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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

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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

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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

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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?

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<p>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</p> <p style="text-align: right;">Page 6</p>	<p>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</p> <p style="text-align: right;">Page 8</p>
<p>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&amp;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</p> <p style="text-align: right;">Page 7</p>	<p>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&amp;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</p> <p style="text-align: right;">Page 9</p>

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.

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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

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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

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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

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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

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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

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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

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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

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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

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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.

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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

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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

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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

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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

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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

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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

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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

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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

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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,

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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.

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<p>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:</p> <p style="text-align: right;">Page 30</p>	<p>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&amp;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</p> <p style="text-align: right;">Page 32</p>
<p>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?</p> <p style="text-align: right;">Page 31</p>	<p>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&amp;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</p> <p style="text-align: right;">Page 33</p>

<p>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&amp;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,</p> <p style="text-align: right;">Page 34</p>	<p>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</p> <p style="text-align: right;">Page 36</p>
<p>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&amp;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</p> <p style="text-align: right;">Page 35</p>	<p>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.</p> <p style="text-align: right;">Page 37</p>

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

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

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

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,

<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

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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

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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

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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.

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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

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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

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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

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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?

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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

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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.

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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

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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

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<p>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.</p> <p>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.</p> <p>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).</p> <p>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</p> <p style="text-align: right;">Page 58</p>	<p>1 with what I, or we recommended. It does seem  2 weird now to look at it under this guise.</p> <p>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 --</p> <p>17 COMMISSIONER SUSAN PASSOVOY: You're  18 excused.</p> <p>19 COMMISSIONER SPENCER CORDOVANO: -- in  20 the business at hand.</p> <p>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.</p> <p style="text-align: right;">Page 60</p>
<p>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.</p> <p>6 COMMISSIONER TIM CARTER: Yeah.</p> <p>7 CHAIRMAN NEIL MORROW: Okay. That's  8 very reasonable. Spencer? Any --</p> <p>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.</p> <p>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.</p> <p>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</p> <p style="text-align: right;">Page 59</p>	<p>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.</p> <p>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.</p> <p>16 CHAIRMAN NEIL MORROW: It's good to end  17 on a tough one.</p> <p>18 COMMISSIONER SPENCER CORDOVANO:  19 (Indiscernible).</p> <p>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</p> <p style="text-align: right;">Page 61</p>



<p>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</p> <p style="text-align: right;">Page 62</p>	<p>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</p> <p style="text-align: right;">Page 64</p>
<p>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</p> <p style="text-align: right;">Page 63</p>	<p>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.</p> <p style="text-align: right;">Page 65</p>

<p>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</p> <p style="text-align: right;">Page 66</p>	<p>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</p> <p style="text-align: right;">Page 68</p>
<p>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</p> <p style="text-align: right;">Page 67</p>	<p>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</p> <p style="text-align: right;">Page 69</p>

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 --  
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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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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  
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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.  
 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  
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 16 Date: December 27, 2023  
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[1 - advance]

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[city - completion]

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[complex - days]

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Idaho Rules of Civil  
Procedure

Rule  
30

(e) Review by the Witness; Changes.

(1) Unless waived by the deponent and the parties, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which (A) to review the transcript or recording; and (B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them. (2) Changes indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30 (f) (1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period. (3) Witness Failure to Sign. (A) In General, If the deposition is not signed by the witness within the 30-day period, the officer must sign it and state on the record the fact of the waiver of signature, or of the illness or absence

of the witness or the fact of the refusal to sign the deposition together with any reason given for not signing.

(B) Use of Unsigned Deposition. The deposition may be used as if it were signed, unless pursuant to Rule 32 (d)(4) the court determines that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

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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



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

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

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?

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 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 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 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.



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 in it  
24 in your August 2022 meeting when you reviewed and  
25 recommended the interim ordinance to the City

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

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

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

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

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

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

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



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.

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

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

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 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 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 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



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

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,

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.

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?

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PLANNING DIRECTOR MORGAN LANDERS:

That's correct. They were both deemed complete prior to the adoption of Ordinance 1234. And those applications, both of those were also required to have pre-applications. Those pre-applications were not voluntary, similar to Sawtooth Serenade. So, all three projects were being treated the same.

VICE-CHAIRPERSON BRENDA MOCZYGEMBA:

Question for staff, without trying to get into deliberation here. So, when I listened back to the August 11th meeting or whatever, whenever it was, of P&Z reviewing and hearing the proposed Interim Ordinance 1234, there was significant discussion about the inclusion of, well, grandfathering in pre-app or not. And there was direct mention made of applying a timeline.

So, there was obviously the conversation and the intent. But then what we have at the other end is the adopted language of 1234. And so, at what point -- and it doesn't seem like some of the verbiage of 1234 quite captured in the way that the discussion was headed.

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 than 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

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

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

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,

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



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

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-

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:

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

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

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

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 courtesy 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.

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



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

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

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?

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



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

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.

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

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



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

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

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

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 --

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

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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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certify that the foregoing transcript is a true and accurate record of the proceedings.



Veritext Legal Solutions  
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Date: December 27, 2023

[1 - advance]

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[adversely - applications]

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[applied - beth]

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[city - completion]

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[expending - go]

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[making - moving]

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[multi - ordinance]

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Idaho Rules of Civil  
Procedure

Rule  
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(e) Review by the Witness; Changes.

(1) Unless waived by the deponent and the parties, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which (A) to review the transcript or recording; and (B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them. (2) Changes indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30 (f) (1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period. (3) Witness Failure to Sign. (A) In General, If the deposition is not signed by the witness within the 30-day period, the officer must sign it and state on the record the fact of the waiver of signature, or of the illness or absence

of the witness or the fact of the refusal to sign the deposition together with any reason given for not signing.

(B) Use of Unsigned Deposition. The deposition may be used as if it were signed, unless pursuant to Rule 32 (d)(4) the court determines that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

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