

WHITE PETERSON

ATTORNEYS AT LAW

MARC J. BYBEE
MAREN C. ERICSON
WM. F. GIGRAY, III
LINDA C. HALSEY
MATTHEW A. JOHNSON
JACOB M. JONES
BRIAN T. O'BANNON *

WHITE, PETERSON, GIGRAY & NICHOLS, P.A.
CANYON PARK AT THE IDAHO CENTER
5700 E. FRANKLIN RD., SUITE 200
NAMPA, IDAHO 83687-7901
TEL (208) 466-9272
FAX (208) 466-4405
EMAIL: mjohnson@whitepeterson.com

PHILIP A. PETERSON
WILLIAM L. PUNKONEY

WILLIAM F. NICHOLS (1955-2025)
TERRENCE R. WHITE, RETIRED
WILLIAM F. "BUD" YOST, RETIRED

* Also admitted in OR

August 18, 2025

To: Mayor and City Council
City of Ketchum

From: Matthew Johnson, City Attorney

Re: Decision on Administrative Appeal P25-008, Design Review Extension for PEG Hotel

Background:

The attached written Decision was drafted by the City Attorney from the deliberation and direction at the Council's July 21, 2025 administrative appeal hearings on this matter. This Decision will formalize and final the decision, as is required within 30 days of the administrative appeal hearing.

The attached draft remains open to modifications as deemed appropriate by the Council to reflect the Council's determination and the reasons for such. In the event of modifications, an alternative motion is provided below.

Recommended Motion:

Recommended Motion: *I move to approve the written Decision as presented by the City Attorney, and authorize the Mayor to sign.*

Alternative Motion: *I move to approve the written Decision as presented by the City Attorney, with the following changes: [OR "with the changes as specified in our discussion"], and authorize the Mayor to sign.*

**BEFORE THE CITY COUNCIL
OF THE
CITY OF KETCHUM**

In the Matter of the 2025)	
Administrative Appeal of:)	
)	FINDINGS OF FACT,
PEG Ketchum Hotel, LLC (Appellant))	CONCLUSIONS OF LAW, AND
)	DECISION
Of a Planning and Zoning Commission)	
Decision on P25-008: Extension on)	
P22-028 Design Review)	

This matter comes before the City Council pursuant to Ketchum City Code 17.144.020, as an appeal by an applicant of a Planning and Zoning Commission decision. An appeal hearing on the matter was held before the Council on July 21, 2025. The matter was further heard for adoption of this written Decision on August 18, 2025. The Council does hereby make and set forth the following Record of Proceedings and the Council’s Decision to remand as follows:

I. RECORD OF PROCEEDINGS

The Appellant in this matter is the applicant PEG Ketchum Hotel, LLC, represented by Deborah Nelson of Givens Pursley, LLP. The appeal concerns allegations of errors by the Planning and Zoning Commission in a May 7, 2025 decision (P&Z Decision) denying the Appellant’s application for a 12-month extension of Design Review Permit P22-028, approved March 28, 2023 (“Permit”).

A Record of Documents before the Ketchum Planning and Zoning Commission ("Record") was prepared and submitted to the Council. That Record, including all briefs and memos filed by parties as well as the transcript of the Planning and Zoning Commission proceedings is hereby referenced and incorporated in full into the Record and this Decision.

A public hearing on the Design Review Extension Application was held before the Planning and Zoning Commission on April 22, 2025. The written decision of the Planning and Zoning Commission (P&Z Decision) was approved on May 7, 2025. Such hearing was recorded and that recording is made a part of the Record in this matter.

An appeal hearing before the Council was held on this matter on July 21, 2025. Such hearing was recorded and the recordings are made a part of the Record in this matter. At the conclusion of the July 21, 2025 hearing and deliberation, the City Attorney was directed to prepare a draft written decision for the final review and approval in writing by the Council with direction for a decision of remand.

II. JUDICIAL NOTICE AND REVIEW STANDARD

The Commission takes judicial notice of the Ketchum Municipal Code (KMC).

Pursuant to KMC § 17.144.020 (C), the Council makes its determination considering the Planning and Zoning Commission decision below along with written and oral legal arguments by parties. New facts or evidence are not considered in the appeal. The Council may affirm, reverse, remand, or modify, in whole or in part, the order, requirement, determination, or decision of the Commission. The Council reviews the decision for clear error or abuse of discretion.

III. FINDINGS, CONCLUSIONS, AND DECISION

1. **The Planning and Zoning Commission Decision appropriately interpreted the extension factors under KMC 17.96.090.**

Upon review of the Record and the arguments, the Council finds that the Record contains sufficient information showing the P&Z Commission appropriately interpreted the criteria for extension of a design review approval under KMC 17.96.090(B)(2).

Most relevant is the Commission's consideration of factor (b): "Whether significant land use changes have occurred in the project vicinity which would adversely impact the project or be adversely impacted by the project." The discussion upon appeal is whether criteria (b) and "significant land use changes" is limited only to specific zoning or land use designations or whether it is intended to be interpreted more generally as to actual development of such land uses and the changing nature of impacts upon actual development.

The Council hereby affirms that the Commission appropriately understood and interpreted factor (b) and land use to be inclusive not simply of land use designations on paper, but also the changing actual circumstances on the ground as development occurs. The scope of this Application involves extension of design review approval, including concerns as relate to compatibility. The Council finds that the reason for including required extension approvals in the Ketchum Municipal Code is to allow for further analysis on how changing actual circumstances on the ground impact ongoing compatibility and design approvals. Such extensions are discretionary, with the first extension being available under administrative review and the second extension potentially being available under Commission review. These steps are formulated within the KMC specifically to tie discretionary extensions to the actual changed circumstances that may impact and influence ongoing compatibility and the desirability of extending out previous design review approvals.

In its decision, the P&Z Commission finds: "The Commission also finds that 'land use' constitutes general changes in the growth and development of the city within the vicinity, not just

formal changes to underlying zoning. The reason being that specific changes to ordinances is contemplated under consideration #1, therefore consideration #2 is separate and distinct and implies a broader purview.” P&Z Decision, p. 2. This finding by the Commission is accurate and within this Council’s interpretation of the meaning and intent of KMC 17.96.090.

The Council also finds that the Commission appropriately identified and considered the term “vicinity.” KMC 17.96.090(B)(2)(b) does not define nor limit “vicinity” to only properties adjacent to a project property. Rather, much like the more general consideration of land use changes above, the identification of “vicinity” is to be considered in light of a subject property’s relation to compatibility and impact within a broader area. To that end, the Commission appropriately found “that the definition of ‘vicinity’ is not just properties immediately adjacent to the subject property, but the broader downtown area as development on the subject property is directly related to the downtown as a whole, but more specifically Main Street and the few blocks to the north and south. A project of this size has a broader impact on the functionality, vibrancy, and success of the downtown as a whole and the entrance to the community.” P&Z Decision, p. 2.

2. The Planning and Zoning Commission Decision warrants further consideration and analysis of KMC 17.96.090(B)(2)(d) regarding community facilities and services.

Upon review of the Record and decision below, the Council hereby finds that the Commission should take further steps to evaluate and analyze factor (d) of KMC 17.96.090(B)(2). Much as actual land use circumstances and development on the ground have impacted the compatibility and appropriateness of design, so too have there been significant

changes over time that may likely impact the provision of community facilities and services. In particular, the Commission identifies impacts on Main Street in relation to evaluating the “vicinity” of the project, but does not provide much analysis on whether such impacts the adequacy of such facility and transportation service. The Commission’s findings on such criteria comes to a fairly summary conclusion, and with the Council remanding this matter to the Commission the Council hereby further directs and requests the Commission go into further review and analysis on factor (d) (also identified as Criteria #4).

3. The Planning and Zoning Commission Decision appropriately evaluated the different contexts for weighing similar factors relevant to the design review extension and associated floodplain development permit extension.

Appellant argues that since the factors are similar in evaluating potential extensions of a design review permit and a floodplain development permit, that therefore it was arbitrary for the Commission to come to different conclusions on Appellant’s design review extension application (extension denied) and Appellant’s floodplain development permit application (extension approved).

The Council finds that while the relevant factors are substantially similar in their descriptions, that the context for a design review is substantially different from the context for a floodplain development permit. With that in mind, it is not automatically arbitrary that there may be differing outcomes upon weighing the same factors when the context can vary significantly. A floodplain development permit has a more focused scope of concern, which may provide a different context and finding as compared to a more general compatibility scope of concern tied to design review. For this reason, and with the understanding of the different

context, the Commission appropriately finds: “No significant developments have occurred that change the way the floodplain development permit would be evaluated.” P&Z Decision, p. 3.

For the above reasons, the Council finds that the Commission appropriately interpreted the extension factors under KMC 17.96.090(B)(2). However, in light of this being a question of first impression, and now the confirmation of appropriate interpretations, the Council finds that this matter is appropriate for remand back to the P&Z Commission for supplemental findings as may be appropriate. With such remand, the Council also finds it appropriate to identify factor (d) as deserving of further review and attention by the Commission for additional deliberation and findings upon remand.

Based upon the foregoing review and analysis, and good cause appearing from the record in these proceedings, the Council REMANDS this matter to the Planning and Zoning Commission for additional proceeding in light of the above analysis and direction. The Council authorizes the Mayor to sign this Decision.

Neil Bradshaw, Mayor

ATTEST:

By: _____
Trent Donat, City Clerk