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February 2, 2023

To: Ketchum Historic Preservation Commission (HPC)
Morgan Landers, Planning Director
Delivered electronically to mlanders@ketchumidaho.org

From: Matt Johnson, City Attorney

Re: HPC Authority and Questions

Dear Commissioners,

Morgan conveyed some recent questions and requests for clarification regarding HPC authority and process. This memo is intended to provide legal input and guidance on those items. I am also enclosing as reference a memo from April 29, 2021, which provides a further general overview of Idaho's historic preservation statutes and may be helpful as a refresher.

- How broad is the City's authority to regulate historic properties without a historic district specifically designated?

The City's authority is broad and allows for regulation by ordinances and local laws/regulations even if a historic district is not established. Idaho Code § 67-4612 makes clear this historic preservation authority is for the "protection, enhancement, and preservation of historic properties" with no limit that such preservation regulations can only be applicable in a historic district. While designation of a historic district may be a convenience for establishing regulations by an area or using some specific district tools, that does not mean such historic regulation authority is only limited to historic districts. In the City of Ketchum's situation, due to the varied locations of potential historic buildings, the determination has been made to evaluate and approach historic buildings on a case-by-case basis rather than through a district designation. The City has established a historic buildings list and a 50-years in age baseline for triggering an evaluation of a property for historic significance in relation to demolition permits. Ketchum Municipal Code (KMC) 17.20.010.

- What is the HPC's authority to grant, deny, or condition a demolition permit?

Idaho Code § 67-4616 provides for a 180-day period that a designated historic property must give notice to a local historic preservation commission before proceeding on any demolition, remodel, relocation, or material alteration. This is to provide a waiting period wherein the

parties may discuss conditions or options for preservation. The statute provides that the HPC may shorten that waiting period upon agreement on conditions or for “extreme hardship” circumstances. This 180-day is a baseline requirement as to the property owner, and does not undercut the City’s further historic preservation regulatory authority such as per IC §67-4612.

With respect to demolition permits, the City has adopted specific criteria and regulations including that the HPC “may approve, deny, or approve with conditions the request for demolition or alteration.” KMC 17.20.030(C). So in evaluating a demolition permit application, the HPC should reference specifically to the criteria listed in KMC 17.20.030 and may use those as the basis for approval, approval with conditions, or denial on the permit.

From discussion with Morgan, it sounds like some of the uncertainty on this question likely relates to the City’s previous demolition permits approach. That previous approach put a time period on demolition permits whereby the situation could be reviewed and evaluated by the City but there were not necessarily criteria or authority for the City to actually deny a demolition permit. This was changed in early 2022 when the City updated its historic preservation/demolition permit approach. The criteria and authority for approval, approval with conditions, or denial are now clearly lined out in KMC 17.20.030. So yes, the HPC may deny a demolition permit application for reasons tied to those criteria. KMC Chapter 17.20 provides further options, such as administrative appeal and dangerous building exceptions, to provide options for an applicant property owner if they have reasons to dispute an HPC denial or conditions.

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April 29, 2021

To: Historic Preservation Commission
City of Ketchum

From: Matthew Johnson, City Attorney

Re: Idaho Legal Authority re Historic Preservation

Dear HPC Members,

This memo is to recap some of the background on the reconstitution of the City of Ketchum HPC and the steps before you. Also, in follow-up to the legal training and some questions at the previous HPC meeting, below you will find a listing of the key relevant statutes in Idaho relating to historic preservation authority and policy option available to the City.

Background:

The City has identified that development demand within the City is increasing the likelihood of negative impacts to historic structures and landmarks within the City. This includes potential demolition of historically significant structures.

The City had established a Historical Preservation Commission (HPC). Ketchum City Code 4.08. Until recently however, there were no active members appointed to the HPC. The purpose of the HPC is identify, evaluate, designate and protect areas and structures with historical, architectural, archaeological, and cultural heritage significance. KCC 4.08.010. The power and duties of the HPC include surveying local historic properties and making recommendations on preservation and planning. KCC 4.08.050.

In 2005, the City conducted and completed a survey of historic properties. This survey was conducted by Walsworth and Associates. (2005 Walsworth Survey). In 2006, the HPC did adopt an additional recommended list of heritage sites. (2006 HPC Survey).

The City has established a separate demolition process for historic buildings versus non-historic buildings. Historic buildings are defined as those fifty years or older, or properties identified in the 2005 Walsworth Survey. KCC 15.16.020. The substantial difference in the demolition permit process for a historic building is that there is a requirement for notice to the public of intent to demolish and a sixty (60) day demolition waiting period. KCC 15.16.040. The purpose of the waiting period appears to be to allow for potential negotiations for relocation of a historic building.

The City has not established any historic districts or zones.

The City has recently adopted an interim ordinance regulating demolition of historic buildings while an updated historic preservation/demolition process is established. The City has also recently reconstituted the HPC.

Historic Preservation Authority:

The City has legal authority to protect and preserve historic sites under Idaho Code Title 67, Chapter 46. The purpose of that statute specifically includes that historical, archaeological, architectural, and cultural heritage preservation is a public interest at all levels of government, including cities as a political subdivision of the state. I.C. §67-4601.

Cities are empowered to create a historic preservation commission. I.C. §67-4603. Cities are empowered to acquire historic properties, I.C. §67-4606, or historic easements, I.C. §67-4613.

I.C. §67-4607 provides for the establishment of historic districts. I.C. §67-4608 provides for regulation of structures and buildings within historic districts by requiring a certificate of appropriateness determination before any exterior structure alteration, including demolition.

Cities are also broadly empowered to enact special restrictions or conditions for the protection and preservation of properties in historic district. I.C. §67-4612. This includes broad language about the authority for a city to adopt special conditions and restrictions for historic preservation.

I.C. §67-4614 provides for a city to adopt an ordinance for designating historic properties, including factors and criteria to be considered in such. I.C. § 67-4615 sets a process for the ordinance designating a historic property, including an investigation and report from the local historic preservation commission and a public hearing on the ordinance.

I.C. §67-4616 specifies that a property designated as historic must go through a one hundred and eighty (180) day notice and waiting period before being demolished, materially altered, remodeled, relocated, or put to a different use. The intent of this notice period is to allow for negotiations on options such as acquisition or relocation to preserve the historic building.