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April 1, 2024

To: City Council, City of Ketchum

From: Matthew Johnson, City Attorney

Re: 180 Leadville, LLC, Administrative Appeal of HPC Determination - Hearing

Agenda Item: Review, hold hearing, and make a determination on Administrative Appeal of 180 Leadville, LLC, on H23-084: Decision of Historic Preservation Commission denying a demolition permit.

Background:

This is an administrative appeal to the City Council of a decision by the Historic Preservation Commission. The appeal was filed by the Applicant 180 Leadville, LLC, represented by Brian Barsotti.

Under Ketchum Municipal Code § 17.20.030(F), an HPC decision on a demolition or alteration permit may be appealed to the City Council in the same manner as a Planning and Zoning Commission decision under KMC §17.144. Under Ketchum Municipal Code §17.144.020, the Council ordered a hearing date of April 1, 2024 for the administrative appeal and also accepted certain procedural steps.

This is an administrative appeal hearing where the Council will sit in a quasi-judicial role in review of the HPC decision below. There will be oral arguments by the parties, but there is no public hearing and public comments will not be taken. Council will have full discretion to ask questions of the parties, staff, and/or city attorney as we needed.

As part of the meeting packet, the Council has been provided the briefs/memos of the parties. Further background and record on this matter is also available at <https://www.ketchumidaho.org/planning-building/project/180-leadville-relocation-180-n-leadville-ave>

Standard of Review [KMC 17.144.020(C)]

Per KMC 17.144.020(C):

Upon hearing the appeal, the council shall consider only matters which were previously considered by the Commission as evidenced by the record, the order, requirement, decision or determination of the Commission and the notice of appeal, together with oral presentation and written legal arguments by the appellant, the applicant, if different than the appellant, and the Commission and/or staff representing the Commission. The council shall not consider any new

facts or evidence at this point. The council may affirm, reverse or modify, in whole or in part, the order, requirement, decision or determination of the Commission. Furthermore, the council may remand the application to the Commission for further consideration with regard to specific criteria stated by the council.

Decision Options:

Upon review and deliberation on this matter, the Council may decide to affirm, reverse, modify in whole or in part, and/or remand with direction the HPC Decision. Per KMC 17.144.020(D), a written decision must be issued within 30 days of this hearing. Typically, at conclusion of deliberation at the appeal hearing the Council will indicate a decision, or at least direction, for the city attorney to draft a written decision to be presented for final review and approval at a further meeting within the 30-day time period.

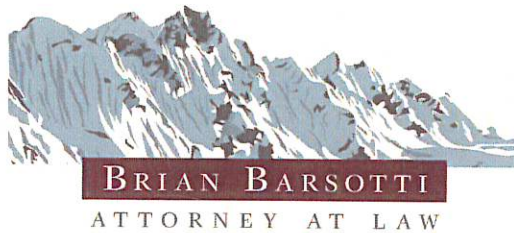
Sustainability Impact: N/A

Financial Impact: N/A

Attachments:

1. Appellant Brief – dated March 11, 2024
2. Staff Response Brief – dated March 20, 2024
3. Appellant Reply Brief – dated March 26, 2024.
4. Record available at <https://www.ketchumidaho.org/planning-building/project/180-leadville-relocation-180-n-leadville-ave>

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215 PICABO ST., SUITE 304
P. O. BOX 370
KETCHUM, IDAHO 83340



PHONE: 208-726-3030
FAX: 208-726-2922
E-MAIL: barsotti1@mindspring.com

March 11, 2024

VIA EMAIL: mlanders@ketchumidaho.org
acrutcher@ketchumidaho.org
mjohnson@whit-peterson.com

Mayor Neil Bradshaw and City Council Members
City of Ketchum
PO Box 2315
Ketchum, Idaho 83340

RE: 180 North Leadville Relocation

Dear Mayor Bradshaw and Council Members,

Michelle Griffith of ARCH and I represent 180 Leadville, LLC, whose sole members are Bob and Betsy Reniers, Trustees of The Reniers Family Trust (hereinafter “the Reniers”), the appellants in this case. This letter is submitted in support of this appeal.

1. SUMMARY OF FACTS

The Reniers purchased Lot 3 and 4, Block 22 of the Village of Ketchum (hereinafter “collectively” the “Property”) from Andrew Sabel and Pamela M. Sabel on August 3, 2021. The Reniers purchased the Property to build a personal residence on the top floor and build four (4) affordable housing units in the building for employees of three local nonprofits the Reniers support.

Prior to closing the purchase, the Reniers performed due diligence. The Title Report issued by Sun Valley Title did not reference the City of Ketchum’s historic designation (see page 44 of transcript where Vice Chair Holland asked representative of Reniers if the Reniers did a title search as research on history of the building). Andy Sabel did inform the Reniers the Property had been designated “historical” by the City. He informed the Reniers he had no formal written notification from the City of the historical designation, or of the criteria for designation. Upon learning of the designation, Mr. Sabel became concerned with the unknown meaning of the designation. He quickly applied for and obtained a demolition permit from the City of Ketchum to demolish the house on the Property. As part of the transaction with Reniers, Sable offered to demolish the residence at his expense prior to closing.

Assisting the Reniers on the due diligence for the purchase, I called Spencer Cordovano, Chairman of the Committee and asked how the historical designation affects the use of the Property. Cordovano stated “it means you have to have a couple extra meetings before you can do anything to the property”. In an attempt to more fully understand the effect to the Property by historical designation, Bob Reniers and I met with Mayor Bradshaw and Planning Director Suzanne Frick. At no time did Mayor Bradshaw or Ms. Frick inform us of 1) the four criteria for historical designation; 2) history of the residents of the house, or 3) that the historical designation prohibited development of the Property. Bob Reniers told the Mayor and Ms. Frick his purposes for buying the Property and that he estimated it would be two (2) or more years before the Property would be developed. Bob Reniers stated that with the severe housing shortage, he believed it was in the public’s best interest for him not to demolish the building and

make it available for housing for St. Luke's until such time as construction was started on the Property. Having not seen plans for the project, the Mayor and Ms. Frick made no recommendations or statement that if he didn't demolish the residence, he couldn't develop the Property, but acknowledged the desperate need for affordable housing and that temporary affordable housing would be good use of the Property.

Initially, the Reniers designed a new building on the Property with affordable units and one residence for the Reniers. The Reniers, together with local architect, Janet Jarvis, met with Morgan Landers to discuss the proposed project. This meeting centered around the building F.A.R. and size of Renier's residence which exceeded 3000 square feet. At no time did Ms. Landers inform the Reniers the historical designation criteria could prevent development of the Property or discuss the historical designation criteria for property. Later after the Reniers incurred the cost and expense of the design of the proposed project, Morgan Landers called the Reniers to inform them that she had overlooked the historical designation.

The Reniers decided not to build a residence in the proposed project and entered into a "Donation and Development Agreement" with ARCH to donate the Property at their purchase price valuation to ARCH for a one hundred percent (100%) affordable housing project on the site. Additionally, the Reniers agreed to donate to ARCH funds to help build four (4) units on the project for St. Luke's, Hospice of the Wood River Valley, and the Ketchum Community Library. A copy of the fully executed Donation and Development Agreement is attached hereto as Exhibit A.

ARCH and the Reniers then applied to the City to relocate the residence on the Property to property in Hailey owned by ARCH to be used as long-term affordable housing. The denial of the application to relocate is the subject of this Appeal.

**2. KETCHUM HISTORIC PRESERVATION COMMISSION ("KHPC")
FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISIONS, DATED
NOVEMBER 7, 2023 MUST BE DISREGARDED.**

The findings of fact, conclusions of law and decision adopted by the Ketchum Historic Preservation Commission ("KHPC") after a 4 to 1 vote, do not reflect the confusion of the Commission regarding application of the criteria to determine historical designation.

Adam Crutcher, representing the Planning Department, in his presentation to the KHPC, stated the City staff was having difficulty with this application. The Property was placed on the "list", not for the architecture of structure but more pertained to occupancy of Alonzo Price and Esther Fairman (page 6, lines 8-25) who were determined to be historic residents (Page 7, line 11, also see Commissioner Rick Reynolds question the historical status of Price and Fairman, (Page 38, lines 16-25 and page 39, lines 1-8). Repeatedly Crutcher states staff "struggles to see the significance of the architecture" (Page 7, lines 20-21); and that there are ".....four other sort of smaller residences on the historic preservation list due to members not seeing them to have architectural distinction or significance." (Page 7, lines 21-25; see also page 8, lines 2-8. Throughout the hearing both staff and commission members appeared to be unable to apply clear standards of review. Morgan Landers stated that obviously more work needs to be done in the comprehensive plan relative to the HPC's actions (see Page 77-78, lines 25-). Ultimately the focus of the Commission was "...does this decision help or hurt historic preservation..." (see Page 74, lines 10-13) an arbitrary standard used by Commissioner Jakob Galczykuski. Vice Chair Wendolyn Holland stated the current comprehensive plan's "...doesn't have enough teeth or meat or weight or strength in it on historic preservation." (see Page 73, lines 5-9). Thereafter Commissioner Rick Reynolds motion to allow relocation died for lack of a second (Page 74, lines 20-25, Page 75, lines 1-16). Vice Chair Wendolyn Holland moved "to deny the application for demolition of the structure at 180 Leadville." (Page 75, lines 22-24) which we can only assume her reason for the motion was to put "teeth in the comprehensive plan." On page 4 of 6 of the adopted findings states "the Commission finds that the project conflicts with the Comprehensive Plan, particularly Policy CD-1.2. This policy, the Preservation of Historic Buildings and

Sites states “Individual buildings and sites of historical, architectural, archaeological, or cultural significance identified and considered for protection. The City should **encourage** the private sector to preserve and rehabilitate buildings and sites through local landmark designation, public improvements, guidelines, and other tools. **The relocation of the residence outside of Ketchum City limits would remove the Commission’s ability to preserve the structure and review any potential alterations or additions.**

The current Comprehensive Plan does not give the Commission the ability to preserve. The current Comprehensive Plan gives the Commission the ability to “**encourage**” the private sector to preserve private property owned by others.” This finding is clearly in error. The Applicant, as owner of the Property, has no intention of preserving, maintaining or rehabilitating the residence on the Property in any way whatsoever.

3. IN BALANCING THE CURRENT NEEDS OF THE CITY, THE COMPREHENSIVE PLAN SIGNIFICANTLY SUPPORTS NEED FOR AFFORDABLE HOUSING MORE THAN ENCOURAGING PROPERTY OWNERS OF LANDMARK DESIGNATION TO PRESERVE AND REHABILITATE.

While the KHPC noted that the Comprehensive Plan does not have enough teeth of meat or weight or strength on historic preservation, the Comprehensive Plan absolutely has strength, weight and meat in support of the relocation of the current home and the subsequent construction of workforce housing benefitting several area non-profits.

Chapter 2: Strond and Diverse Economy, point #2 Housing. “There are not enough affordable or varied housing options for existing employees and potential new workers.”

Chapter 3: Housing. This entire chapter would support creating more workforce housing on the subject site and relocation of the existing home in support of valley-wide collaborative housing solutions. Specifically:

Goal H-1 “Ketchum will increase its supply of homes, including rental and special-needs housing for low-, moderate- and median-income households.

Goal H-2 “The Ketchum Community will support affordable housing programs.” Policy H-2.1 “BCHA, ARCH and KCDC will serve the important functions of promoting, planning, developing, managing, and preserving the long-term supply of affordable housing options in Ketchum.”

Goal H-3.1 “The City should encourage the private sector, through land-use regulations and incentive programs to provide a mixture of housing types”

Chapter 7: Mobility. Policy M-1.3 “Encourage compact development, mixed uses and additional housing density in the downtown and high activity areas.”

Chapter 10: Community Health and Wellness. “Ketchum’s higher cost of living provides daily economic challenges for average-income workers. In addition to **higher-than-average housing costs....**”

Chapter 112: High Performing Community.

Goal H1-1 “Encourage and celebrate volunteerism and philanthropy throughout the community.”

Goal H1-4 “The City will collaborate with **public, private business and non-profit organizations and other partners to maximize efficiency, innovation and mutual benefits.**”

4. **PAGE 6 OF 6 ON THE KHPC DECISION STATES IN BOLD: REGULATORY TAKING ANALYSIS NOTICE: APPLICANT HAS THE OPPORTUNITY, PURSUANT TO IDAHO CODE 67-8003, TO SUBMIT A WRITTEN REQUEST FOR REGULATORY TAKING ANALYSIS OF THIS DECISION.**

On November 13, 2023, Applicant submitted a written request for Regulatory Taking Analysis pursuant to Idaho Code 67-8003. A copy of acknowledgement of receipt of Request for Regulatory Taking Analysis executed by Trent Donat, City Clerk, is attached hereto as Exhibit B. Idaho Code 67-8003 (2) requires the City of Ketchum to provide the Applicant the Taking Analysis within forty-two (42) days of filing the request. The City of Ketchum did not within the forty-two (42) day period or at any time, provide Applicant with the required Taking Analysis. Idaho Code Section 67-8003 (3) states, “A governmental action is voidable if a written taking analysis is not prepared after a request has been made pursuant to this chapter. Applicant reserves all its rights under Idaho Code 67-8003(3).

5. **PRECEDENT SETTING OPPORTUNITY**

Governing entities throughout Blaine County are undertaking numerous opportunities to address the affordable housing crisis. The Applicant is providing an incredible philanthropic opportunity for housing at 180 Leadville. Unlike other local efforts to fund housing through financial investments requiring some kind of return, the Applicants are gifting the Property to ARCH and partially funding construction costs. An extremely altruistic contribution which will set precedent to be duplicated by others.

During his campaign for City Council, I recall Councilman Hutchinson presented a platform calling for county wide organizations and governmental agencies should cooperate and collaborate on affordable housing. This possible project provides just such an opportunity as stated in Goal H1-4 cited above.

My clients, Michelle Griffith from ARCH and I will be in attendance at the scheduled appeal hearing on April 1, 2024.

Very truly yours,


Brian Barsotti

Exhibit A

DONATION AND DEVELOPMENT AGREEMENT

This Agreement is executed on this 1st day of November 2023, by and between 180 Leadville, LLC, an Idaho limited liability company (hereinafter "180"), and ARCH Community Housing Trust, an Idaho non-profit corporation (hereinafter "ARCH").

1. On August 3, 2021, Robert W. Reniers, Jr. and Elizabeth E. Reniers, as Trustees of the Reniers Family Living Trust dated April 10, 1997, (hereinafter "the Reniers") purchased Lot 3 and 4, Block 22 of the Village of Ketchum, Blaine County, Idaho (hereinafter "the Property") from Andrew Sabel and Pamela M. Sabel, husband and wife (hereinafter "the Sables"). The purchase price for the Property was Four Million Two Hundred Thousand Dollars (4,200,000.00).
2. Prior to entering into the sales transaction, the Sables procured a demolition permit from the City of Ketchum to demolish the building on the property. The Seller offered to demolish the building prior to closing. Bob Reniers and his attorney, Brian Barsotti, met with the Ketchum Director of Planning, Suzanne Frick and Ketchum Mayor, Neil Bradshaw, regarding the demolition of the house on the property. The house had recently been designated historical by the Ketchum Historical Commission, but at that time there was no clear course of action as to the meaning and procedures related to such designation. The Reniers purchased the property to build a personal residence and provide affordable housing for employees of three local non-profit organizations which they support. The Reniers estimated it would be two (2) or more years before the Property was developed. The Reniers believed it was in the public's best interest not to demolish the building and make it available for affordable housing for St. Luke's until such time as construction was started on the Property. The Sables had used the building as a private office during their ownership of the property.
3. Initially the Reniers designed a new building on the Property with four (4) affordable units and one residence for the Reniers. The Reniers formed and transferred the Property to 180 in anticipation of building on the Property. The sole members of the 180 are the Reniers.
4. The Reniers now desire to donate the Property at their purchase price valuation to ARCH. Additionally, the Reniers further desire to gift ARCH additional monies to cover part of the cost of four (4) units on the Property for the local non-profit organizations: St. Luke's, the Community Library, and Hospice of the Wood River Valley. The Reniers no longer desire a personal residence on the Property and ARCH will design and build four (4) or more affordable units on the Property.
5. As part of the Agreement for ARCH to develop affordable units on the Property, 180 requested permission of the Ketchum Historical Commission to move the residence on the Property to property owned by ARCH in Hailey. The Ketchum Historical Commission denied the request. 180 and ARCH are now appealing the denial to the Ketchum City Council.
6. 180 and ARCH desire to enter into this Agreement for the purpose of memorializing the donation of the Property from 180 to ARCH and establishing a development plan for the development of affordable housing units on the Property. The development plan set forth in this Agreement shall contain multiple rights and obligations of the parties with regard to this one hundred percent (100%) affordable housing project within the City of Ketchum.

7. The parties acknowledge and agree the development of the Property for one hundred percent (100%) affordable housing project will set precedent for future private-public partnership to help alleviate the housing crisis within the City of Ketchum.

Now therefore, in consideration of the mutual promises, covenants and agreements contained herein, and in order to provide for development of a one hundred percent (100%) affordable housing project on the Property, the parties agree as follows:

Section 1. DEFINITIONS AND GENERAL TERMS. For purposes of this agreement, the following terms and conditions shall have the following meanings:

- 1.1 Property. The "Property" shall mean that certain real property described as Lots 3 and 4, Block 22 of the Village of Ketchum, Blaine County, Idaho.
- 1.2 Donation. Upon satisfaction of the conditions stated in Section 3 herein, 180 shall transfer by quit claim deed the Property to ARCH as charitable donation.
- 1.3 Valuation of Donation. The valuation of the Property at the time of transfer shall be the purchase price paid by the Reniers of FOUR MILLION TWO HUNDRED THOUSAND DOLLARS (\$4,200,000.00). ARCH shall provide 180 an appropriate documentation of a charitable donation of the Property to ARCH at a valuation of Four Million Two Hundred Thousand Dollars (\$4,200,000.00).
- 1.4 Additional Charitable Contributions to ARCH. At such time as ARCH develops plans of multiple affordable housing units on the Property and estimates the construction cost for ARCH improvements, 180 and/or the Reniers agree to meet with ARCH to determine the appropriate additional charitable donation by the Reniers to ARCH to help pay for the construction costs of four (4) affordable housing units on the Property. Such additional charitable contribution shall be conditioned on the terms for the local non-profits identified above and set forth in Section 2 below.

Section 2. CONDITION FOR ADDITIONAL CHARITABLE DONATION. As a specific condition precedent of an additional capital donation to ARCH to help pay construction costs of four (4) units within the affordable housing project on the Property, ARCH agrees to designate, hold and maintain four (4) specific units within the project for the following non-profit organizations: 1) Two (2) units shall be designated, held and maintained for employees of St Luke's Hospital in Blaine County; 2) One (1) unit shall be designated, held and maintained for employees of Hospice of the Wood River Valley; and 3) One (1) unit shall be designated, held and maintained for employees of the Ketchum Community Library.

The four (4) units designated for employees of the above-described local non-profit organizations shall be rented pursuant to the Category "L" designation as defined by the Ketchum Housing Authority. In the event the local non-profit organizations described herein do not have employees in need of the housing units, ARCH may temporarily rent the appropriate housing unit as ARCH in its sole discretion determines appropriate until ARCH can rent such unit to employees of designated non-profit organizations. ARCH shall further have sole authority to rent any other units within the Property specifically

not designated here for affordable housing at a category of the Ketchum Housing Authority as it deems appropriate.

Section 3. TIME LIMITATIONS. The parties hereto acknowledge that the uniqueness of the proposed charitable donations for this affordable housing project necessitates time limitations as a result of the Ketchum Historical Commission's denial to the request to moving the building from the Property. ARCH agrees to appeal such decision to the Ketchum City Council and exhaust all administrative remedies from such denial upon moving the building from the Property by ARCH, 180 will transfer the property to ARCH. In the event ARCH is unsuccessful in its efforts to obtain approval to move the residence from the Property, this Agreement shall automatically terminate and 180 shall be free to take such legal action for a "taking" of the Property by the Ketchum Historical Commission and the City of Ketchum.

Section 4. EFFECTIVE DATES. This Agreement shall be effective upon execution.

Section 5. COVENANTS WITH THE LAND. Each covenant and agreement contained herein shall be a burden on the Property and shall run with the land.

Section 6. SUCCESSORS AND ASSIGNS. This agreement and the obligations created hereby shall inure to the benefit of and be binding upon the parties, their heirs, personal representatives, successors and assigns, and upon any person or entity acquiring a portion of the Property, or any interest therein, whether by operation of law or otherwise.

Section 7. GOVERNING LAW. This agreement shall be construed in accordance with the laws of the State of Idaho.

EXECUTED AS OF THE DAY AND YEAR FIRST ABOVE WRITTEN.

180 Leadville, LLC, an Idaho
Limited Liability Company

By _____
Robert W. Reniers, Jr.

By _____
Elizabeth E. Reniers

ARCH Community Housing Trust,
An Idaho non-profit corporation

By Michelle Griffith
Michelle Griffith, Executive Director

not designated here for affordable housing at a category of the Ketchum Housing Authority as it deems appropriate.

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By 
Robert W. Reniers, Jr.

By 
Elizabeth E. Reniers

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An Idaho non-profit corporation

By _____
Michelle Griffin, Executive Director

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EXECUTED AS OF THE DAY AND YEAR FIRST ABOVE WRITTEN.

180 Leadville, LLC, an Idaho
Limited Liability Company

By 
Robert W. Reniers, Jr.

By 
Elizabeth E. Reniers

ARCH Community Housing Trust,
An Idaho non-profit corporation

By _____
Michelle Griffin, Executive Director


Exhibit B

ACKNOWLEDGEMENT OF RECEIPT PF
REQUEST FOR REGULATORY TAKING ANALYSIS
PURSUANT TO IDAHO CODE 67-8003(2)

BB
DR

The undersigned, representative of the Ketchum Historical Preservation Commission of the Ketchum City Clerk hereby acknowledges receipt of the request for Regulatory Taking Analysis pursuant to Idaho Code 67-8003(2).

Dated November 13, 2023

By  _____

@ 3:27 pm
Received





City of Ketchum
City Hall

March 20, 2024

To: Mayor and Councilmembers, City of Ketchum

From: Morgan Landers, Planning Director
Matthew Johnson, City Attorney

Re: Response on Administrative Appeal of HPC – 180 N. Leadville Demolition Permit
H23-084

Background

This matter concerns an Application for Demolition Permit (Application) related to a historic structure located at 180 N. Leadville Ave. The Applicant/Appellant (180 Leadville, LLC) applied for a permit to remove the structure from 180 N. Leadville and relocate the structure to an alternate location in Blaine County.

The building at issue is generally referred to as the Price/Fairman Residence. The Price/Fairman Residence has been placed on the Ketchum Historic Building/Site List, and therefore is subject to Ketchum Municipal Code (KMC) 17.20 concerning Historic Preservation. Pursuant to KMC 17.20.030, an application for demolition (which is inclusive of removal/relocation) must be approved by the Historic Preservation Commission (HPC).

The HPC held a meeting and public hearing on the Application on October 17, 2023. The HPC deliberated on the matter and directed by a vote of three to one to deny the Application. That decision was formalized and finalized via the written HPC Findings of Facts, Conclusion of Law, and Decision (HPC Decision), which was presented to and approved by the HPC on November 7, 2023.

The Applicant has timely appealed the HPC Decision, pursuant to KMC 17.20.030(F) and by reference the administrative appeal process under KMC 17.144. Under KMC 17.144, an HPC Decision is handled under the same administrative appeal process as an appeal of a Planning and Zoning Commission decision to the City Council.

Standard of Review

The standard of review for the City Council is the same in reviewing the HPC Decision as it is in reviewing a Planning and Zoning Decision under KMC 17.144. The authority and standard of review for the Council is specified under KMC 17.144.020(C):

Upon hearing the appeal, the council shall consider only matters which were previously considered by the Commission as evidenced by the record, the order, requirement, decision or determination of the Commission and the notice of appeal, together with oral presentation and written legal arguments by the appellant, the applicant, if different than the appellant, and the Commission and/or staff representing the Commission. The council shall not consider any new facts or evidence at this point. The council may affirm, reverse or modify, in whole or in part, the order, requirement, decision or determination of the Commission. Furthermore, the council may remand the application to the

Commission for further consideration with regard to specific criteria stated by the council.

Response

The HPC Decision, as written, must be regarded and clearly provides the HPC's reasoning under the applicable historic preservation criteria.

Appellant's Memo on Appeal, submitted March 11, 2024, argues the HPC Decision should be disregarded. Applicant's argument focuses on an allegation of "confusion of the Commission [HPC] regarding application of the criteria to determine historical designation." Appellant Memo, p. 2.

However, Appellant's Memo selects only portions of the Transcript of the 10/17/2023 HPC Meeting to try and present this confusion. In actuality, a full reading of the Transcript shows the HPC walking through the four historic preservation criteria questions set forth in KMC 17.20.030(C):

1. Is the structure of historic or architectural value or significance and does it contribute to the historic significance of the property within the community core.
2. Would the loss, alteration of, or addition to, the structure adversely affect the historic integrity of the structure, impact the significance of the structure within the community core, impact the architectural or aesthetic relationship to adjacent properties, or conflict with the Comprehensive Plan.
3. Does the structure retain the requisite integrity to convey its historic and/or architectural significance.
4. Does the proposed demolition or alteration adversely affect the historic significance or architectural distinction of the structure or the community core.

While there is are requests for clarification and some discussion on these four criteria, the full context of the Transcript shows that this was all within the deliberation of the HPC as it sought to balance the criteria. There was acknowledgement that the specifics of this Application constituted a "50/50" situation, where it was not necessarily a simple black-or-white answer. Indeed, the staff recommendation was mixed in its review, though ultimately recommending an approval of the permit. The HPC appropriately grappled with the areas of gray in its deliberations to on-balance apply and analyze the four criteria.

Beyond the deliberation and initial determination reflected in the Transcript, the final decision of the HPC is formally reflected in writing in the HPC Decision. The HPC Decision constitutes the formal and effective final decision of the HPC. While verbal deliberation from the Transcript may be informative, ultimately it is the reasoning specified in the written Decision that is determinative. The HPC Decision, in writing, fully specifies the four historic preservation criteria, presents no confusion, and provides written reasoned explanation as to how the HPC evaluated and balanced those criteria to reach a decision of denial.

Appellant provides no argument or reasoning about how the criteria and rationale specified in the HPC Decision were incorrectly interpreted or mis-applied. Appellant provides no argument or reasoning that the HPC Decision evaluation is somehow arbitrary or capricious, or has clear error.

Historic preservation, and associated regulation, is within the authority of the City. Encouragement and cooperation with the private sector for historic preservation may be desirable, but is not limiting.

Appellant's Memo argues that the City's Comprehensive Plan limits historic preservation to just "encouraging" the private sector to preserve. Appellant Memo, p. 3. The City's authority on historic preservation is broader than simply "encouraging" historic preservation. Idaho Code §67-4612

specifically authorizes that the City is “empowered to provide by ordinances, special conditions or restrictions for the protection, enhancement and preservation of historic properties.”

Based on that statutory authority, the City has provided for such restrictions and regulations, particularly as to demolition of historic properties, by ordinance and as codified in KMC 17.20. The HPC Decision and denial of the Application is under this ordinance authority, and is not limited by the Comprehensive Plan language.

The next part of Appellant’s argument focuses on that this demolition/relocation is intended to pave the way for development of affordable and/or workforce housing on the property. While housing is a priority issue for the City, it is not within the purview of the HPC or the applicable historic preservation criteria to weigh the request for demolition against what may be proposed for replacement. There are no historic preservation criteria that modify or reduce the historic significance and context criteria by weighing it against some other policy purpose achieved by a replacement proposal. So, it is outside the HPC’s purview to relax or re-balance the evaluation of historic preservation criteria under KMC 17.20.030(C) just because the likely proposed replacement may pursue an alternative public good.

There may be good reason for the City to consider discussion with the Appellant about alternative approaches to balance the historic preservation purposes with the housing opportunities. However, the appropriate forum for that discussion is separate from and outside the bounds of this particular Application and the HPC Decision, and is outside of the Council review factors on this appeal.

Delay in providing a regulatory takings analysis does not significantly impact the Council’s review on appeal.

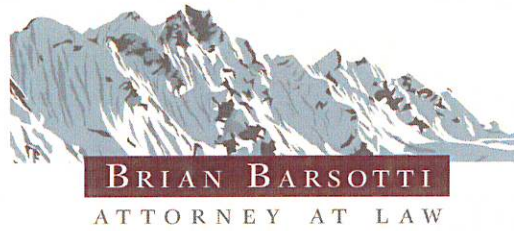
Appellant is correct that a written request for a regulatory takings analysis was submitted and such analysis has not yet been provided. Appellant is also correct that the forty-two days period for responding to that request has passed. However, it also needs noted that the decision on the Application has yet to be fully final due to the pendency of this administrative appeal. Additionally, the remedy would only be for a voiding of the HPC’s denial of the Application, which would not equate to an approval but would simply push this matter back to still being under a pending application and under deliberation by the HPC.

Conclusion

Ultimately, there is no real allegation of error on the HPC Decision. Appellant is primarily focused on how the proposed housing replacement upon a demolition/relocation creates an opportunity. That may very well be true, and may be worth pursuing through other means and avenues. However, for the specifics of this administrative appeal the question is simply whether the HPC appropriately interpreted and applied the applicable criteria under the City Code. The HPC has done so correctly, and for that reason the HPC Decision should be affirmed.

Should the Council find that the HPC did misinterpret or mis-apply the historic preservation criteria, then the Council may consider a reversal of the HPC Decision or a remand of the Decision to the HPC with instruction on which criteria to re-evaluate and guidance on how to interpret and apply such criteria.

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Mayor Neil Bradshaw and City Council Members
City of Ketchum
PO Box 2315
Ketchum, Idaho 83340

RE: Reply Brief to City of Ketchum Response on Administrative Appeal HPC – 180
North Leadville Demolition Permit

Dear Mayor Bradshaw and Council Members,

1. The City of Ketchum’s response demonstrated a flawed system in enforcing the HPC decision, which deprives applicant of meaningful use of their property without due process of the law for the following reasons:

a). The City’s staff report, specifically recommended approval of request to move the residence with language of a recommended motion to approve the request. No alternative language of a motion to deny the request was provided to the HPC in the staff report. The transcript of the hearing shows the commission made no specific findings at the hearing for denial of request to relocate. Specific findings were adopted later by the Commission on November 7, 2023. The findings of fact, and conclusion of law and decision adopted by the HPC after the hearing are in no way supported by the Commission’s discussions and deliberations at the hearing. Owners were not given opportunity to review and comment on the staff’s findings of fact and conclusion of law before adoption by Commission.

b). No criteria exist to define a “Notable Person” of historic significance in Ketchum. Therefore, finding the historic value of the property due to the designation of Alonzo Price and Esther Fairman as “Notable Persons” is arbitrary and capricious. The owners have never been afforded the opportunity to participate in such designation, which deprives the owners of due process and results in a taking of their land.

Alonzo Price and Esther Fairman are not significant notable people and historic citizens, and HPC should be overturned simply for this reason.

c). The HPC and the owners were denied the opportunity at the hearing to consider the owners’ alternative use of the property. In addition to the Comprehensive Plan policy 1.2 to “**encourage**” the private sector to preserve local landmark and designated property, while other portions of the Comprehensive Plan, favor affordable housing. The instructions of the staff to refuse to allow the HPC to consider other significant parts of the Comprehensive Plan supporting affordable housing is a denial of

due process and made the hearing patently unfair to the owners in disregard of criteria stated in 17.20.030.c.2 requirement to consider the Comprehensive Plan.

2. **The KMC 17.20.15 is vague and ambiguous and as written, and in conflict with the Comprehensive Plan.** The Comprehensive Plan encourages the private sector to preserve local landmarks and designated properties, but KMC 17.20 requires the private sector to “maintain buildings to certain standards”, which requires the private sector to spend money to maintain the property to such standards. The Comprehensive Plan does not give the City and the HPC the power and authority to force the private sector to “Maintain” their property to certain standards. Additionally, the HPC’s finding relative to 17.20.030.c.2, which states “the relocation of the residence out of Ketchum City limits would remove the Commission’s ability to preserve the structure and review any potential alterations or additions” clearly demonstrates the HPC decision exceeds their authority to “encourage preservation” set forth in the Comprehensive Plan.

Conclusion: For the reasons stated herein, the HPC decision must be overturned and the request to move the house granted.

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