. Those pre-  
6 applications were not voluntary, similar to  
7 Sawtooth Serenade. So, all three projects were  
8 being treated the same.  
9 VICE-CHAIRPERSON BRENDA MOCZYGEMBA:  
10 Question for staff, without trying to get into  
11 deliberation here. So, when I listened back to  
12 the August 11th meeting or whatever, whenever it  
13 was, of P&Z reviewing and hearing the proposed  
14 Interim Ordinance 1234, there was significant  
15 discussion about the inclusion of, well,  
16 grandfathering in pre-app or not. And there was  
17 direct mention made of applying a timeline.  
18 So, there was obviously the  
19 conversation and the intent. But then what we  
20 have at the other end is the adopted language of  
21 1234. And so, at what point -- and it doesn't  
22 seem like some of the verbiage of 1234 quite  
23 captured in the way that the discussion was  
24 headed.  
25 So, at what point are we really arguing

1 over, or are we deciding between intent versus I  
2 guess the legality of the language of how that  
3 was written. You know, can we say, well, it was  
4 written like this. But what we meant was?  
5 PLANNING DIRECTOR MORGAN LANDERS: That  
6 would probably be a better question directed at  
7 Matt. What I can say is just from a factual  
8 matter, there was the P&Z discussion. And then  
9 Mr. Laskey does account the subsequent events  
10 accurately.  
11 So, there was a revision made by staff  
12 ahead of the City Council meeting. That first  
13 version of the ordinance included kind of two  
14 backstops, Section 3, and that additional  
15 language in Section 1. That language in Section  
16 1 then was kind of reverted back to what was  
17 eventually adopted through that discussion  
18 process. But on the -- kind of how you make your  
19 determination, I'll look to Matt to kind of guide  
20 you all on how to do that.  
21 CITY ATTORNEY MATTHEW JOHNSON: So,  
22 Commissioners, I mean, initially, you start with  
23 a look at the plain language. And then secondly,  
24 because this is coming up on appeal for you,  
25 you're being asked this question about the intent

1 So, you have a fair amount of discussion here to  
 2 apply how you intend it and how you understand it  
 3 to the situation, while trying to stay, you know,  
 4 within the letter of what's on the inlay.  
 5 JIM LASKEY: May I address this issue?  
 6 Thank you. So, I think we were all at this  
 7 meeting. And we all were a part of the  
 8 discussion. And I think Susan Frick was the one  
 9 who brought up the -- I listened to this just  
 10 this week to -- the guardrails that we needed to,  
 11 so that applications didn't stay active forever.  
 12 I would submit that's not what's  
 13 written into the ordinance. What's written into  
 14 the ordinance is that pre-application vests a  
 15 project at pre-application, and that project  
 16 vests for 180 days through that pre-application  
 17 design review from the last meeting at P&Z. And  
 18 if you don't thereafter file a design review  
 19 application, you have to start over.  
 20 I think the way it's written actually  
 21 supports our position, that we were vested at  
 22 design review, at pre-app design review. I'm  
 23 sorry.  
 24 And the new ordinance limited the  
 25 timeframe by which pre-application design review,

1 the term for which pre-application design review  
 2 vested a project, kept a project alive.  
 3 And the discussion about -- there was  
 4 discussion about whether we would grandfather our  
 5 projects. Our projects were different that those  
 6 other two -- our project was different from the  
 7 other two projects, because at your meeting, we  
 8 had not yet been deemed complete for pre-app  
 9 design review, whereas the other ones had.  
 10 So, we were in a different boat. And  
 11 that's why I said we were sort of the one that  
 12 was hanging out there, and the one where -- I  
 13 think it was even suggested like maybe you say,  
 14 okay, our application fits. And we're not going  
 15 to let anybody else. But what was recommended to  
 16 City Council was not what you guys suggested to  
 17 P&Z. And I listened to the City Council tapes as  
 18 well. And I did a search of those transcripts.  
 19 And they never once discussed Section 3.  
 20 So, it's going to be hard to say the  
 21 City Council -- what the City Council's intent  
 22 was with that.  
 23 COMMISSIONER SUSAN PASSOVOY: I have  
 24 another question if I'm -- if it's my turn again.  
 25 Or shall I -- is there someone else that wants to

1 jump in?  
 2 CHAIRMAN NEIL MORROW: No, go ahead.  
 3 Tim will go after you.  
 4 COMMISSIONER SUSAN PASSOVOY: Okay.  
 5 I'll appear in person here. I -- this becomes  
 6 very circular if anybody's noticed, which of  
 7 course makes us all dizzy. But I guess the  
 8 question that I have for the City Attorney, and  
 9 for Mr. Laskey is if Ordinance 1234 does not  
 10 apply to an approved pre-application, pre-design  
 11 review application that was completed, deemed  
 12 complete prior to the adoption of 1234, what is  
 13 the point of a grandfather or a grace period, or  
 14 whatever you choose to call it?  
 15 It either is vesting for some infinite  
 16 future application, or it's subject to the  
 17 ordinance. And so, I would like to hear from  
 18 those two gentlemen how -- whether I'm chasing my  
 19 tail or how they would answer that argument.  
 20 CITY ATTORNEY MATTHEW JOHNSON: Can I  
 21 go first? Let me just clarify something for you,  
 22 Susan. So, because I'm serving as the process  
 23 attorney for this, not arguing a side. So, I  
 24 think you would want to go to Morgan if you want  
 25 kind of the City perspective on that. But I

1 think probably Jim can address the question as  
 2 well as anything else. So --  
 3 COMMISSIONER SUSAN PASSOVOY: Okay.  
 4 Thank you, Matt.  
 5 JIM LASKEY: So, Jim Laskey again for  
 6 the record. So, the reason for what language was  
 7 because it was stated that you had design review  
 8 applications that were dangling for years, and  
 9 you didn't want them to do that. So, going  
 10 forward, right now, an Applicant puts -- does  
 11 their pre-app design review after their last  
 12 meeting, when they get recommended to go forward.  
 13 They have 180 days, or they have to start over.  
 14 So, that's a prospective ordinance.  
 15 It's not a retroactive ordinance. And it was  
 16 addressed to address a problem that people had  
 17 where people were dangling in pre-app for a long  
 18 time.  
 19 COMMISSIONER SUSAN PASSOVOY: Thank  
 20 you.  
 21 CHAIRMAN NEIL MORROW: Susan, do you  
 22 have other questions?  
 23 COMMISSIONER SUSAN PASSOVOY: Nope.  
 24 That was the question generated by the prior  
 25 discussion.

1 CHAIRMAN NEIL MORROW: Okay. Thank  
2 you. Tim?  
3 COMMISSIONER TIM CARTER: I just have a  
4 question for Mr. Laskey. And I'm waiting -- I'm  
5 sorry. Mr. Laskey -- or Jim, can you define --  
6 it seems, this -- it seems to hinge a little bit  
7 on whether the project was vested or not vested.  
8 Can you define your understanding of vested? I  
9 know Susan asked you that. But can you -- what's  
10 your definition? How do you understand vesting?  
11 What does it mean to you?  
12 JIM LASKEY: Vesting means that once  
13 you submit an application that is complete, it  
14 will be reviewed under an ordinance that's in  
15 effect at the time, was complete. So, if you  
16 listened to the Director's perspective, you're  
17 going to say this is a series of applications.  
18 So, the pre-application and the design review  
19 application are separate. We only were vested  
20 for pre-app, not for design review.  
21 What I'm saying is that's all part of  
22 the same section, that pre-app is a required  
23 condition precedent to design review, and that  
24 those legally are the same application, the same  
25 application process, they're the same section of

Page 38

1 the code. It's just you go from one to two to  
2 three.  
3 COMMISSIONER TIM CARTER: Thank you.  
4 CHAIRMAN NEIL MORROW: Anything else?  
5 All right. Since there's no public comment here,  
6 after we're done with this we can move to  
7 deliberation -- or not -- go ahead, Matt.  
8 CITY ATTORNEY MATTHEW JOHNSON: So,  
9 you'll want to allow Mr. Laskey to do a final  
10 rebuttal of anything else he may want  
11 (indiscernible).  
12 CHAIRMAN NEIL MORROW: Okay. Before we  
13 discuss this. And then --  
14 CITY ATTORNEY MATTHEW JOHNSON: Before  
15 deliberation.  
16 CHAIRMAN NEIL MORROW: -- once we go  
17 into deliberation, what happens after that if  
18 there are things that Morgan or --  
19 CITY ATTORNEY MATTHEW JOHNSON: If you  
20 have a particular question that's helpful for you  
21 --  
22 CHAIRMAN NEIL MORROW: More like if we  
23 say something --  
24 CITY ATTORNEY MATTHEW JOHNSON: Yeah,  
25 you can direct questions to staff or Mr. Laskey

Page 39

1 in your deliberation. I would just note that if  
2 you ask a question to staff --  
3 CHAIRMAN NEIL MORROW: Then it reopens,  
4 right.  
5 CITY ATTORNEY MATTHEW JOHNSON: -- and  
6 Mr. Laskey would like a chance to respond, that  
7 you give him that opportunity. So, I'm sure  
8 he'll raise his hand.  
9 CHAIRMAN NEIL MORROW: Okay.  
10 COMMISSIONER TIM CARTER: I got another  
11 question for Mr. Laskey.  
12 CHAIRMAN NEIL MORROW: Sure.  
13 COMMISSIONER TIM CARTER: Let's see,  
14 Jim, in your, appeal Section D, you bring up a  
15 concept called estoppel. Can you explain what  
16 that is?  
17 JIM LASKEY: Yeah. It's estoppel, is a  
18 -- it's a legal principle that basically says if  
19 you say something and then somebody relies on it,  
20 you can't then change your position to their  
21 detriment. And that's an argument of what  
22 happened here.  
23 We went through the design review, the  
24 pre-app design review process. During that  
25 process, I've cited in my letter several areas

Page 40

1 where we were told, where you were told, we were  
2 told that our project -- and project was the word  
3 that was used -- was vested under the prior  
4 ordinance. 1234 did not apply. So, what our  
5 argument is is that you can't say that and then  
6 change your position to then adversely impact our  
7 position.  
8 COMMISSIONER TIM CARTER: Thanks.  
9 PLANNING DIRECTOR MORGAN LANDERS: I  
10 (indiscernible) comment to that.  
11 CHAIRMAN NEIL MORROW: Please.  
12 PLANNING DIRECTOR MORGAN LANDERS: So,  
13 just, and because Mr. Laskey will have a chance  
14 to kind of rebut anything else, one of the things  
15 that I didn't address in the determination letter  
16 because I didn't feel like it was necessary to go  
17 kind of line by line. All of the references that  
18 Mr. Laskey put in his appeal letter were all  
19 references from completeness letters or staff  
20 reports or things like that, things that were  
21 discussed in that pre-application meeting. They  
22 were all related directly to the development  
23 standards in Ordinance 1234, not process.  
24 And that was when, you know, when we  
25 went through and we said, hey, you know, yes,

Page 41



<p>1 we're not evaluating this based on the 2 requirements of 1234. That was in relation to 3 the development standards. I think he also put 4 in his appeal letter an attachment that was kind 5 of staff's review of interim ordinance 6 compliance. 7 As you all recall, we were doing that 8 for every project through the process. That's 9 kind of just an informational piece. And all of 10 the items listed in that review were also all 11 just development standards. There was never a 12 question about process because the application 13 was already in the process. So, just a point of 14 clarification there. 15 CHAIRMAN NEIL MORROW: Thank you. 16 Anything else for staff or the Applicant? 17 COMMISSIONER SPENCER CORDOVANO: Matt, 18 is an executive session an option for this 19 meeting at this time, or any further point in 20 this meeting? 21 CITY ATTORNEY MATTHEW JOHNSON: So, 22 although you all get to serve as judges for this 23 one, one of the drawbacks is you really don't 24 have that like going back to chambers discussion 25 part. So, particularly with anything with</p> <p style="text-align: right;">Page 42</p>	<p>1 180-day clause after vesting? 2 PLANNING DIRECTOR MORGAN LANDERS: 3 That's correct. 4 COMMISSIONER SPENCER CORDOVANO: Thank 5 you. 6 CHAIRMAN NEIL MORROW: All right. 7 Thank you so much. 8 COMMISSIONER SUSAN PASSOVOY: Wait. I 9 have one more question. 10 CHAIRMAN NEIL MORROW: Okay. 11 COMMISSIONER SUSAN PASSOVOY: Okay. I 12 forgot. This was puzzling me. In terms of 13 Section 3 of Ordinance 1234, why does it refer to 14 the mountain overlay district? 15 PLANNING DIRECTOR MORGAN LANDERS: So, 16 the reason that staff included that as a separate 17 callout is because the mountain overlay standards 18 are in a different mountain overlay section of 19 the Municipal Code. So, if we just referenced 20 17.96, it wouldn't cover the mountain overlay 21 provisions as well. 22 COMMISSIONER SUSAN PASSOVOY: Okay. 23 So, the 180 calendar days does not apply just to 24 pre-application material or in the mountain 25 overlay district? It applies to all pre-</p> <p style="text-align: right;">Page 44</p>
<p>1 respect to the merits. If there's a question 2 about sort of legal liability we need to get 3 into, that could be appropriate. But note, that 4 would be a very constrained part of the 5 discussion. 6 So, particularly anything on the merits 7 or the bigger pat, I encourage do that in 8 deliberation. 9 COMMISSIONER SPENCER CORDOVANO: 10 Thanks. 11 CHAIRMAN NEIL MORROW: Thank you. All 12 right, if there's nothing else, we can go to 13 deliberation. 14 JIM LASKEY: Can I respond to Morgan's 15 last comment? 16 CHAIRMAN NEIL MORROW: Oh, sure. 17 JIM LASKEY: So, I just want to point 18 out that -- say we were vested under the prior 19 ordinance for the purposes of going through the 20 design criteria, we were vested under the prior 21 ordinance, not just for design criteria, but the 22 prior ordinance is what applied. 23 CHAIRMAN NEIL MORROW: Thank you. 24 COMMISSIONER SPENCER CORDOVANO: And 25 Morgan, prior to adoption of 1234, there was no</p> <p style="text-align: right;">Page 43</p>	<p>1 application decisions? 2 PLANNING DIRECTOR MORGAN LANDERS: 3 That's correct. 4 COMMISSIONER SUSAN PASSOVOY: Okay. 5 Thank you. 6 COMMISSIONER SPENCER CORDOVANO: You 7 were going to say? 8 JIM LASKEY: Sure, just as a follow up 9 rebuttal to that, that further proves my point, 10 that the addition of three was not just to 11 grandfather a dangling application. The addition 12 of Section 3 was to move the process forward for 13 prospective applications. 14 CHAIRMAN NEIL MORROW: Thank you. 15 Good? Okay. We can move into deliberation. 16 CITY ATTORNEY MATTHEW JOHNSON: I just 17 want to make sure. Jim, did you get a chance to 18 complete your rebuttal? 19 JIM LASKEY: I think you can move on. 20 I think everybody's point is clearly stated. 21 CHAIRMAN NEIL MORROW: Okay. Anyone 22 chomping at the bit to start the first time, now 23 that you're an elected official, you can, changes 24 the -- 25 VICE-CHAIRPERSON BRENDA MOCZYGEMBA:</p> <p style="text-align: right;">Page 45</p>

1 I'll go ahead and start. This is definitely a  
2 tricky one. And for good reason that it's being  
3 questioned. So, I appreciate the Applicant and  
4 staff for going through the process here.  
5 And as I stated before in my question,  
6 I think in relistening to the meeting we had  
7 regarding 1234, it was clear out of fairness that  
8 we wanted to include this grandfathering  
9 provision for pre-apps that came through before  
10 1234 was put in place.  
11 And then it was also discussed. I  
12 think Susan had brought it up. But I think we  
13 were all in agreement that -- I think there was a  
14 concern by staff and by us that there would be  
15 this glut of applications, which I did not  
16 believe to be true because of the requirements  
17 necessary to get in place, but that there would  
18 be this glut of applications just trying to get  
19 this pre-application deemed complete, and then  
20 they'd sit for, you know, a long period of time,  
21 until they were ready to proceed.  
22 You know, they -- so, I think it was  
23 clear in the discussion how we wanted Ordinance  
24 1234 to be written. But I think I have some  
25 sympathy towards the Applicant team that the way

Page 46

1 that that was captured between Section 1 and  
2 Section 3 just completely misses the mark of that  
3 particular conversation and how it was worded.  
4 And so, you know, there was arguments  
5 being made by both sides about, okay, is a pre-  
6 application design review actually a vestment, I  
7 guess, of this process, or not? So, again,  
8 that's just arguing terms versus what the intent  
9 was.  
10 But then the most important part to me  
11 is Section 1, clearly is the applicability of the  
12 entirety of this 1234. So, I think I would agree  
13 with the Applicant, that the application of 1234  
14 and pieces and parts is not necessarily  
15 appropriate. I think it's an all or nothing  
16 thing. Either we're under 1234, or we're under  
17 the 17.96. So, those are my thoughts.  
18 CHAIRMAN NEIL MORROW: Spencer, Tim,  
19 Susan? All right, with nothing --  
20 COMMISSIONER SUSAN PASSOVOY: I'm still  
21 cogitating here.  
22 CHAIRMAN NEIL MORROW: Okay. I've got  
23 a couple. So, and I don't know -- Matt, some of  
24 this is based on me being here for a long time.  
25 And you know, we've always -- a couple of guys

Page 47

1 have been here through a bunch of these pre-apps  
2 that were, it wasn't mandatory, it was mandatory.  
3 It's a hotel, so you have to do it. You know,  
4 there was a lot. But we never really looked at  
5 it. It was more of a charette. Pre-app was  
6 always kind of its own, come in, let's give you  
7 our ideas. We don't want you to spend a crap  
8 load of money and bring this to design review,  
9 and have us tell you, you know, it's horrible or  
10 it doesn't work.  
11 So, I -- for years, we've always looked  
12 at it. We've looked at materials in pre-app that  
13 never happened. We looked at things that never  
14 happened. In my opinion, it's always been its  
15 own thing. It's always been a charette to give  
16 advice on things. It didn't ever have any real  
17 power to it, in a way. You know what I mean? It  
18 was, we saw it with -- I can name 50 projects  
19 that we saw it with, where they came in, and we  
20 said, okay, this doesn't fit, or this doesn't --  
21 and then they came back with almost a completely  
22 different project. There was no vesting of their  
23 project in pre-app. It was a design charette for  
24 us to give them ideas, so they didn't show up  
25 with an elephant, and have us go we don't want

Page 48

1 the elephant.  
2 So, I don't know how that fits. But  
3 I've always looked at it as something different,  
4 and as a chance for us to talk with developers  
5 and designers and architects about what fits and  
6 what we like, and not as a part of a vested --  
7 once you were into pre-app -- I mean, I can't  
8 tell you how many came in and we never saw again,  
9 or how many we saw that were completely  
10 different, or how many we -- you know, it never  
11 was -- for a long time there were people who said  
12 we don't need pre-app. You know, it's voluntary.  
13 You don't have to come in. They were like, why  
14 do we have to come in to do this, we're going to  
15 bring our project in.  
16 So, I've always been under the  
17 impression that it was its own thing, and that it  
18 was more of a curtesy to developers and  
19 designers, so they didn't bring in something that  
20 wasn't, that was completely off the mark. And  
21 we've seen that before. And we've had things  
22 that weren't pre-app that that happened.  
23 So, I'm not sure how that -- that's  
24 always been in my head, that pre-app is, it's  
25 just a charette. It doesn't vest anything.

Page 49

1 Vesting happens at design review. And our saying  
2 take it from here to design review, it's a --  
3 design review is a totally different thing than  
4 pre-app design review. It's a much different  
5 animal. And you can see that through any number  
6 of projects that have gone to one or two pre-apps  
7 but have gone to three or four design reviews,  
8 because we don't, it's too intense. And it goes  
9 a much longer period of time.  
10 So, that's just, in my opinion, the way  
11 I've always looked at it. So, just because  
12 they're linked doesn't mean they're vested, or  
13 they're grandfathered. Again, these may be legal  
14 determinations that I'm not making. But that,  
15 for six and a half, seven years, we've looked at  
16 pre-app as a chance to talk to designers, so they  
17 didn't bring in something terrible.  
18 Yeah, I don't, I mean, I have a bunch  
19 of stuff. But in a sense, I could also say, you  
20 know, as much as they can say the City changed  
21 the rules on them, it looks to me like there's  
22 three or four chances here for them to have made  
23 attempts to get a deferred application. You  
24 know, say we want to do this, but we want to do  
25 it without these two because these guys aren't

Page 50

1 cooperating. That's a process. That happens.  
2 It's not the City's responsibility. And if you  
3 drop the ball and don't ask for it, that's -- I'm  
4 not sure that can be put back on, hey, the City  
5 didn't do it. You know, the City didn't answer  
6 our phone calls, so we did whatever we wanted.  
7 You know, it's not a -- I just, that one doesn't  
8 work for me.  
9 It's just as easy to argue that they  
10 dropped the ball. They didn't apply for it when  
11 they knew. They didn't come and look to see if  
12 Section 3 applied like the other people did.  
13 They just assumed. And that's, in my opinion,  
14 that's as much them dropping the ball on their  
15 job as it being inappropriate.  
16 I'm not, I'm a little confused. Either  
17 the 180 days doesn't apply, or it does apply, and  
18 they missed it.  
19 So, once again, you know, we have  
20 projects that make it. There is a rule. So, if  
21 it doesn't apply, then it doesn't apply. And if  
22 it does apply, then they missed it. And it's  
23 over. You can call it a technicality. But  
24 that's what it said. That's what it's there for.  
25 So, you know, you want to make that argument. It

Page 51

1 doesn't apply to us. But if it does, it's only a  
2 technicality. These guys get paid a lot of money  
3 to be lawyers, to know what's going on. You drop  
4 the ball, it's not always someone else's fault.  
5 You know, walk over to -- drive over to Clear  
6 Creek and say, it's taken 47 days to get a  
7 response, and our multi-million-dollar project is  
8 hanging on the balance. But you know, that's  
9 obviously too much.  
10 I'm with Susan. I think that even the  
11 assertion that staff did anything hanky, as far  
12 as this project goes, it was the last project  
13 through. They were busting their ass to get it  
14 in so it would get in under the -- under the  
15 wire. I'm not sure we were even sure it did get  
16 in under the wire initially. I don't think any  
17 of this was done specifically because it was  
18 their project. I just think they were the last  
19 ones. And they were the ones rushing to try and  
20 get it done. The other two projects had been in  
21 the process, and had gone through that, and had  
22 followed the rules.  
23 So, I'm not, I don't believe anything  
24 vests in pre-app. And I don't believe that it's  
25 the City's fault to follow your timelines and

Page 52

1 know what the timelines and the rules are. It's  
2 why lawyers get paid, you know, hundreds and  
3 hundreds of dollars an hour.  
4 You know, our recommendations to City  
5 Council, when we said we wanted some kind of 180  
6 days or something, they're recommendations.  
7 That's, City Council can change that language  
8 with staff. That's not our -- they're not  
9 required to take our wording and place it  
10 directly into the code. So, you know, again, I  
11 think we recommended -- in IPN, I think if you  
12 listen to that, the idea was we didn't want  
13 projects two years, three years, 12 years sitting  
14 around and then coming back, oh, we're good,  
15 we're vested with pre-app because we did this two  
16 years ago.  
17 So, I think that was the intent, at  
18 least in my opinion, of that whole discussion.  
19 And I think how it turned out in the ordinance,  
20 you know, it wasn't up to us to say specifically  
21 this is it, City Council has to adopt it. So,  
22 how it turned out is how it turned out. And  
23 again, you're doing a project. When the rules  
24 are changing, you have to stay on the ball.  
25 So, that's my opinion. Anyone else?

Page 53

1 COMMISSIONER TIM CARTER: Susan, I can  
2 go. Are you ready?  
3 COMMISSIONER SUSAN PASSOVOY: Okay.  
4 I'll go. Whoops, what happened to me? Oh, there  
5 I am.  
6 Once again, it's -- this is a very  
7 difficult -- and both from a process point of  
8 view and from a legal and analysis point of view  
9 when we get down to very tiny items, which have  
10 impact on people and on the City.  
11 The question of vesting, and what that  
12 means, in my experience, comes up in a number of  
13 circumstances. There is nothing that vests  
14 forever, even if you have met -- if you're doing  
15 a development project, and a development -- a  
16 developer has met the vesting requirements of  
17 law, in terms of expending funds and doing  
18 material, physical work on their project, that  
19 developer does not get to sit around forever and  
20 not do anything and then show up much later with  
21 the development right to proceed. Everything has  
22 an end date, a parenthesis around it. And I'm  
23 looking at this in the same way.  
24 If I really look at the language of  
25 Section 1, it says that anything that has vested

1 is subject to this ordinance. And the vesting,  
2 in terms of vesting, a pre-application only means  
3 that you don't have to go through the pre-  
4 application process. You have vested that pre-  
5 application. But it's not vested for all  
6 purposes. It's only vested for the totality of  
7 the pre-application process. And since one is  
8 required to go to take the next step, in terms of  
9 filing a complete application, I think I am  
10 sympathetic to the staff's conclusion that this  
11 ordinance is clear, that you know -- we  
12 acknowledge that it can be a -- what's the word?  
13 It can impose a, you know, a hardship on an  
14 Applicant to have gone that far and not have a  
15 leg up doing the next step. And if you don't do  
16 what's required to meet that next step within six  
17 months, then you're subject to the new law.  
18 So, I am coming down on the side of the  
19 staff's conclusion in this. But it is a very,  
20 very, as Brenda said, a very tricky situation.  
21 And it's difficult to parse your way through  
22 these various words that have loaded meanings.  
23 Oh, excuse me. That's my husband's  
24 phone and I'll turn it off. So, sorry about  
25 that.

1 So, that's my -- that's my thinking.  
2 And it is a very challenging analysis and a very  
3 challenging problem to have to parse.  
4 CHAIRMAN NEIL MORROW: Thank you. Tim?  
5 COMMISSIONER TIM CARTER: So, my  
6 recollection of the intent of the language in  
7 Section 3 is consistent with what we've heard.  
8 And you know, in that intent, our intent was to  
9 avoid a situation where a project was given an  
10 approval before the ordinance and then had an  
11 indefinite amount of time to come before us in  
12 the next step when a different ordinance was in  
13 place.  
14 So, my recollection is there as an  
15 attempt to find that. But you know, I'm  
16 certainly sympathetic to the Applicant here. You  
17 know, there is a question of, you know, if you're  
18 -- if it's deemed that we're not, that the  
19 Applicant isn't subject to Interim Ordinance  
20 1234, but then they are subject to a part of  
21 Interim Ordinance 34, that seems to me to be a  
22 conflict.  
23 And so, I'm certainly sympathetic to  
24 the argument -- the Applicant's argument there.  
25 It seems like the, you know, the decision of

1 whether or not the Applicant is subject to  
2 Section 3 of 1234 to our intent, you know, is a -  
3 - ultimately comes down to some legal principles,  
4 you know, whether or not, you know, it's vested  
5 or it's not vested, other complex, sort of legal  
6 principles that, you know, I don't -- I'm not a  
7 trained attorney. I don't want to make that -- I  
8 feel like I don't want to make that  
9 determination. I want to give the Applicant the  
10 opportunity to make this argument in front of  
11 somebody who is more, you know, a body that's  
12 more trained into whether or not this is a, you  
13 know, that has standing.  
14 So, I mean, that also creates kind of a  
15 complex situation, because what that means, in  
16 order to do that, we would need to sort of reject  
17 the application, so that it gets a chance to move  
18 up and be argued in front of someone with more  
19 training, which doesn't -- I'm not sure if that's  
20 helpful or not to the Applicant. But I don't  
21 feel like I can say because I know -- I mean, I  
22 have a recollection of what the intent was.  
23 And I -- so, I do feel like we're  
24 acting consistent to the intent by rejecting the  
25 appeal, and simultaneously giving the Applicant

1 an opportunity, because there is -- I do see that  
2 there -- it does seem like there's an argument to  
3 be made. To let that argument continue, you  
4 know, there's an opportunity for the Applicant to  
5 make that argument in front of a body that can  
6 parse the sort of legal -- you know, there are  
7 some fine legal issues here that have standing or  
8 precedent or whatever the right term is that --  
9 this decision ought to be made under those  
10 principles.  
11 So, my intent is to -- my instinct is  
12 to pass this along to some of those folks.  
13 Because I see both sides of this. I think  
14 there's good standing for the Applicant's  
15 argument. But I also feel like the staff may  
16 have done correct, staff made the correct  
17 interpretation based on the intent of the  
18 language.  
19 But -- so, that's my suggestion is that  
20 we -- but I would vote to deny the appeal so that  
21 it can go to -- (indiscernible) which is a bit of  
22 (indiscernible).  
23 CHAIRMAN NEIL MORROW: Well, actually,  
24 to allow it, you're saying, because none of us  
25 really even know what vesting is. And I

Page 58

1 guarantee in the new code, we'll have a much  
2 better this vest here, this vest there, whatever  
3 it is. But because of that, you're more  
4 comfortable allowing experts on how to parse that  
5 term out do it than have us make that decision.  
6 COMMISSIONER TIM CARTER: Yeah.  
7 CHAIRMAN NEIL MORROW: Okay. That's  
8 very reasonable. Spencer? Any --  
9 COMMISSIONER SPENCER CORDOVANO: I feel  
10 like I can -- my intent when we were working  
11 through 1234 was to take projects that were in  
12 the application state that did not meet the  
13 minimum densities and minimum number of units,  
14 and allow them to proceed with their program, not  
15 under the restrictions of 1234, or the  
16 restrictions of 1249.  
17 However, the intent was clear for me,  
18 that the process updates, which this 180-day  
19 clause is part of, and the process updates to  
20 less materials needing to be provided for pre-  
21 application, were to affect those projects in the  
22 pipeline.  
23 Mr. Laskey brings up a good point, that  
24 I do see the conflict that pathway at this time.  
25 However, I believe staff's decision was in line

Page 59

1 with what I, or we recommended. It does seem  
2 weird now to look at it under this guise.  
3 And I'm trying to think through how it  
4 all affects each other. And you know me, as  
5 always, just telling it as I see it. I think  
6 it's potentially a moot point either way. I feel  
7 like -- I feel like the proposed project doesn't  
8 meet the development standards to qualify for an  
9 (indiscernible) exceedance in Ketchum and has no  
10 place in Ketchum. And I feel like the amount of  
11 public feedback that I've gotten after that  
12 meeting was some of the most robust of all my  
13 time on the Commission, which is the most limited  
14 of anybody here. Well, actually, never mind.  
15 Sorry, Susan. But obviously all of her  
16 experience trumps my --  
17 COMMISSIONER SUSAN PASSOVOY: You're  
18 excused.  
19 COMMISSIONER SPENCER CORDOVANO: -- in  
20 the business at hand.  
21 But I just feel like regardless of this  
22 thing, I feel like it has a hard time of getting  
23 through council as qualifying for an  
24 (indiscernible) exceedance either way. And  
25 that's not what's up for deliberation here today.

Page 60

1 But I'm just trying to provide my  
2 classic perspective to the Applicant without  
3 beading the bushes, is that that's how I feel  
4 about the whole global perspective of this thing.  
5 And I'm having a hard time today to  
6 decide which way to go because if we approve or  
7 deny and reverse and modify, where does this all  
8 go to? And I would like to exercise some  
9 fairness to the Applicant. We don't want anybody  
10 to feel that way when they come through a  
11 process. And I also want to be able to support  
12 staff when they did what I/we recommended. So,  
13 it's a tough one for me. And I just wanted to go  
14 last today. (Indiscernible) nothing to do with  
15 anything.  
16 CHAIRMAN NEIL MORROW: It's good to end  
17 on a tough one.  
18 COMMISSIONER SPENCER CORDOVANO:  
19 (Indiscernible).  
20 COMMISSIONER SUSAN PASSOVOY: Well, you  
21 don't have to be last, Spencer, because I want to  
22 walk through something. Each of your comments  
23 has clarified some things for me. The question  
24 of -- as I asked Mr. Laskey at the beginning,  
25 what he thought vested. And as I -- as I

Page 61

1 interpret this, based upon my 35 years of the  
2 practice of law in this field, what's vested is  
3 the pre-application design review, or the -- and  
4 the world application, where does it fit in this  
5 sentence? But anyway --  
6 COMMISSIONER SPENCER CORDOVANO: Pre-  
7 app design review.  
8 COMMISSIONER SUSAN PASSOVOY: The pre-  
9 app design review vested. That is all that  
10 vested. And Ordinance 1234 said that if -- that  
11 you don't have to go back and start all over  
12 again with pre-app if you vested prior to the  
13 adoption date of this ordinance. However, you  
14 don't get to go forward unless you get the next  
15 step accomplished within 180 days. And this  
16 Applicant did not get the next step accomplished  
17 within 180 days.  
18 Therefore, as sympathetic as I might be  
19 with someone who deals with the complexities of  
20 any city department, and all of the work, you  
21 know, the workload that everybody has, and the  
22 delays that occur, you know, we -- I really  
23 understand that, and I'm very, very sympathetic  
24 to the Applicant. But 180 days means 180 days.  
25 And if you -- if you have that in mind

1 and you understand it, then you get things done  
2 in time, or to the extent they can't -- that  
3 delays are due to reasons without -- beyond your  
4 control, you make allowance for that with your  
5 final design review application.  
6 I don't, I just, I think the ordinance  
7 if you --  
8 COMMISSIONER SPENCER CORDOVANO: Susan,  
9 can I -- take your time here.  
10 COMMISSIONER SUSAN PASSOVOY: Sorry.  
11 That's my bodyguard. I just -- so, let me just  
12 close that sentence and then turn it over.  
13 And that being said, to make the  
14 assumption that vesting means you're vested for  
15 the next step under the old ordinance, that's an  
16 assumption. And that's -- could be a costly  
17 assumption. And you better get verification of  
18 that before you proceed.  
19 So, I do support -- I think the City  
20 was generous in giving people six months. And  
21 I'm not sure if I had been on the City Council I  
22 would have voted for that long a period of time.  
23 But I understand it. It's what was adopted. But  
24 there is a definitive -- Henry, enough.  
25 Sorry. I'll stop there so I can shut

1 him up. Okay?  
2 COMMISSIONER SPENCER CORDOVANO: Hold  
3 on, Susan. I have a question for you. And I'll  
4 wait until you get back.  
5 CHAIRMAN NEIL MORROW: Anyone else,  
6 while we're waiting?  
7 VICE CHAIRMAN BRENDA MOCZYGEMBA: Well,  
8 I guess I'll follow up to that in the interim  
9 here, is that if that's -- if Susan's definition  
10 or understanding of vesting is that, you know,  
11 it's only pre-application vested and then you do  
12 design review, and you're vested -- you know, the  
13 other part of this Section 1 is building permit.  
14 So, to me, if that's the take, then there's  
15 probably several projects that were approved  
16 under design review that were preparing their  
17 plans. And now, they should also be subject to  
18 1234, because they were not vested under that.  
19 But then in response, Neil, to your  
20 comment about why the Applicant did not ask for  
21 deferred submittals, is that if you simply did  
22 not know that you're up against a timeline,  
23 whether -- you know, again we can argue why,  
24 whether or not the question was asked. But of  
25 course, they didn't ask for a deferred submittal

1 or more time if they didn't know that they were  
2 missing this timeline.  
3 CHAIRMAN NEIL MORROW: Spencer, go  
4 ahead.  
5 COMMISSIONER SPENCER CORDOVANO: Susan,  
6 are you still around?  
7 COMMISSIONER SUSAN PASSOVOY: Yes, I am  
8 here.  
9 COMMISSIONER SPENCER CORDOVANO: By the  
10 way, we could barely hear the dog. So --  
11 COMMISSIONER SUSAN PASSOVOY: Oh, okay.  
12 I'm sorry.  
13 COMMISSIONER SPENCER CORDOVANO: -- we  
14 can hear you loud and clear -- or the bodyguard,  
15 as you call it.  
16 COMMISSIONER SUSAN PASSOVOY: Thank  
17 you.  
18 COMMISSIONER SPENCER CORDOVANO: What  
19 my question was for you, or to deliberate with  
20 you, based on your comments there was -- let me  
21 find my words again. How do I put it? You  
22 basically said that even though they weren't  
23 subject to the items of the -- the program items,  
24 that they should have been aware of the timeline  
25 updates.

1 COMMISSIONER SUSAN PASSOVOY: I'm  
2 saying that -- I'm agreeing with Neil, in that  
3 it's a complicated process. But there's a lot --  
4 there's obviously a lot at stake, or the  
5 Applicant would not be going through this  
6 process. And I just think you -- I can't, it's  
7 not my job to blame anybody for anything in this  
8 process.  
9 It's our job, or my job to look at this  
10 and see whether or not the interpretations of  
11 some, of the ordinance and the process were  
12 objective and fair and evenly applied. And I  
13 can't -- and I have to go with the decision of  
14 the Planning Director, because I don't find that  
15 those standards were violated.  
16 COMMISSIONER SPENCER CORDOVANO: Thank  
17 you. I'm still super stuck on this one. I want  
18 to be sympathetic to the Applicant. I also think  
19 staff performed as directed. And there was other  
20 projects that met a similar timeline of when they  
21 submitted, when they went through pre-app, and  
22 how adoption of 1234 affected their timeline, and  
23 didn't affect their program.  
24 I'm having a tough time because I do  
25 feel for the Applicant team. I understand where

Page 66

1 you're coming from 100 percent. But I also think  
2 staff acted as we intended, and it does sound  
3 tricky right now upon further look in the mirror.  
4 So, maybe we could roll through some scenarios  
5 here of, you know, I would like to -- so, if we  
6 affirm staff's decision, then what?  
7 CHAIRMAN NEIL MORROW: Goes back to --  
8 Matt, go ahead.  
9 CITY ATTORNEY MATT JOHNSON: Sure. So,  
10 if you affirm the decision, then at that point,  
11 it would be up to the Applicant, the Appellant  
12 whether they'd like to take the next  
13 administrative appeal step, which would be  
14 appealing that decision up to the City Council.  
15 City Council would essentially conduct  
16 the same process you've conducted here today,  
17 come to a similar decision. Depending upon the  
18 outcome there, then that would trigger a final  
19 decision at the City level, which would open the  
20 door if the party wanted to take it to court.  
21 COMMISSIONER SPENCER CORDOVANO: And  
22 they have 30 days to appeal that?  
23 CITY ATTORNEY MATT JOHNSON: The  
24 Planning and Zoning Commission has 30 days to do,  
25 issue the written decision. So, you'll give

Page 67

1 direction tonight. I'll prep, draft a written  
2 decision for you that will come back within those  
3 30 days. And then the administrative the appeal  
4 timeline for that to go up to Council, I believe,  
5 is 10 days.  
6 PLANNING DIRECTOR MORGAN LANDERS: I  
7 can double check.  
8 CITY ATTORNEY MATT JOHNSON: Yeah, I'm  
9 pulling it up right now.  
10 COMMISSIONER SPENCER CORDOVANO: Make  
11 sure we got all of our timelines set with  
12 everyone in the room.  
13 CHAIRMAN NEIL MORROW: But it does? It  
14 goes back to Council, and --  
15 COMMISSIONER SPENCER CORDOVANO: It's  
16 15 days. That's what I thought it was. So, they  
17 have 30 days to bring that back through for  
18 findings of fact. And then the Applicant will  
19 have 15 days to appeal that to Council, at which  
20 the same conversation will happen. And if we  
21 were to reverse --  
22 CITY ATTORNEY MATT JOHNSON: So, a  
23 straight reversal would then either reverse the -  
24 - essentially flip the decision of the Director.  
25 The Director actually has the opportunity, if

Page 68

1 they would like, to also appeal up to the City  
2 Council, under the same timeline (indiscernible).  
3 So, if the Planning Director opted to appeal,  
4 it'd go up to Council. If Planning Director  
5 opted not to appeal, it'd be a reversal of that  
6 decision. That'd essentially be a direction back  
7 to Planning to, for whatever reason you say to  
8 accept the application and process it.  
9 COMMISSIONER SPENCER CORDOVANO: Move  
10 forward with --  
11 CITY ATTORNEY MATT JOHNSON: Under pre-  
12 ordinance.  
13 COMMISSIONER SPENCER CORDOVANO: And  
14 move forward with design review for the  
15 Applicant.  
16 CITY ATTORNEY MATT JOHNSON: Correct.  
17 COMMISSIONER SPENCER CORDOVANO: If the  
18 Director did not appeal. And then our third  
19 option is to remand.  
20 CITY ATTORNEY MATT JOHNSON: So, yeah,  
21 you have modify as an option, and you have remand  
22 as another option. Remand -- and really, either  
23 of those, I think is sort of a splitting the  
24 baby, where you'd be giving some kind of  
25 direction on a part of this, perhaps if you

Page 69

1 wanted to kick it back to the Director for some  
 2 further evaluation.  
 3 Those are a little more rare. So, I'm  
 4 happy to help you sort through those if that's  
 5 the direction you're wanting to take it. But  
 6 affirm and reversal are obviously the simplest  
 7 choices.  
 8 COMMISSIONER SPENCER CORDOVANO: That  
 9 gives me further direction. Thank you.  
 10 CHAIRMAN NEIL MORROW: Anything else?  
 11 No other deliberation? All right. I'm open to a  
 12 motion. I'm open to more discussion. I'm with  
 13 Susan. I'm upholding this Director's decision.  
 14 COMMISSIONER SUSAN PASSOVOY: Yeah, I  
 15 don't see any reason to remand it for further  
 16 consideration. I think this is really a thumbs  
 17 up or a thumbs down type of decision. And --  
 18 CHAIRMAN NEIL MORROW: And move it up  
 19 the list.  
 20 COMMISSIONER SUSAN PASSOVOY: Move it  
 21 up the ladder.  
 22 COMMISSIONER TIM CARTER: That's my  
 23 instinct as well. Yeah. So, affirm the  
 24 Director's decision, yes.  
 25 CHAIRMAN NEIL MORROW: Okay. That's --

Page 70

1 I think they should have that opportunity to do  
 2 that.  
 3 CHAIRMAN NEIL MORROW: All right.  
 4 Well, I'll take a motion if someone would like to  
 5 make one.  
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Page 72

1 VICE CHAIRMAN BRENDA MOCZYGEMBA: And  
 2 my opinion would be to reverse. As Spencer was  
 3 saying, you know, I completely agree with the way  
 4 that Morgan upheld kind of the interpretation and  
 5 our prior discussions.  
 6 But I think the language is a little  
 7 bit too far off for any layperson to kind of come  
 8 in and understand that that would, that 1234  
 9 would be applicable to their project. And I  
 10 mean, that's what happens. That's the last  
 11 couple years. You know, the language of our  
 12 code, including this project, tests the language  
 13 of things that you just don't foresee. And I get  
 14 it. But we, I think the language has to be  
 15 closer to be able to support that interpretation.  
 16 COMMISSIONER SPENCER CORDOVANO: Which  
 17 was one of the clearly stated goals of staff and  
 18 the Commission and Council of going down this  
 19 pathway.  
 20 CHAIRMAN NEIL MORROW: Right.  
 21 COMMISSIONER TIM CARTER: Yeah, I mean,  
 22 I see the staff's decision, consistent with the  
 23 intent of the language. But I certainly see that  
 24 there's an opportunity for the Applicant to  
 25 contest that on legal grounds. And you know, and

Page 71

1 CERTIFICATION

2  
 3 I, Sonya Ledanski Hyde, certify that the  
 4 foregoing transcript is a true and accurate  
 5 record of the proceedings.  
 6  
 7  
 8  
 9 *Sonya M. Ledanski Hyde*  
 10  
 11 Veritext Legal Solutions  
 12 330 Old Country Road  
 13 Suite 300  
 14 Mineola, NY 11501  
 15  
 16 Date: December 27, 2023  
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Page 73



EXHIBIT 19

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City of Ketchum  
Planning and Zoning Commission Meeting  
November 28, 2023

1 CHAIRMAN NEIL MORROW: This won't take  
2 long though, will it, the Serenade?  
3 COMMISSIONER SUSAN PASSOVOY: Did you  
4 all get the -- Matt's revised finding -- decision  
5 memo?  
6 CHAIRMAN NEIL MORROW: Revised decision  
7 memo?  
8 COMMISSIONER SUSAN PASSOVOY: Yeah.  
9 CHAIRMAN NEIL MORROW: Yeah.  
10 COMMISSIONER SUSAN PASSOVOY: He  
11 submitted a redline.  
12 (Pause)  
13 CHAIRMAN NEIL MORROW: Okay. We are  
14 back. We have our last item, which is the  
15 Sawtooth Serenade decision packet.  
16 PLANNING DIRECTOR MORGAN LANDERS: All  
17 right. So, let me just check. We have Matt  
18 Johnson on the line, I believe, if he's still  
19 there with us.  
20 CITY ATTORNEY MATT JOHNSON: I'm still  
21 here.  
22 PLANNING DIRECTOR MORGAN LANDERS: So,  
23 we've got Matt here. He can give you kind of an  
24 overview of what's in your packet. And I do  
25 believe we have some comments from Susan Passovoy

Page 2

1 as well on some potential revisions she'd like to  
2 see.  
3 So, I don't have to do much. But let  
4 me know if you have questions. And Matt and you  
5 all can take it from here.  
6 CITY ATTORNEY MATT JOHNSON: So,  
7 Commissioners, you were provided a draft decision  
8 I prepared. Susan did have a couple comments,  
9 suggestions she had sent me in advance. And I  
10 prepared a revised version to try to incorporate  
11 some of those in a redline format.  
12 Morgan, has that revised version been  
13 provided to the Commissioners?  
14 PLANNING DIRECTOR MORGAN LANDERS: It  
15 has not. So, if you wouldn't mind doing a verbal  
16 overview, or sharing your screen, or I can do  
17 that as well. That would be good.  
18 CITY ATTORNEY MATT JOHNSON: Sure, if  
19 you could, if you want to pull it up. I'm on two  
20 separate devices for sharing a screen.  
21 PLANNING DIRECTOR MORGAN LANDERS: Yep,  
22 I can do that.  
23 CITY ATTORNEY MATT JOHNSON: But  
24 generally, the comments Susan had were related to  
25 adding some language that the Applicant, the

Page 3

1 Appellant in this situation had actually urged  
2 for the 180-day grace period to be added. So, a  
3 sentence was added to reflect that. This was  
4 added in Finding Conclusion Number 2. So, that  
5 would be on Page 3 of the decision in the first  
6 paragraph.  
7 PLANNING DIRECTOR MORGAN LANDERS:  
8 There we go. I've got it on the screen.  
9 CITY ATTORNEY MATT JOHNSON: There we  
10 go. You can see the additional sentence there in  
11 red. And then a little further down, in that  
12 same finding and conclusion, some language was  
13 added that Susan had requested regarding that the  
14 administrator's determination was not  
15 discriminatory or arbitrary or capricious in this  
16 situation, and also a sentence there at the end  
17 reflecting the discussion that the  
18 Applicant/Appellant in this case, like other  
19 projects, could have, with minimal inquiry  
20 action, inquired about the 180-day grace period.  
21 So, you know, at this point, you've all  
22 had a chance to read the draft decision. This is  
23 a draft. If you, as a Commission, have changes,  
24 additions, anything you want to add -- I know  
25 Susan mentioned she might have some other

Page 4

1 comments -- we can definitely revise this on the  
2 go.  
3 At the end, we just need a motion to  
4 approve, either as presented or with amendments,  
5 and authorize the Chair to sign. Because the  
6 written decision does have to be issued within 30  
7 days of the hearing. And we won't have another  
8 P&Z Commission meeting in time. So, we do need  
9 to work out the final at the meeting today.  
10 Happy to answer questions or provide  
11 clarifications.  
12 CHAIRMAN NEIL MORROW: Thank you. I'm  
13 interested in Susan's other changes. But  
14 otherwise, I think it's good. And I love the  
15 changes you made. It's perfectly legal --  
16 COMMISSIONER SUSAN PASSOVOY: I would  
17 just add one more magic phrase. Matt, thank you  
18 very much for making these changes. They shorten  
19 the time of this section of the hearing  
20 dramatically.  
21 In the language that Matt added in --  
22 on Page 4, about the administrator's  
23 determination not being discriminatory, et  
24 cetera, I would like to insert one more phrase in  
25 Line 3 on the last paragraph on that page, where

Page 5

1 it says, "Administrator's determination was not,"  
 2 and add, "an abuse of discretion, nor was it,"  
 3 and then it goes on, "discriminatory, arbitrary,  
 4 or capricious".  
 5 CHAIRMAN NEIL MORROW: Lovely.  
 6 COMMISSIONER SUSAN PASSOVOY: And I had  
 7 talked -- I will say I had talked with Matt about  
 8 the discussion we had regarding vesting. But I,  
 9 as he reminded me, everyone seemed to be a little  
 10 confused about it. And I don't think it's  
 11 essential to our decision. So, I'm -- unless  
 12 someone else had a thought about that with these,  
 13 I'm very comfortable with the changes that have  
 14 been made to the revised draft, with that one  
 15 other addition I'd like to put in.  
 16 VICE CHAIRMAN BRENDA MOCZYGEMBA:  
 17 Morgan, can you go to the first suggested edit?  
 18 Maybe it was up a little higher there. Okay.  
 19 What -- Susan, can you explain, I guess that  
 20 first line of, "According to the Applicant's  
 21 memo"? Could you jog my memory about this grace  
 22 period being placed at the Applicant's urging?  
 23 COMMISSIONER SUSAN PASSOVOY: I -- it  
 24 wasn't solely as a result of the Applicant's  
 25 urging. And maybe we could rephrase this

Page 6

1 slightly. But the Applicant did make the  
 2 argument that they were present at the hearing  
 3 where the City Council inserted the 180-day grace  
 4 period, that they thought it was important, and  
 5 that they were supportive of it.  
 6 So, does that answer your question?  
 7 And then I can suggest -- I'm glad you brought  
 8 this up, Brenda, because I didn't want it to read  
 9 that it was solely at their -- I didn't want it  
 10 to look like it was solely at their urging. I  
 11 would rather say that the 180-day grace period or  
 12 forbearance period, or whatever -- because they  
 13 seem to also object to our use of the phrase  
 14 grace period, because it wasn't exactly what the  
 15 City Council said.  
 16 COMMISSIONER TIM CARTER: With the  
 17 Applicant's knowledge and support?  
 18 COMMISSIONER SUSAN PASSOVOY: Yeah,  
 19 that would be better. That's very good, Tim.  
 20 Thank you.  
 21 VICE CHAIRMAN BRENDA MOCZYGEMBA: And  
 22 then, Matt, do we call the Applicant's legal  
 23 counsel as the Applicant? Do we need to clarify  
 24 that at all? You know, maybe we say they, 180-  
 25 day grace period -- yeah, that's a tricky one,

Page 7

1 which was, you know -- I don't know -- understood  
 2 at the time of review, or which was discussed. I  
 3 don't know. Somehow trying to bring some clarity  
 4 into what it means in the Applicant's urging. I  
 5 mean, they were, it was the Applicant's legal  
 6 counsel that was present at the time of that  
 7 discussion. Right?  
 8 CITY ATTORNEY MATT JOHNSON: Right.  
 9 And so, two things. One, the Appellant's counsel  
 10 is part of the Appellant, for party purposes.  
 11 So, we can specify that if you like. But the --  
 12 VICE CHAIRMAN BRENDA MOCZYGEMBA: No.  
 13 CITY ATTORNEY MATT JOHNSON: -- term  
 14 Applicant and Appellant would be inclusive of  
 15 their legal counsel representative.  
 16 VICE CHAIRMAN BRENDA MOCZYGEMBA:  
 17 Great. Okay.  
 18 CITY ATTORNEY MATT JOHNSON: And then,  
 19 Morgan, if you can scroll down a little to the  
 20 bottom of Page 4, there's also a footnote that  
 21 was in the original draft that discusses that the  
 22 Applicant/Appellant was present for the hearings  
 23 --  
 24 VICE CHAIRMAN BRENDA MOCZYGEMBA: Oh,  
 25 great. I see that.

Page 8

1 CITY ATTORNEY MATT JOHNSON: -- and  
 2 (indiscernible) on this. So, I think this might  
 3 already be capturing what you're suggesting.  
 4 VICE CHAIRMAN BRENDA MOCZYGEMBA: Okay.  
 5 Great. Yeah, no, I think it does. Thanks for  
 6 pointing out that footnote.  
 7 COMMISSIONER SPENCER CORDOVANO: If I  
 8 can just --  
 9 COMMISSIONER SUSAN PASSOVOY: Could I -  
 10 - if I could just finish the -- I liked Tim's  
 11 instead of saying, "Applicant's urging," I would  
 12 say, "Applicant's knowledge and support of". And  
 13 that is also reflected in your footnote, but it's  
 14 a little more consistent with your footnote.  
 15 VICE CHAIRMAN BRENDA MOCZYGEMBA: The  
 16 only thing that I'm remembering though that was  
 17 brought up was the 180-day window. There was  
 18 kind of some confusion. We have the discussion  
 19 amongst P&Z. But then it was presented to the  
 20 Council kind of in a different way. And then I  
 21 guess at what time, or at which draft was the  
 22 180-day within 1234?  
 23 PLANNING DIRECTOR MORGAN LANDERS:  
 24 Yeah. So, the 180-day grace period was included  
 25 with the first draft that went to Council.

Page 9

1 VICE CHAIRMAN BRENDA MOCZYGEMBA: Okay.  
2 Okay.  
3 PLANNING DIRECTOR MORGAN LANDERS: So,  
4 it was between the Planning and Zoning Commission  
5 and the City Council's first reading.  
6 VICE CHAIRMAN BRENDA MOCZYGEMBA: Okay.  
7 COMMISSIONER SPENCER CORDOVANO: Matt,  
8 question for you. We're all good on just like  
9 referring to Ordinance 1234 as -- it doesn't need  
10 to be referred to as Interim Ordinance  
11 everywhere. It's 1234, is what is now 1249 and  
12 what was Interim Ordinance 1234?  
13 CITY ATTORNEY MATT JOHNSON: Correct.  
14 It's -- at the time, it would have just been  
15 Ordinance 1234. The fact that it's interim is  
16 included within the ordinance. So, if you don't  
17 -- you don't have to always refer to it as  
18 Interim Ordinance 1234. There's no other  
19 Ordinance 1234, other than the interim.  
20 COMMISSIONER SPENCER CORDOVANO: Cool.  
21 Thanks.  
22 CITY ATTORNEY MATT JOHNSON: You're  
23 welcome.  
24 CHAIRMAN NEIL MORROW: Anything else?  
25 Take a motion.

Page 10

1 COMMISSIONER SPENCER CORDOVANO: Are we  
2 taking any -- is there any room for public  
3 comment or Applicant comment? Or is that part of  
4 the process?  
5 CHAIRMAN NEIL MORROW: No.  
6 COMMISSIONER SPENCER CORDOVANO: No,  
7 no, no, and no. Thank you.  
8 PLANNING DIRECTOR MORGAN LANDERS: And  
9 then Matt, is it clear, I guess the two edits  
10 that we're discussing now, we don't need to be  
11 editing that live?  
12 CITY ATTORNEY MATT JOHNSON: Correct.  
13 I've actually made those changes on the draft  
14 I've pulled up, as you've been discussing.  
15 PLANNING DIRECTOR MORGAN LANDERS:  
16 Great. Okay. So, you're clear.  
17 CITY ATTORNEY MATT JOHNSON: And so --  
18 yeah, the Chair can verify those before he signs  
19 upon approval of the Commission.  
20 CHAIRMAN NEIL MORROW: I will double  
21 check.  
22 VICE CHAIRMAN BRENDA MOCZYGEMBA:  
23 Great.  
24 COMMISSIONER TIM CARTER: So, what's  
25 the motion here? Approve with edits, approve

Page 11

1 with -- as discussed?  
2 VICE CHAIRMAN BRENDA MOCZYGEMBA: Yes,  
3 and then for the record, I did vote nay on  
4 upholding, I guess the Planning Director's  
5 determination on this. But I am in support of  
6 the way that this is worded, as far as a  
7 summation of that meeting.  
8 CHAIRMAN NEIL MORROW: Thank you for  
9 that clarification.  
10 COMMISSIONER SUSAN PASSOVOY: Morgan,  
11 what's the language of the motion?  
12 PLANNING DIRECTOR MORGAN LANDERS: So,  
13 I think you can just move to approve the decision  
14 as drafted, with the requested revisions, and  
15 direct the Chair to sign the final version.  
16 COMMISSIONER SUSAN PASSOVOY: Okay. I  
17 -- does anyone have any further comment, before I  
18 make, before a motion is put forward?  
19 CHAIRMAN NEIL MORROW: No, ma'am.  
20 COMMISSIONER TIM CARTER: I do not.  
21 COMMISSIONER SUSAN PASSOVOY: I move  
22 that we approve the decision with the edit, with  
23 the additional edits, and direct the Chair to  
24 sign the decision and forward it to the City  
25 Council.

Page 12

1 COMMISSIONER TIM CARTER: Second.  
2 CHAIRMAN NEIL MORROW: All in favor?  
3 Aye.  
4 COMMISSIONER TIM CARTER: Aye.  
5 VICE CHAIRMAN BRENDA MOCZYGEMBA: Aye.  
6 COMMISSIONER SPENCER CORDOVANO: Aye.  
7 COMMISSIONER SUSAN PASSOVOY: Aye.  
8 CHAIRMAN NEIL MORROW: So, that's  
9 unanimous.  
10 PLANNING DIRECTOR MORGAN LANDERS:  
11 Great. Thank you, everyone. Thank you, Matt.  
12 Appreciate it.  
13 CHAIRMAN NEIL MORROW: Thank you, Matt.  
14 Anything else from staff?  
15 CITY ATTORNEY MATT JOHNSON: Thank you  
16 all.  
17 PLANNING DIRECTOR MORGAN LANDERS: I  
18 will keep it short because it's 7:00.  
19 CHAIRMAN NEIL MORROW: Yeah.  
20 PLANNING DIRECTOR MORGAN LANDERS: Your  
21 last meeting in December has been canceled. I  
22 don't have any items for you.  
23 CHAIRMAN NEIL MORROW: Yay.  
24 PLANNING DIRECTOR MORGAN LANDERS: So,  
25 please enjoy your Christmas. And we will see you

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1 for one meeting in December.  
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1 CERTIFICATION  
2  
3 I, Sonya Ledanski Hyde, certify that the  
4 foregoing transcript is a true and accurate  
5 record of the proceedings.  
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9 *Sonya M. Ledanski Hyde*  
10  
11 Veritext Legal Solutions  
12 330 Old Country Road  
13 Suite 300  
14 Mineola, NY 11501  
15  
16 Date: December 27, 2023  
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EXHIBIT 20

**BEFORE THE PLANNING & ZONING COMMISSION  
OF THE  
CITY OF KETCHUM**

In the Matter of the Administrative Appeal of: )  
Scott and Julie Lynch, Yah Bernier and Elizabeth McCaw, and Distrustful Ernest Revocable Trust, for the Sawtooth Serenade Project (Applicant/Appellant) )  
 ) **FINDINGS OF FACT,**  
 ) **CONCLUSIONS OF LAW, AND**  
 ) **DECISION**

Of a Planning Director Determination on a Design Review Application

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This matter comes before the Planning and Zoning Commission of the City of Ketchum ("Commission"), pursuant to Ketchum City Code 17.144.010, as an appeal by an applicant/affected party of a Planning Director determination. An appeal hearing on the matter was held before the Commission on November 14, 2023. The matter was heard for adoption of this written Decision on November 28, 2023. The Commission does hereby make and set forth the following Record of Proceedings and the Commission's Decision as follows:

**I. RECORD OF PROCEEDINGS**

The Appellants in this matter are Scott and Julie Lynch, Yah Bernier and Elizabeth McCaw, and Distrustful Ernest Revocable Trust, ("Applicant" or "Appellant"), an affected party, for the Sawtooth Serenade Project ("Project"). The Planning Director served as Respondent in replying to the issues raised on administrative appeal.

A Record of Documents before the Ketchum Planning Department and upon administrative appeal ("Record") was prepared and submitted to the Commission before the



November 14, 2023 hearing. That Record is hereby referenced and incorporated in full into the Record and this Decision. The Record includes the following Attachments:

- A. Administrative Determination, August 24, 2023
- B. Notice of Appeal and Appellant Brief with exhibits, September 7, 2023
- C. Administrator Response Brief, November 3, 2023
- D. Appellant Reply Brief, November 9, 2023
- E. City Ordinance 1234
- F. Legal Cover Report, November 9, 2023

On November 14, 2023, the Commission made procedural determinations and approved the stipulated and satisfied deadlines as to submission of written argument by the Parties. All submitted Memoranda are referenced above and made a part of the Record in this matter.

An appeal hearing on this matter was held on November 14, 2023, at which hearing the Commission heard oral arguments by the Parties, deliberated, and made a verbal determination. Such hearing was recorded and that recording is made a part of the Record in this matter.

## **II. JUDICIAL NOTICE AND REVIEW STANDARD**

The Commission takes judicial notice of the Ketchum Municipal Code (KMC).

Pursuant to KMC § 17.144.010 (C), the Commission makes its determination considering only the administrator determination below along with written and oral legal arguments by the Parties. No new facts or evidence are considered in the appeal.

## **III. FINDINGS, CONCLUSIONS, AND DECISION**

**1. The Administrator's Determination was made on Applicant's application for Design Review (DR), which is distinct from Preapplication Design Review.**

Applicant's application for preapplication design review was timely filed and complete prior to the City's adoption of Interim Ordinance 1234. For purposes of consideration on preapplication design review, the Commission therefore evaluated the application and provided feedback in relation to the standards set prior to Interim Ordinance 1234. The Applicant and Commission completed the preapplication design review process on January 24, 2023.

A preapplication design review is provided for under KMC 17.196.010(C). It is required in certain circumstances, and may be requested in other circumstances, as a separate and distinct step. KMC 17.196.010(C)(1). The purpose of preapplication design review is to provide direction and exchange ideas on design concept, prior to full design review. KMC 17.196.010(C)(2). Preapplication design review was required in this matter.

Design review is a subsequent and separate application and process, as provided for under KMC 17.196.040. The Applicant was required to submit a subsequent application to initiate the design review process after the preapplication design review process concluded on January 24, 2023.

**2. The 180-day requirement of Ordinance 1234 was appropriately interpreted and applied by the Administrator to the DR Application.**

Interim Ordinance 1234 specifically considered and provided for situations where a preapplication design review had already been conducted and with an allowance of an additional 180-day timeframe for the next process: application for design review. See Ordinance 1234, Section 3. According to the Applicant's Memo, the 180-day grace period was placed with the Applicant's knowledge and support, and therefore Applicant should have been aware the grace

period applied to preserve the completion of their preapplication design review. The Commission hereby confirms the intent of Section 3 was to provide a reasonable timeframe for an applicant that had conducted preapplication design review to proceed to final design review under the pre-Ordinance 1234 standards, while not allowing an applicant to delay and sit on the preapplication design review completion and pre-Ordinance 1234 standards without further timely action.

The purpose of Section 3 was to provide for orderly and timely transition of development projects from the pre-Ordinance 1234 standards and criteria to the Ordinance 1234 standards and criteria. The timeframe for such transition was specifically discussed in the deliberations on Ordinance 1234, with 180 days being added to Ordinance 1234 and adopted as an appropriate time period to balance the interests.<sup>1</sup>

Therefore, when the Administrator received the Applicant's design review application, the Administrator appropriately checked to see if this new application fell within the 180-day window provided allowing projects to remain under pre-Ordinance 1234 standards. In this situation, the Administrator appropriately found that the Final Design Review Application was submitted on August 7, 2023, which was beyond the 180-day window to preserve the previously completed preapplication design review.

The Administrator appropriately interpreted and applied the 180-day window of Section 3 of Ordinance 1234 in this context, and consistent with the ordinance language and intent. The Administrator's determination was not an abuse of discretion, nor was it discriminatory, arbitrary or capricious, and should therefore be upheld, The Applicant failed to timely file a Final Design Review application in order to preserve the previous completion of the preapplication design

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<sup>1</sup> It is noted that Applicant/Appellant was present for those hearings and the discussion on the addition to Ordinance 1234 for the inclusion of the 180-day window to preserve a preapplication design review completion.

review. With minimal inquiry or action, Applicant could have remained in status as preserving their completed preapplication design review under the 180-day grace period; just as other applicants did.

**3. The 180-day requirement of Ordinance 1234 was equitably applied, and there is no evidence of improper delay by City staff.**

The Commission finds that two other projects, as presented in the hearing on this matter, similarly fell into this transition period and took steps to timely preserve their preapplication design review as provided for by Section 3 of Ordinance 1234. Appellant in this matter had the same time requirements and opportunity for transition as any other project.

The Commission also finds that no evidence was presented of any substantive delay or abuse of process by City staff. Any delays in scheduling with staff were early enough in the time period to provide ample time for follow-up, and there is no evidence that those delays were undue or unreasonable as beyond what reasonably might be expected in scheduling for a busy department. Alleged delays by third-parties, such as Michael Decker and/or Clear Creek Disposal, would be outside the control or purview of the City. Furthermore, it was admitted that no attempts were made by Applicant to address any such outside third-party delays by submitting a nearly complete or contingent application, and/or seek other accommodation due an outside party delay.

Based upon the foregoing review and analysis, and good cause appearing from the record in these proceedings, the Commission AFFIRMS the Administrator Determination as presented in this matter and authorizes the Chair to sign this Decision on behalf of the Commission.



  
Neil Morrow, Chair

ATTEST:

By:   
Trent Donat, City Clerk

**NOTICE OF APPEAL RIGHTS:**

This Decision constitutes the written decision of the Commission pursuant to KMC 17.144.010(D). The City Clerk is directed to transmit this Decision to the Appellant and any other affected person who has requested a copy in writing. All parties and affected persons are hereby notified of this decision and their option to consider further action, including further appeal, pursuant to the proceedings set forth in KMC 17.144.020 and Idaho Code § 67-6521.

A copy of this Decision has been provided to the Appellant, Planning Director, and City Attorney, and the original has been retained in the records of this City on this 30<sup>th</sup> day of NOVEMBER, 2023.

By:   
Trent Donat, City Clerk



EXHIBIT 21

## Timeline of Delays - Sawtooth Serenade

### **1<sup>st</sup> Collaborative design Meeting with Morgan Landers, Director of Planning and Building**

2/11/23 Dave Thielsen (DT) of Thielsen Architects emails Morgan Landers (ML) asking for collaborative design meeting.

2/14/23 DT emails ML again asking for collaborative design meeting.

2/14/23 ML responds that she is booked for the rest of the week.

2/22/23 First collaborative design meeting between ML and TA.

*Total of eleven (11) days from meeting request to the 1<sup>st</sup> meeting.*

### **2<sup>nd</sup> Collaborative design Meeting with Morgan Landers, Director of Planning and Building**

4/26/23 Robert Connor (RC) of Thielsen Architects emails ML requesting a second collaborative design meeting and receives an autoreply from ML that she is out of the office until 5/1/23.

5/1/23 RC emails ML for second collaborative design meeting.

5/1/23 DT emails ML asking for collaborative design meeting to be the week of the 8<sup>th</sup>.

5/8/23 RC emails ML asking again to schedule a collaborative design meeting.

5/8/23 ML responds that this week is full for her. Proposes the following week.

5/9/23 DT emails ML proposing meeting times.

5/9/23 ML responds that proposed times do not work for her.

5/9/23 DT emails ML proposing other times.

5/10/23 DT emails ML again attempting to secure meeting time.

5/11/23 ML responds that 5/17/23 will work.

5/17/23 Second collaborative design meeting between ML and TA.

*Total of seventeen (17) days from meeting request after ML's return from vacation to the 2<sup>nd</sup> meeting.*

### **The MH Companies**

5/25/23 RC emails architectural drawings and the previous street lighting plan to the previous contact at The MH Companies. RC receives notice that the previous contact has left the company and that the message has been forwarded to a new contact who will respond shortly.

**Sawtooth Serenade**  
**Timeline of Delays**  
**Page 2 of 3**

5/31/23 RC calls The MH Companies and learns that the new contact is Mike Decker (MD). RC brings MD up to speed on the project.

5/31/23 RC emails drawings and the previous street lighting plan to MD.

6/9/23 RC emails MD to check status. MD can't access any of their previous work on the project and does not have good information on what Ketchum's requirements are for the project. MD tells RC he will contact the City of Ketchum to get more information.

6/14/23 MD emails RC an update. MD is still working on the project but promises something very soon.

6/20/23 MD emails RC an update. MD is still working on the project and hopes to have something soon.

6/21/23 MD emails RC a drawing, but MD has moved the streetlight from in front of the exit door into a required street tree.

6/22/23 RC and MD exchange emails and MD revises the drawing. MD moves the streetlight back in front of the exit door. RC responds asking it to be moved away from the door. MD moves the streetlight back into the street tree. RC responds that it is back in the street tree and needs to move further west to be out of the street tree and not in front of the door. MD provides a drawing with the streetlighting in a workable location.

24 total emails, plus phone calls, required to get small adjustments to the location of two streetlights. *Total of twenty-eight (28) days to receive requested minor adjustment from City required vendor.*

**Trash Collection/Clear Creek Disposal**

6/16/23 Jeff Loomis (JL) of Galena-Benchmark emails Mike Goitiandia (MG) to review trash collection access.

6/21/23 Email from JL to Thielsen Architects (TA) stating JL is still waiting to hear back from MG on a question he asked him regarding trash collection in alley.

6/23/23 JL calls MG.

6/23/23 RC emails MG asking that he return JL's call.

6/27/23 RC calls and leaves a voicemail for MG.

6/28/23 RC calls and leaves a voicemail for MG.

6/29/23 RC emails MG drawings for his review.

6/30/23 JL and MG speak on the phone.



**Sawtooth Serenade  
Timeline of Delays  
Page 3 of 3**

7/3/23 DT emails MG.

7/6/23 DT calls MG.

7/11/23-7/17/23 TA revises drawings based on civil design work which JL reviewed with MG.

7/17/23 RC emails MG asking for memo.

7/18/23 MG emails response to RC, JL, and DT.

7/18/23 RC replies to MG with revised drawings based MG's email

7/25/23 RC calls and leaves a voicemail for MG asking for a response.

7/25/23 RC emails MG asking for a response.

7/26/23 RC and MG speak on the phone.

7/26/23 RC emails MG revised drawings based on phone conversation.

7/31/23 RC emails MG asking for a response.

8/1/23 RC emails MG asking for a response.

8/1/23 RC asks Jim Laski to contact MG to get things moving.

8/2/23 MG sends approval memo to City of Ketchum and project team.

8/7/23 Final design Review Application is transmitted to City of Ketchum.

*Total of forty-seven (47) days to receive feedback and approval from City required vendor.*