



City of Ketchum

March 16, 2020

Mayor Bradshaw and City Councilors
City of Ketchum
Ketchum, Idaho

Mayor Bradshaw and City Councilors:

**Recommendation to Consider Request for Reconsideration of the
PEG Ketchum Hotel, LLC (“Applicant”) Planned Unit Development Conditional Use Permit (“PUD”) &
Preliminary Plat Approvals as Submitted by Attorney Gary Slette,
Hear from the Applicant’s Attorney Deborah Nelson with Givens Pursley,
Deliberate and Ask Questions of Staff, Mr. Slette and Ms. Nelson (as applicable),
and Deny the Request for Reconsideration**

Recommendation and Summary

Staff recommends the council:

- Move to deny Mr. Slette’s March 11, 2020 request for reconsideration and direct the city attorney to prepare a decision for Ketchum City Council adoption on April 6, 2020.

The reasons for the recommendation are as follows:

- The Applicant has not been granted any waivers of the subdivision ordinance in the approved preliminary plat lot line adjustment findings. The Planning and Zoning staff in the administration of condition No. 1 of the Findings would require the Applicant to file a waiver application in order to get a building permit under this condition. Further, in the event the Applicant proceeds to file and obtain approval of a final plat that no waiver is required.
- The city has conducted a thorough process, carefully considered the project applications and facts, and complied with applicable Ketchum Municipal Code provisions in the approval of the Planned Unit Development Conditional Use Permit (PUD) and preliminary plat.

Attachments

- Attachment E.2.A – Signed Copy of KCC Approved Preliminary Plat Findings
- Attachment E.4.A – Signed Copy of KCC Approved Planned Unit Development CUP Findings
- Letter dated February 14, 2020 from Gary Slette
- Letter dated March 11, 2020 from Deborah Nelson

Attachment E.2.A – Preliminary Plat Findings



**City of Ketchum
Planning & Building**

IN RE:)	
)	
PEG Ketchum Hotel, LLC)	KETCHUM CITY COUNCIL
Lot 3A, Block 82)	FINDINGS OF FACT, CONCLUSIONS OF LAW AND
Subdivision)	DECISION
)	
File Number: 19-064)	
)	

BACKGROUND FACTS

PROJECT: Lot 3A, Block 82, Ketchum Townsite

OWNER: PEG Ketchum Hotel LLC

REPRESENTATIVE: Galena Engineering

REQUEST: The applicant proposes to combine three parcels (251 S. Main Street – Ketchum Townsite Lots 3, 21, FR 22 Blk 82 N 10’ x 110’ of alley S 20’ x 230’ of alley, 260 E. River Street – Ketchum Townsite Lot 2 Block 82 10’ x 110’ of alley, and 280 E. River Street – Ketchum Townsite Lot 1 Block 82) into one lot, referenced herein as Lot 3A, Block 82, Ketchum Townsite (“new Lot 3A”).

PUBLIC NOTICE: Legal notice with the city’s newspaper of record and for adjoining landowners within 300’ was in compliance with the 15 day and 10 day notice requirements. Notice to neighbors and political subdivisions and publication in the *Idaho Mountain Express* occurred on 19/18/19. On-site notice posting on the premises occurred on 9/30/19.

ZONING: The property is zoned Tourist (T) with Floodplain/Waterways Design Review overlay.

FINDINGS OF FACT

1. The applicant proposes to combine three parcels into a new Lot 3A, Block 82, Ketchum Townsite.
2. The proposal is subject to the City Subdivision requirements as set forth in Title 16, Chapter 16.04 of the Ketchum Municipal Code (“KMC”).

3. The application meets the definition of “readjustment of lot line” as set forth in Title 16, Chapter 16.04.030.L.
4. Applicant has submitted a Master Plan as part of its Planned Unit Development application, pursuant to Title 16, Chapter 16.08. Subject Master Plan includes a request for waiver or deferral of requirements (KMC §16.08.070.F).
5. Consistent with §16.08.070.F, Applicant requests city allow building permit issuance prior to final plat recordation and defer the requirements of KMC §16.04.030.H, which states that “No building permit shall be issued with regard to any parcel of land within a proposed subdivision until the final plat has been recorded.”
6. As set forth in the Applicant’s PUD application and Master Plan, waivers are requested to the following dimensional standard provisions: side yard setbacks, height requirements, and floor area ratio.
7. Details of the Applicant’s Master Plan are set forth in Attachment B. Included in Attachment B is Galena Engineers plat map showing a new Lot 3A, which combines the three existing lots owned by the Applicant within Block 82 of the Ketchum Townsite Plat into one larger lot. Subject map was prepared by Galena Engineers and was stamped by Mark Phillips on 6/12/2019.
8. New Lot 3A is 47,249 square feet and exceeds the minimum Tourist zone lot size of 8,000 square feet. Further, the property exceeds the eighty-foot (80’) minimum lot width established for the Tourist zone and includes the required twenty-five foot (25’) Riparian and Scenic Easement from the Ordinary High Water Mark (“OHWM”) established by the KMC for building setbacks along Trail Creek.
9. The following provides the Ketchum City Council’s findings regarding the new Lot 3A subdivision plat within the City.

Table 1: Zoning Standards Analysis

Compliance with Zoning Standards				
Compliant			Standards and Staff Comments	
Yes	No	N/A	Guideline	City Standards and Staff Comments
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.12.030	Minimum Lot Area: 9,000 square feet minimum.
			<i>Staff Comment</i>	<i>New Lot 3A is 47,249 square feet</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.12.030	Building Coverage
			<i>Staff Comment</i>	<i>A Planned Unit Development Application, pursuant to Title 16, Chapter 16.08 Project proposes a waiver to the FAR requirements consistent with KMC §17.124040 and, subject to approval of the PUD application with conditions, complies with this zoning standard.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.12.030	Minimum Building Setbacks Minimum: <i>Front: 15’</i> <i>Side: > of 1’ for every 2’ in building height, or 10’, whichever is greater</i> <i>Trail Creek/Rear: 25’</i>

				State Highway 75: 25' to 32' (varies)
			<i>Staff Comment</i>	The Project proposes a waiver to the side yard setback requirements and, subject to approval of the PUD application with conditions, complies with this provision of the Tourist zoning standard.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.12.030	Building Height Maximum Permitted: 35' or greater for hotels
			<i>Staff Comment</i>	The Project proposes a waiver to the height/4-story Tourist zone requirements for hotels and, subject to approval of the PUD application with conditions, complies with this zoning standard
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.125.030.H	Curb Cut Permitted: A total of 35% of the linear footage of any street frontage can be devoted to access off street parking.
			<i>Staff Comment</i>	There are no curb cuts proposed along State Highway 75. The new configuration results in < 35% of the linear footage of street frontage devoted to access the off street parking within the parking garage.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.125.020.A.2 & 17.125.050	Parking Spaces Off-street parking standards of this chapter apply to any new development and to any new established uses.
			<i>Staff Comment</i>	As analyzed by staff and consistent with §17.125 of the KMC, the Project has adequate parking for the proposed uses on the property.

Table 2: Plat Requirements

Plat Requirements				
Compliant			Standards and Staff Comments	
Yes	No	N/A	City Code	City Standards and <i>Staff Comments</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.C.1	The subdivider shall file with the administrator copies of the completed subdivision application form and preliminary plat data as required by this chapter.
			<i>Staff Comments</i>	The application has been reviewed and determined to be complete.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.I	Contents Of Preliminary Plat: The preliminary plat, together with all application forms, title insurance report, deeds, maps, and other documents reasonably required, shall constitute a complete subdivision application. The preliminary plat shall be drawn to a scale of not less than one inch equals one hundred feet (1" = 100') and shall show the following:
			<i>Staff Comments</i>	All required materials for the Subdivision Plat application have been submitted.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.I .1	The scale, north point and date.
			<i>Staff Comments</i>	This standard has been met.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.I .2	The name of the proposed subdivision, which shall not be the same or confused with the name of any other subdivision in Blaine County, Idaho.
			<i>Staff Comments</i>	This standard has been met.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.I .3	The name and address of the owner of record, the subdivider, and the engineer, surveyor, or other person preparing the plat.
			<i>Staff Comments</i>	This standard shall be met with the Final Plat with the signed Certificate of Ownership.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.I .4	Legal description of the area platted.
			<i>Staff Comments</i>	This standard has been met.

<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.I .5	The names and the intersecting boundary lines of adjoining subdivisions and parcels of property.
			<i>Staff Comments</i>	<i>This standard has been met.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.I .6	A contour map of the subdivision with contour lines and a maximum interval of five feet (5') to show the configuration of the land based upon the United States geodetic survey data, or other data approved by the city engineer.
			<i>Staff Comments</i>	<i>This standard has been met. The Subdivision Plat indicates contour lines at 1 ft intervals.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.I.7	The scaled location of existing buildings, water bodies and courses and location of the adjoining or immediately adjacent dedicated streets, roadways and easements, public and private.
			<i>Staff Comments</i>	<i>This standard has been met.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.I .8	Boundary description and the area of the tract.
			<i>Staff Comments</i>	<i>The legal description appears on the Plat.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.I .9	Existing zoning of the tract.
			<i>Staff Comments</i>	<i>Each of the affected lots are located in the Tourist Zoning District.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.I .10	The proposed location of street rights of way, lots, and lot lines, easements, including all approximate dimensions, and including all proposed lot and block numbering and proposed street names.
			<i>Staff Comments</i>	<i>Subject items are reflected on the plat.</i>
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16.04.030.I .11	The location, approximate size and proposed use of all land intended to be dedicated for public use or for common use of all future property owners within the proposed subdivision.
				<i>No land for common or public use is required or proposed.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.I .12	The location, size and type of sanitary and storm sewers, water mains, culverts and other surface or subsurface structures existing within or immediately adjacent to the proposed sanitary or storm sewers, water mains, and storage facilities, street improvements, street lighting, curbs, and gutters and all proposed utilities.
			<i>Staff Comments</i>	<i>The plat indicates the existing locations of all utilities. An encroachment permit will be required for all improvements to public right of way. A full utility plan will be required prior to final plat recordation and infrastructure construction.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.I .13	The direction of drainage, flow and approximate grade of all streets.
			<i>Staff Comments</i>	<i>These details are indicated. An encroachment permit will be required for all improvements to public right of way. A full utility plan will be required prior to final plat recordation and infrastructure construction.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.I .14	The location of all drainage canals and structures, the proposed method of disposing of runoff water, and the location and size of all drainage easements, whether they are located within or outside of the proposed plat.
			<i>Staff Comments</i>	<i>Drainage infrastructure exists within Idaho Transportation Department (ITD) right of way (ROW) near the SE corner of the property. This and related infrastructure are shown on the plat, including a drywell easement (instrument #440075) and two sanitary sewer easement (instrument #130085 and 130089). Also, a proposed new twenty-five foot (25') riparian and scenic easement is shown on the plat. Any work in this area is subject to separate floodplain rules and regulations.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.I .15	All percolation tests and/or exploratory pit excavations required by state health authorities.
			<i>Staff Comments</i>	<i>Applicant has submitted results of percolation and related tests.</i>

<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16.04.030.I .16	A copy of the provisions of the articles of incorporation and bylaws of homeowners' association and/or condominium declarations to be filed with the final plat of the subdivision.
			<i>Staff Comments</i>	<i>N/A</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.I .17	Vicinity map drawn to approximate scale showing the location of the proposed subdivision in reference to existing and/or proposed arterials and collector streets.
			<i>Staff Comments</i>	<i>This has been provided.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.I .18	The boundaries of the floodplain, floodway and avalanche zoning district shall also be clearly delineated and marked on the preliminary plat.
			<i>Staff Comments</i>	<i>New Lot 3A is located within the City's Floodplain Overlay District. The applicant has included an easement on the plat to protect this area.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.I .19	Building envelopes shall be shown on each lot, all or part of which is within a floodway, floodplain, or avalanche zone; or any lot that is adjacent to the Big Wood River, Trail Creek, or Warm Springs Creek; or any lot, a portion of which has a slope of twenty five percent (25%) or greater; or upon any lot which will be created adjacent to the intersection of two (2) or more streets.
			<i>Staff Comments</i>	<i>KMC §16.040.020 defines Building Envelope as, "the site for location of a structure delineated on a preliminary plat and final plat within which the entire building must be constructed. A building envelope shall conform to all minimum zoning ordinance requirements and requirements of this chapter." This application is a minor amendment to shift an interior boundary line in order to for the Applicant to not build over existing lot lines. Applicant has shown a new easement to assure no building is constructed within 25' of Trail Creek. A building envelope ("BE") will be reflected on the final plat consistent with the approved final Agreement for the Project. Subject BE will reflect the Council's final approval on corner lot radii sight line requirements and side yard setbacks. The BE shall not encroach within 25' of Trail Creek or the edge of ITD ROW.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.I .20	Lot area of each lot.
			<i>Staff Comments</i>	<i>The areas of each lot are indicated on the Plat.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.I .21	Existing mature trees and established shrub masses.
			<i>Staff Comments</i>	<i>Existing mature trees and established shrub masses exist on the Property. Subject vegetation along Trail Creek helps provide important habitat and benefits to the stream. Mature trees along River Street provide a visual buffer for the old, dilapidated structures. A landscaping plan has been submitted for the Project, as well as a separate Floodplain Development Permit. The removal of existing mature trees and/or established shrub masses is subject to approval and adoption of the Applicant's landscape plan through the Design Review and/or Floodplain Development Permit process.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.I .22	A current title report shall be provided at the time that the preliminary plat is filed with the administrator, together with a copy of the owner's recorded deed to such property.
			<i>Staff Comments</i>	<i>A current title report and a copy of the both owners' recorded deed to the subject properties were included in the Plat application submittal.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.I .23	Three (3) copies of the preliminary plat shall be filed with the administrator.
			<i>Staff Comments</i>	<i>A digital copy for reproduction was submitted with the application. Therefore, Staff required only one (1) full size copy of the preliminary plat.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.040.A	Required Improvements: The improvements set forth in this section shall be shown on the preliminary plat and installed prior to approval of the final plat.

				<p>Construction design plans shall be submitted and approved by the city engineer. All such improvements shall be in accordance with the comprehensive plan and constructed in compliance with construction standard specifications adopted by the city. Existing natural features which enhance the attractiveness of the subdivision and community, such as mature trees, watercourses, rock outcroppings, established shrub masses and historic areas, shall be preserved through design of the subdivision.</p>
			Staff Comments	<p>The property is served by city water and sewer services, as well as other public and private utilities (TV, gas, electric, etc). Also serving new Lot 3A is an existing six-foot (6') wide sidewalk within ITD ROW. Subject sidewalk width is less than the current eight-foot (8') wide city sidewalk standard. Further, no sidewalks exist for the Property along River Street, which also has an eight-foot (8') wide sidewalk requirement. An encroachment permit from ITD as well as the City will be required for all improvements to public right of way, including the construction of a sidewalk not less than eight-feet (8') in width along River Street. As a condition of Plat approval, subject sidewalk shall be installed prior to final plat recordation unless otherwise approved by the Ketchum City Council.</p>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.040.B	<p>Improvement Plans: Prior to approval of final plat by the commission, the subdivider shall file two (2) copies with the city engineer, and the city engineer shall approve construction plans for all improvements required in the proposed subdivision. Such plans shall be prepared by a civil engineer licensed in the state.</p>
			Staff Comments	<p>Subject plans are required.</p>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.040.C	<p>Prior to final plat approval, the subdivider shall have previously constructed all required improvements and secured a certificate of completion from the city engineer. However, in cases where the required improvements cannot be constructed due to weather conditions or other factors beyond the control of the subdivider, the city council may accept, in lieu of any or all of the required improvements, a performance bond filed with the city clerk to ensure actual construction of the required improvements as submitted and approved. Such performance bond shall be issued in an amount not less than one hundred fifty percent (150%) of the estimated costs of improvements as determined by the city engineer. In the event the improvements are not constructed within the time allowed by the city council (which shall be one year or less, depending upon the individual circumstances), the council may order the improvements installed at the expense of the subdivider and the surety. In the event the cost of installing the required improvements exceeds the amount of the bond, the subdivider shall be liable to the city for additional costs. The amount that the cost of installing the required improvements exceeds the amount of the performance bond shall automatically become a lien upon any and all property within the subdivision owned by the owner and/or subdivider.</p>
			Staff Comments	<p>Subject plans and sidewalk improvement is required.</p>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.040.D	<p>As Built Drawing: Prior to acceptance by the city council of any improvements installed by the subdivider, two (2) sets of as built plans and specifications, certified by the subdivider's engineer, shall be filed with the city engineer. Within ten (10) days after completion of improvements and submission of as built drawings, the city engineer shall certify the completion of the improvements and the acceptance of the improvements, and shall submit a copy of such certification to the administrator and the subdivider. If a performance bond has been filed, the administrator shall forward a copy of the certification</p>

				to the city clerk. Thereafter, the city clerk shall release the performance bond upon application by the subdivider.
				<i>Subject plans are required.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.040.E	<p>Monumentation: Following completion of construction of the required improvements and prior to certification of completion by the city engineer, certain land survey monuments shall be reset or verified by the subdivider's engineer or surveyor to still be in place. These monuments shall have the size, shape, and type of material as shown on the subdivision plat. The monuments shall be located as follows:</p> <ol style="list-style-type: none"> 1. All angle points in the exterior boundary of the plat. 2. All street intersections, points within and adjacent to the final plat. 3. All street corner lines ending at boundary line of final plat. 4. All angle points and points of curves on all streets. 5. The point of beginning of the subdivision plat description.
			<i>Staff Comments</i>	<i>Monumentation required.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.040.F	<p>Lot Requirements:</p> <ol style="list-style-type: none"> 1. Lot size, width, depth, shape and orientation and minimum building setback lines shall be in compliance with the zoning district in which the property is located and compatible with the location of the subdivision and the type of development, and preserve solar access to adjacent properties and buildings. 2. Whenever a proposed subdivision contains lot(s), in whole or in part, within the floodplain, or which contains land with a slope in excess of twenty five percent (25%), based upon natural contours, or creates corner lots at the intersection of two (2) or more streets, building envelopes shall be shown for the lot(s) so affected on the preliminary and final plats. The building envelopes shall be located in a manner designed to promote harmonious development of structures, minimize congestion of structures, and provide open space and solar access for each lot and structure. Also, building envelopes shall be located to promote access to the lots and maintenance of public utilities, to minimize cut and fill for roads and building foundations, and minimize adverse impact upon environment, watercourses and topographical features. Structures may only be built on buildable lots. Lots shall only be created that meet the definition of "lot, buildable" in section 16.04.020 of this chapter. Building envelopes shall be established outside of hillsides of twenty five percent (25%) and greater and outside of the floodway. A waiver to this standard may only be considered for the following: <ol style="list-style-type: none"> a. For lot line shifts of parcels that are entirely within slopes of twenty five percent (25%) or greater to create a reasonable building envelope, and mountain overlay design review standards and all other city requirements are met. b. For small, isolated pockets of twenty five percent (25%) or greater that are found to be in compliance with the purposes and standards of the mountain overlay district and this section. 3. Corner lots shall have a property line curve or corner of a minimum radius of twenty five feet (25') unless a longer radius is required to serve an existing or future use. 4. Side lot lines shall be within twenty degrees (20°) to a right angle or radial line to the street line. 5. Double frontage lots shall not be created. A planting strip shall be provided along the boundary line of lots adjacent to arterial streets or incompatible

				<p>zoning districts. Should a double frontage lot(s) be created out of necessity, then such lot(s) shall be reversed frontage lot(s).</p> <p>6. Minimum lot sizes in all cases shall be reversed frontage lot(s).</p> <p>7. Every lot in a subdivision shall have a minimum of twenty feet (20') of frontage on a dedicated public street or legal access via an easement of twenty feet (20') or greater in width. Easement shall be recorded in the office of the Blaine County recorder prior to or in conjunction with recordation of the final plat.</p>
			<i>Staff Comments</i>	<p><i>The Project complies with each of these requirements. A building envelope ("BE") will be reflected on the final plat consistent with the approved final Agreement for the Project. Subject BE will reflect the Council's final approval on FAR , corner lot radii sight line requirements, and front/side yard setbacks. The BE shall not encroach within 25' of Trail Creek or the edge of ITD ROW.</i></p>
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16.04.040.G	<p>G. Block Requirements: The length, width and shape of blocks within a proposed subdivision shall conform to the following requirements:</p> <ol style="list-style-type: none"> 1. No block shall be longer than one thousand two hundred feet (1,200'), nor less than four hundred feet (400') between the street intersections, and shall have sufficient depth to provide for two (2) tiers of lots. 2. Blocks shall be laid out in such a manner as to comply with the lot requirements. 3. The layout of blocks shall take into consideration the natural topography of the land to promote access within the subdivision and minimize cuts and fills for roads and minimize adverse impact on environment, watercourses and topographical features. 4. Corner lots shall contain a building envelope outside of a seventy-five foot (75') radius from the intersection of the streets.
			<i>Staff Comments</i>	<p><i>This application does not create a new block. This requirement is not applicable. Notwithstanding, a Building Envelope ("BE") will be reflected on the final plat consistent with the approved final Agreement for the Project. Subject BE will reflect the Council's final approval on corner lot radii sight line requirements.</i></p>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.040.H	<p>Street Improvement Requirements:</p> <ol style="list-style-type: none"> 1. The arrangement, character, extent, width, grade and location of all streets put in the proposed subdivision shall conform to the comprehensive plan and shall be considered in their relation to existing and planned streets, topography, public convenience and safety, and the proposed uses of the land; 2. All streets shall be constructed to meet or exceed the criteria and standards set forth in chapter 12.04 of this code, and all other applicable ordinances, resolutions or regulations of the city or any other governmental entity having jurisdiction, now existing or adopted, amended or codified; 3. Where a subdivision abuts or contains an existing or proposed arterial street, railroad or limited access highway right of way, the council may require a frontage street, planting strip, or similar design features; 4. Streets may be required to provide access to adjoining lands and provide proper traffic circulation through existing or future neighborhoods; 5. Street grades shall not be less than three-tenths percent (0.3%) and not more than seven percent (7%) so as to provide safe movement of traffic and emergency vehicles in all weather and to provide for adequate drainage and snow plowing;

			<p>6. In general, partial dedications shall not be permitted, however, the council may accept a partial street dedication when such a street forms a boundary of the proposed subdivision and is deemed necessary for the orderly development of the neighborhood, and provided the council finds it practical to require the dedication of the remainder of the right of way when the adjoining property is subdivided. When a partial street exists adjoining the proposed subdivision, the remainder of the right of way shall be dedicated;</p> <p>7. Dead end streets may be permitted only when such street terminates at the boundary of a subdivision and is necessary for the development of the subdivision or the future development of the adjacent property. When such a dead end street serves more than two (2) lots, a temporary turnaround easement shall be provided, which easement shall revert to the adjacent lots when the street is extended;</p> <p>8. A cul-de-sac, court or similar type street shall be permitted only when necessary to the development of the subdivision, and provided, that no such street shall have a maximum length greater than four hundred feet (400') from entrance to center of turnaround, and all cul-de-sacs shall have a minimum turnaround radius of sixty feet (60') at the property line and not less than forty five feet (45') at the curb line;</p> <p>9. Streets shall be planned to intersect as nearly as possible at right angles, but in no event at less than seventy degrees (70°);</p> <p>10. Where any street deflects an angle of ten degrees (10°) or more, a connecting curve shall be required having a minimum centerline radius of three hundred feet (300') for arterial and collector streets, and one hundred twenty five feet (125') for minor streets;</p> <p>11. Streets with centerline offsets of less than one hundred twenty five feet (125') shall be prohibited;</p> <p>12. A tangent of at least one hundred feet (100') long shall be introduced between reverse curves on arterial and collector streets;</p> <p>13. Proposed streets which are a continuation of an existing street shall be given the same names as the existing street. All new street names shall not duplicate or be confused with the names of existing streets within Blaine County, Idaho. The subdivider shall obtain approval of all street names within the proposed subdivision from the commission before submitting same to council for preliminary plat approval;</p> <p>14. Street alignment design shall follow natural terrain contours to result in safe streets, usable lots, and minimum cuts and fills;</p> <p>15. Street patterns of residential areas shall be designed to create areas free of through traffic, but readily accessible to adjacent collector and arterial streets;</p> <p>16. Reserve planting strips controlling access to public streets shall be permitted under conditions specified and shown on the final plat, and all landscaping and irrigation systems shall be installed as required improvements by the subdivider;</p> <p>17. In general, the centerline of a street shall coincide with the centerline of the street right of way, and all crosswalk markings shall be installed by the subdivider as a required improvement;</p> <p>18. Street lighting may be required by the commission or council where appropriate and shall be installed by the subdivider as a requirement improvement;</p>
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				<p>19. Private streets may be allowed upon recommendation by the commission and approval by the council. Private streets shall be constructed to meet the design standards specified in subsection H2 of this section;</p> <p>20. Street signs shall be installed by the subdivider as a required improvement of a type and design approved by the administrator and shall be consistent with the type and design of existing street signs elsewhere in the city;</p> <p>21. Whenever a proposed subdivision requires construction of a new bridge, or will create substantial additional traffic which will require construction of a new bridge or improvement of an existing bridge, such construction or improvement shall be a required improvement by the subdivider. Such construction or improvement shall be in accordance with adopted standard specifications;</p> <p>22. Sidewalks, curbs and gutters may be a required improvement installed by the subdivider; and</p> <p>23. Gates are prohibited on private roads and parking access/entranceways, private driveways accessing more than one single-family dwelling unit and one accessory dwelling unit, and public rights of way unless approved by the city council.</p>
			<i>Staff Comments</i>	<i>The Project does not create a new street. With the exception of Street lighting these standards are not applicable. Street lighting in compliance with City standards is required of the Applicant consistent with this standard.</i>
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16.04.040.I	<p>Alley Improvement Requirements: Alleys shall be provided in business, commercial and light industrial zoning districts. The width of an alley shall be not less than twenty feet (20'). Alley intersections and sharp changes in alignment shall be avoided, but where necessary, corners shall be provided to permit safe vehicular movement. Dead end alleys shall be prohibited. Improvement of alleys shall be done by the subdivider as required improvement and in conformance with design standards specified in subsection H2 of this section.</p>
			<i>Staff Comments</i>	<i>This proposal does not create a new alley. This standard is not applicable.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.040.J	<p>Required Easements: Easements, as set forth in this subsection, shall be required for location of utilities and other public services, to provide adequate pedestrian circulation and access to public waterways and lands.</p> <p>1. A public utility easement at least ten feet (10') in width shall be required within the street right of way boundaries of all private streets. A public utility easement at least five feet (5') in width shall be required within property boundaries adjacent to Warm Springs Road and within any other property boundary as determined by the city engineer to be necessary for the provision of adequate public utilities.</p> <p>2. Where a subdivision contains or borders on a watercourse, drainageway, channel or stream, an easement shall be required of sufficient width to contain such watercourse and provide access for private maintenance and/or reconstruction of such watercourse.</p> <p>3. All subdivisions which border the Big Wood River, Trail Creek and Warm Springs Creek shall dedicate a ten foot (10') fish and nature study easement along the riverbank. Furthermore, the council shall require, in appropriate areas, an easement providing access through the subdivision to the bank as a sportsman's access. These easement requirements are minimum standards, and in appropriate cases where a subdivision abuts a portion of the river adjacent to an existing pedestrian easement, the council may require an extension of that</p>

				<p>easement along the portion of the riverbank which runs through the proposed subdivision.</p> <p>4. All subdivisions which border on the Big Wood River, Trail Creek and Warm Springs Creek shall dedicate a twenty five foot (25') scenic easement upon which no permanent structure shall be built in order to protect the natural vegetation and wildlife along the riverbank and to protect structures from damage or loss due to riverbank erosion.</p> <p>5. No ditch, pipe or structure for irrigation water or irrigation wastewater shall be constructed, rerouted or changed in the course of planning for or constructing required improvements within a proposed subdivision unless same has first been approved in writing by the ditch company or property owner holding the water rights. A written copy of such approval shall be filed as part of required improvement construction plans.</p> <p>6. Nonvehicular transportation system easements including pedestrian walkways, bike paths, equestrian paths, and similar easements shall be dedicated by the subdivider to provide an adequate nonvehicular transportation system throughout the city.</p>
			<i>Staff Comments</i>	<i>A ten-foot (10') fishermen's easement needs to be shown on the plat in accordance with subsection 3 herein. The required twenty-five foot (25') riparian and scenic easement along Trail Creek is established in accordance with subsection 4. Standards #1,2, 5 & 6 are not applicable.</i>
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16.04.040.K	<p>Sanitary Sewage Disposal Improvements: Central sanitary sewer systems shall be installed in all subdivisions and connected to the Ketchum sewage treatment system as a required improvement by the subdivider. Construction plans and specifications for central sanitary sewer extension shall be prepared by the subdivider and approved by the city engineer, council and Idaho health department prior to final plat approval. In the event that the sanitary sewage system of a subdivision cannot connect to the existing public sewage system, alternative provisions for sewage disposal in accordance with the requirements of the Idaho department of health and the council may be constructed on a temporary basis until such time as connection to the public sewage system is possible. In considering such alternative provisions, the council may require an increase in the minimum lot size and may impose any other reasonable requirements which it deems necessary to protect public health, safety and welfare.</p>
			<i>Staff Comments</i>	<i>N/A as the existing development connects to the public sewage system.</i>
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16.04.040.L	<p>Water System Improvements: A central domestic water distribution system shall be installed in all subdivisions by the subdivider as a required improvement. The subdivider shall also be required to locate and install an adequate number of fire hydrants within the proposed subdivision according to specifications and requirements of the city under the supervision of the Ketchum fire department and other regulatory agencies having jurisdiction. Furthermore, the central water system shall have sufficient flow for domestic use and adequate fire flow. All such water systems installed shall be looped extensions, and no dead end systems shall be permitted. All water systems shall be connected to the municipal water system and shall meet the standards of the following agencies: Idaho department of public health, Idaho survey and rating bureau, district sanitarian, Idaho state public utilities commission, Idaho department of reclamation, and all requirements of the city.</p>
			<i>Staff Comments</i>	<i>N/A as water system improvements are existing.</i>

<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16.04.040.M	<p>Planting Strip Improvements: Planting strips shall be required improvements. When a predominantly residential subdivision is proposed for land adjoining incompatible uses or features such as highways, railroads, commercial or light industrial districts or off street parking areas, the subdivider shall provide planting strips to screen the view of such incompatible features. The subdivider shall submit a landscaping plan for such planting strip with the preliminary plat application, and the landscaping shall be a required improvement.</p>
			<i>Staff Comments</i>	<i>This standard is not applicable.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.040.N	<p>Cuts, Fills, And Grading Improvements: Proposed subdivisions shall be carefully planned to be compatible with natural topography, soil conditions, geology and hydrology of the site, as well as to minimize cuts, fills, alterations of topography, streams, drainage channels, and disruption of soils and vegetation. The design criteria shall include the following:</p> <ol style="list-style-type: none"> 1. A preliminary soil report prepared by a qualified engineer may be required by the commission and/or council as part of the preliminary plat application. 2. Preliminary grading plan prepared by a civil engineer shall be submitted as part of all preliminary plat applications. Such plan shall contain the following information: <ol style="list-style-type: none"> a. Proposed contours at a maximum of five foot (5') contour intervals. b. Cut and fill banks in pad elevations. c. Drainage patterns. d. Areas where trees and/or natural vegetation will be preserved. e. Location of all street and utility improvements including driveways to building envelopes. f. Any other information which may reasonably be required by the administrator, commission or council to adequately review the affect of the proposed improvements. 3. Grading shall be designed to blend with natural landforms and to minimize the necessity of padding or terracing of building sites, excavation for foundations, and minimize the necessity of cuts and fills for streets and driveways. 4. Areas within a subdivision which are not well suited for development because of existing soil conditions, steepness of slope, geology or hydrology shall be allocated for open space for the benefit of future property owners within the subdivision. 5. Where existing soils and vegetation are disrupted by subdivision development, provision shall be made by the subdivider for revegetation of disturbed areas with perennial vegetation sufficient to stabilize the soil upon completion of the construction. Until such times as such revegetation has been installed and established, the subdivider shall maintain and protect all disturbed surfaces from erosion. 6. Where cuts, fills, or other excavations are necessary, the following development standards shall apply: <ol style="list-style-type: none"> a. Fill areas shall be prepared by removing all organic material detrimental to proper compaction for soil stability. b. Fills shall be compacted to at least ninety five percent (95%) of maximum density as determined by AASHO T99 (American Association of State Highway Officials) and ASTM D698 (American standard testing methods).

				<p>c. Cut slopes shall be no steeper than two horizontal to one vertical (2:1). Subsurface drainage shall be provided as necessary for stability.</p> <p>d. Fill slopes shall be no steeper than three horizontal to one vertical (3:1). Neither cut nor fill slopes shall be located on natural slopes of three to one (3:1) or steeper, or where fill slope toes out within twelve feet (12') horizontally of the top and existing or planned cut slope.</p> <p>e. Toes of cut and fill slopes shall be set back from property boundaries a distance of three feet (3'), plus one-fifth (1/5) of the height of the cut or the fill, but may not exceed a horizontal distance of ten feet (10'); tops and toes of cut and fill slopes shall be set back from structures at a distance of at least six feet (6'), plus one-fifth (1/5) of the height of the cut or the fill. Additional setback distances shall be provided as necessary to accommodate drainage features and drainage structures.</p>
			Staff Comments	<i>The Applicant has submitted a soils report and landscaping plan for the Project. As conditioned herein, prior to grading occurring on the new Lot 3A, City approval of the Applicant's grading, drainage and landscaping construction drawings is required. Subject construction drawings shall be consistent in concept with approved Design Review, Encroachment Permit, and related drawings.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.040.O	Drainage Improvements: The subdivider shall submit with the preliminary plat application such maps, profiles, and other data prepared by an engineer to indicate the proper drainage of the surface water to natural drainage courses or storm drains, existing or proposed. The location and width of the natural drainage courses shall be shown as an easement common to all owners within the subdivision and the city on the preliminary and final plat. All natural drainage courses shall be left undisturbed or be improved in a manner that will increase the operating efficiency of the channel without overloading its capacity. An adequate storm and surface drainage system shall be a required improvement in all subdivisions and shall be installed by the subdivider. Culverts shall be required where all water or drainage courses intersect with streets, driveways or improved public easements and shall extend across and under the entire improved width including shoulders.
			Staff Comments	<i>Prior to grading occurring on the new Lot 3A, City approval of the Applicant's grading, drainage and landscaping construction drawings is required. Subject construction drawings shall be consistent in concept with approved Design Review, Encroachment Permit, and related drawings.</i>
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16.04.040.P	Utilities: In addition to the terms mentioned in this section, all utilities including, but not limited to, electricity, natural gas, telephone and cable services shall be installed underground as a required improvement by the subdivider. Adequate provision for expansion of such services within the subdivision or to adjacent lands including installation of conduit pipe across and underneath streets shall be installed by the subdivider prior to construction of street improvements.
			Staff Comments	<i>N/A as the subject property is served by existing utilities.</i>
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16.04.040.Q	Off Site Improvements: Where the offsite impact of a proposed subdivision is found by the commission or council to create substantial additional traffic, improvements to alleviate that impact may be required of the subdivider prior to final plat approval, including, but not limited to, bridges, intersections, roads, traffic control devices, water mains and facilities, and sewer mains and facilities.
			Staff Comments	<i>No off-site improvements are required as a condition of platting new Lot 3A.</i>

CONCLUSIONS OF LAW

1. The City of Ketchum is a municipal corporation organized under Article XII of the Idaho Constitution and the laws of the State of Idaho, Title 50, Idaho Code.
2. Under Chapter 65, Title 67 of the Idaho Code, the City has passed a land use and subdivision ordinance, Title 16.
3. The City of Ketchum Planning Department provided adequate notice of the time, place and summary of the applicant's proposal to be heard by the Council for review of this application.
4. The proposed plat does meet the standards of approval under Title 16, Chapter 16.04, subject to conditions of approval.
5. Approval is granted for the combination of three parcels (251 S. Main Street – Ketchum Townsite Lots 3, 21, FR 22 Blk 82 N 10' x 110' of alley S 20' x 230' of alley, 260 E. River Street – Ketchum Townsite Lot 2 Block 82 10' x 110' of alley, and 280 E. River Street – Ketchum Townsite Lot 1 Block 82) into one lot, referenced as Lot 3A, Block 82, Ketchum Townsite, as stamped by Mark Phillips with Galena Engineers on 6/12/2019.

DECISION

THEREFORE, the Ketchum Planning & Zoning **recommends for approval** to the Ketchum City Council the request of PEG Ketchum Hotel LLC to reconfigure subject lots as depicted on the 6/12/2019 Plat prepared by Galena Engineers consistent with the following fifteen (15) conditions of approval.

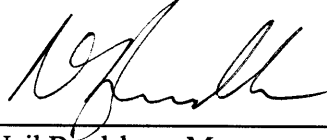
1. Subject to City Council approval of the Master Plan and PUD, including deferment of the final plat Time Limitations set forth in KMC §16.04.030.H, the Applicant may be issued a building permit prior to final plat recordation and shall record the new Lot 3A plat concurrently with a Certificate of Occupancy being issued by the City for the Project;
2. The recorded plat shall show a minimum of two Blaine County Survey Control Monuments with ties to the property and an inverse between the two monuments. The Survey Control Monuments shall be clearly identified on the face of the map;
3. An electronic CAD file shall be submitted to the City of Ketchum prior to final plat signature by the City Clerk. The electronic CAD file shall be submitted to the Blaine County Recorder's office concurrent with the recording of the Plat containing the following minimum data:
 - a. Line work delineating all parcels and roadways on a CAD layer/level designated as "parcel";
 - b. Line work delineating all roadway centerlines on a CAD layer/level designated as "road"; and,
 - c. Line work that reflects the ties and inverses for the Survey Control Monuments shown on the face of the Plat shall be shown on a CAD layer/level designated as "control";
4. All information within the electronic file shall be oriented and scaled to Grid per the Idaho State Plane Coordinate System, Central Zone, NAD1983 (1992), U.S. Survey Feet, using the Blaine

County Survey Control Network. Electronic CAD files shall be submitted in a “.dwg”, “.dgn” or “.shp” format and shall be submitted digitally to the City on a compact disc. When the endpoints of the lines submitted are indicated as coincidental with another line, the CAD line endpoints shall be separated by no greater than 0.0001 drawing units;

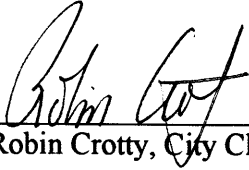
5. The applicant shall provide a copy of the recorded final plat with its recorded instrument number to the Department of Planning and Building for the official file on the application;
6. All requirements of the Fire, Utility, Building, Planning and Public Works departments of the City of Ketchum shall be met. All public improvements shall meet the requirements of the Public Works Department;
7. All other provisions of Ketchum Municipal Code, Chapter 16, Subdivision Regulations, and all applicable ordinances rules and regulations of the city and other governmental entities having jurisdiction shall be complied with by the subdivision;
8. The Project proposes waivers to the side yard setbacks, floor area ratio and height requirements and, subject to approval of the PUD application with conditions, complies with each of the Tourist Zone dimensional standards for hotels;
9. An encroachment permit will be required for all improvements to public right of way. A full utility plan will be required prior to final plat recordation and infrastructure construction;
10. A twenty-five foot (25') riparian and scenic easement is shown on the plat. Any work in this area is subject to separate floodplain rules and regulations;
11. A ten-foot (10') fishermen's easement adjacent to the OHWM of Trail Creek needs to be shown and recorded on the plat;
12. A Building Envelope (“BE”) will be reflected on the final plat consistent with the approved final Agreement for the Project. Subject BE will reflect the Council's final approval on FAR, corner lot radii sight line requirements, and side yard setbacks. The BE shall not encroach within 25' of Trail Creek or the edge of ITD ROW;
13. The removal of existing mature trees and/or established shrub masses is subject to approval and adoption of the Applicant's landscape plan through the Design Review and/or Floodplain Development Permit process;
14. An encroachment permit from ITD as well as the City will be required for all improvements to public right of way, including the construction of a sidewalk not less than eight-feet (8') in width along River Street. As a condition of Plat approval, subject sidewalk and street lighting to city standards shall be installed prior to final plat recordation unless otherwise approved by the Ketchum City Council; **and**

15. Prior to grading occurring on the new Lot 3A, City approval of the Applicant's grading, drainage and landscaping construction drawings is required. Subject construction drawings shall be consistent in concept with approved Design Review, Encroachment Permit, and related drawings.

Findings of Fact **adopted** this 3rd day of February 2020.



Neil Bradshaw, Mayor



Robin Crotty, City Clerk



Attachment E.4.A – Findings PUD Conditional Use Permit and CUP

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

IN RE:)	FILE NO. P19-063
)	
PEG KETCHUM HOTEL, LLC)	FINDINGS OF FACT, CONCLUSIONS
)	OF LAW, ORDER OF DECISION OF
Applicant for)	THE CITY COUNCIL
Planned Unit Development)	
Conditional Use Permit)	
)	

THE ABOVE ENTITLED MATTER coming before the City Council of the City of Ketchum (the "Council") pursuant to the receipt of the *Findings of Fact, Conclusions of Law, Order of Decision and Recommendation to the City Council* from the Planning and Zoning Commission of the City of Ketchum dated August 12, 2019 (the "P & Z FCDR") which is a Decision and Recommendation of approval of PEG Ketchum Hotel, LLC PUD Project Master Plan (the "PEG PUD Conditional Use Permit Application") subject to terms and conditions of approval as set forth in Section IV therein. Upon receipt of the P & Z FCDR the PEG PUD Conditional Use Permit Application has been processed and was first placed upon the agenda of the Council regular meeting of September 16, 2019 pursuant to Ketchum Municipal Code ("KMC") § 16.08.120 A. The Council having reviewed the entire record before the Ketchum Planning and Zoning Commission (the "P&Z") of the P & Z FCDR and sought additional information and processed the PEG PUD Conditional Use Permit Application and does hereby make and set forth the Record of Proceedings, Findings of Fact, Conclusions of Law, and Order of Decision as follows:

**SECTION 1
SUBJECT APPLICATIONS and RECORD OF PROCEEDINGS**

- 1.1 PEG Ketchum Hotel, LLC (the "Applicant") submitted an Application for a Planned Unit Development (a "PUD Conditional Use Permit") of a Master Plan inclusive of a request for waivers to minimum lot size, setback (side yards), height, and floor area ratio (FAR) limitations for a hotel development to be constructed and operated on a 1.09-acre site located at the southwest corner of the State Highway 75 and River Street intersection at 280 E. River, (the "Project Site").
- 1.2 The Project Site is located within the Tourist District Zone as designed by KMC § 17.12.010
- 1.3 Applicant originally submitted a Master Plan and, during the course of the proceedings before the Council, subsequently on December 2, 2019 submitted Master Plan Version 2 and subsequently on January 21, 2020 submitted Master Plan Version 3 as part of its PUD Application.

RECORD OF PROCEEDINGS

The record of the proceedings of the above-referenced matter consists of the following, to-wit:

1.1 Exhibits and documents included in this proceeding:

<i>DESCRIPTION OF EXHIBITS AND DOCUMENTS</i>	
A	P&Z FCDR (true and correct copy of which is attached as Exhibit A)
B	All exhibits identified in the P&Z FCDR and all documents received by the P&Z in the P&Z FCDR and those posted on or before September 11, 2019 to: https://ketchumidaho.org/sites/default/files/fileattachments/planning_amp_building/project/37921/all_comments_received_by_pz_7.15.19_to_9.11.19.pdf
C	All exhibits and documents hereinafter identified were received by the City Council in addition to A and B above stated and are identified by the letter C followed by a number.
C-1	<p>Notice of hearing documents:</p> <p>C-1 Public Hearing September 16, 2019 and October 7, 2019</p> <p>C-1.1 Notice of Public Hearing Before the Ketchum Planning and Zoning Commission on Monday, September 16th, 2019, at 4:00 p.m.</p> <p>C-1.2 Mailing Public Notice Public Hearing Meeting of Ketchum City Council set September 19, 2019</p> <p>C-1.3 Mailing Public Notice Public Hearing meeting of the Ketchum City Council September 16th and October 7, 2019</p> <p>C-1.4 2nd Mailing Public Notice Public Hearing Meeting of Ketchum City Council September 16th and October 7, 2019</p> <p>C-1.5 Planned Unit Development Noticing Checklist/Certification Meeting date 9-16-19 and 10-7-19</p> <p>C-1.6 Development Agreement Noticing Checklist/Certification Meeting date 10-7-19</p> <p>C-1.7 Public Notice – Public Hearing October 7, 2019 Design, Review, Planned Unit Development, Conditional Use Permit, Development Agreement, Readjustment of Lot Lines, and Flood Plain Development</p> <p>C-1.8 Copy of legal notice published Mountain Express on August 28, 2019 for September 16, 2019 public hearing Design, Review, Planned Unit Development, Conditional Use Permit, Development Agreement, Readjustment of Lot Lines, and Flood Plain Development</p> <p>C-1.9 Copy of legal notice published Mountain Express on September 18, 2019 for public hearing on October 7, 2019 Design, Review, Planned Unit Development, Conditional Use Permit, Development Agreement, Readjustment of Lot Lines, and Flood Plain Development</p> <p>C-1.10 Affidavit of Publication Idaho Mountain Express of Legal Notice for publication on the 28th day of August, 2019 for the hearing on September 16th</p>

	C-1.11 Affidavit of Publication Idaho Mountain Express of Legal Notice for publication on the 18 th day of September, 2019 for the hearing on October 7
C-2	<p>C-2 Documents submissions by the Applicant;</p> <p>C-2.1 Owner's Revised Project Master Plan and Submittal Documents as documented in the staff report dated October 7, 2019 and December 2, 2019, as well as the following January 21, 2020 Ketchum Tribute design updates</p> <p>C-2.2 Top Ten – Project Updates</p> <p>C-2.3 New Maps and Information (since PZ approval on 8/12/19)</p> <ul style="list-style-type: none"> • Hales Engineering Access Memorandum, Dated 8/13/19 • In-Group Hospitality Parking Plan, Dated 8/26/19 <p>C-2.4 Following Ketchum Tribute Design Update Drawings, Dated 10/7/19</p> <ul style="list-style-type: none"> • Tribute Portfolio • Council Update • Architectural Site Plan • Landscape Plan • Floor Plans (Each Level) • Contextual Elevations (5 Drawings) • Project Perspectives from NE, NW, SE, NE, N & Rooftop Bar • Waiver Supporting Exhibits <ul style="list-style-type: none"> ○ Minimum Lot Size for PUD ○ Floor Area Ratio ○ Average Setbacks ○ Height / Contextual Elevations • Planning & Zoning Comments • PZ Response <p>C-2.5 Master Plan Version No. 1 Submitted with the Applicant's Application and approved by the Planning and Zoning Commission on August 12, 2019</p> <p>C-2.6 Master Plan Version No. 2: dated December 2, 2019 with changes summarized in Staff Report submitted by Applicant for Council hearing on December 2, 2019 and including in the December 2, 2019 Council Packet</p> <p>C-2.7 Master Plan Version No. 3: Summary in Staff Report and in Exhibits January 21, 2019 submitted by Applicant for Council hearing on January 21, 2020 posted at: https://ketchumidaho.org/planning-building/project/ketchum-boutique-hotel inclusive of the following:</p> <p>C-2.8 Waiver Supporting Exhibits (15 Sheets)</p> <ul style="list-style-type: none"> • Waiver 1 – Minimum Lot Size for PUD • Waiver 2 – FAR = 1.57 <ul style="list-style-type: none"> ○ Before & After – Building Mass Revision • Waiver 3 – Average Setbacks <ul style="list-style-type: none"> ○ Front = 15' ○ West Side = 17.5' (avg), 12' at closest point to property line ○ East Side = 31.3' (avg), +/- 20' at closest point to SH75 property ○ Rear = > 35' from Trail Creek

	<ul style="list-style-type: none"> • Waiver 4 – Height / Contextual Elevations • River Street Entry Plaza (4 Sheets) <ul style="list-style-type: none"> ○ Option 1 with Rendering ○ Option 2 • SH-75 Service Access Study (2 Sheets) • Sustainability Integration (4 Sheets) <ul style="list-style-type: none"> ○ Building Systems / Geothermal ○ High Performance Building & Site ○ Material & Product Sustainability Assessment ○ Updated Site & Floor Plans (16 Sheets) <ul style="list-style-type: none"> ▪ Landscape Plan ▪ Building Perimeter Before / After ▪ Level -03, -02, -01 Floor Plans (Below River Street) ▪ Level 01, 02, 03, 04 Floor Plans ○ Project Perspectives <ul style="list-style-type: none"> ▪ NE, NW, N, NE, SE, SW ○ Employee Housing Plans (6 sheets) <ul style="list-style-type: none"> ▪ 12 one-bedroom studios (2 different designs) – 12 employees housed ▪ two-bedroom suites (1 design) – 4 employees housed ▪ 1 four-bedroom suite (1 design) – 7 employees housed ○ Setback Analysis <ul style="list-style-type: none"> ▪ 5 Sections ○ River Street Encroachment (2 Sheets) ○ Architectural Site Plan (5 Sheets) <ul style="list-style-type: none"> ▪ Contextual ▪ E, N, W, S
<p>C-3</p>	<p>Staff Reports</p> <p>C-3.1 October 7, 2019</p> <ul style="list-style-type: none"> • Staff Report <ul style="list-style-type: none"> ○ Note 1. The following link includes PEG survey response summary and public comment letters reviewed by the PZ through 8/12/19 and submitted to KCC through 9/11/19 ○ https://ketchumidaho.org/sites/default/files/fileattachments/planning_amp_building/project/37921/all_comments_received_by_pz_7.15.19_to_9.11.19.pdf ○ Note 2. The following link includes letters, petitions, emails and other public comments submitted to KCC: ○ https://ketchumidaho.org/citycouncil/page/ketchum-boutique-hotel <p>C-3.2 December 2, 2019</p>

	<p>C-3.3 January 21, 2020</p> <ul style="list-style-type: none"> • Staff Report • Proposed Findings of Fact, Conclusions of Law and Decision
C-4	<p>City Department, Agency & peer Review letters/Memos;</p> <p>C-4.1 Ketchum Fire Department Preapplications Requirements dated June 24, 2019 Ketchum Boutique Hotel</p> <p>C-4.2 E-mail to John Gaeddert dated July 22, 2019 from Sherri Newland, PE, CPESC Principal Engineer/Owner S&C Associates LLC Acting as consulting engineer for the City of Ketchum.</p> <p>C-4.3 E-mail to Suzanne Frick dated December 2, 2019 from Sherri Newland, PE, CPESC Principal Engineer/Owner S&C Associates LLC Acting as consulting engineer for the City of Ketchum.</p> <p>C-4.4 E-mail and attachment to Suzanne Frick dated January 3, 2020 from Sherri Newland, PE, CPESC Principal Engineer/Owner S&C Associates LLC Acting as consulting engineer for the City of Ketchum.</p>
C-5	<p>Public Comment Sign-up Sheets</p> <p>C-4.1 October 7, 2019 Public Hearing</p> <p>C-4.2 December 2, 2019 Public Hearing</p> <p>C-4.3 January 21, 2019 Public Hearing</p>
C-6	<p>Minutes of Council Meetings</p> <p>C-5.1 October 7, 2019</p> <p>C-5.2 December 2, 2019</p> <p>C-5.3 January 21, 2020</p>
C-7	<p>City Council Hearing Packets posted for public hearings held on:</p> <p>October 7, 2019 Posted at: https://mccmeetingspublic.blob.core.usgovcloudapi.net/ketchid-meet-f374e29900a74b108ca2d3560c836ce0/ITEM-Attachment-001-3abc66dc1caf4df39a96255157b5fd32.pdf</p> <p>December 2, 2019 Posted at: https://mccmeetingspublic.blob.core.usgovcloudapi.net/ketchid-meet-a8da33b7685c429c83f5f788dc6b0a06/ITEM-Attachment-001-8fb4f20629724aa69a20fb83918814a8.pdf</p> <p>January 21, 2020 Posted at: Staff report: https://mccmeetingspublic.blob.core.usgovcloudapi.net/ketchid-meet-fccaf6b775254eb2abab6768479876fd/ITEM-Attachment-001-25e632e69d32409eb1d63b0114fb156f.pdf</p>
C-8	<p>Public written comment submitted [inclusive of written public comment submitted on or before 9/11/19 which is also identified in Public Comment C- 9] posted at: https://ketchumidaho.org/citycouncil/page/ketchum-boutique-hotel</p>

C-9	<p>Public Written Comment</p> <ul style="list-style-type: none"> • Public Comment to Planning and Zoning Commission 7/15/19 to on or before 9/11/19 posted at: https://ketchumidaho.org/planning-building/project/ketchum-boutique-hotel
D	<p>Exhibits to these Findings of Fact, Conclusions of Law and Order of Decision:</p> <ul style="list-style-type: none"> • Exhibit A or Attachment A: <ul style="list-style-type: none"> ○ Planning and Building Staff Reports, Analysis and Presented to Council [also see Exhibit C-3] • Exhibit B or Attachment B: <ul style="list-style-type: none"> ○ Applicant Submissions • Exhibit C or Attachment C: <ul style="list-style-type: none"> ○ City consultant or City Department Comments other than the Planning and Building Department • Exhibit D or Attachment D: <ul style="list-style-type: none"> ○ Written Public Comment [also see Exhibit C-8] • Exhibit E or Attachment E: <ul style="list-style-type: none"> ○ P&Z Findings of Fact Conclusions of Law and Recommendations of P&Z inclusive of: <ul style="list-style-type: none"> ▪ E-1 Waterways Design Review, ▪ E-2 Plat Approval Recommendation, ▪ E-3 Preapplication Plan Review Approval, ▪ E-4 PUD Findings of Fact, Conclusions of Law and Recommendation of Approval; and ▪ E-5 Findings and Recommendation of Approval of the 8/12/19 draft dated "<i>Permits Conditions Acceptance Development Agreement.</i>" ○ City Council inclusive of: <ul style="list-style-type: none"> ▪ E-2A Plat Approval

1.2 Initial Proceeding Conducted on September 16, 2019:

The Public Hearing notice for the September 16, 2019 hearing at 4:00 p.m. due to a notice error it was announced by the Mayor that the hearings on the Ketchum Boutique Hotel at 260 and 280 River Street and 251 S. Main Street applications for Planned Unit Development, Conditional Use Permit, and Development Agreement will not be commenced until October 7, 2019 at 4:00 p.m. No presentation was made by the applicant or staff, and no deliberations or discussion on the matter was held by the Council. However, those members of the public who were in attendance at the hearing and unable to attend the re-noticed public hearing for October 7, 2019 were allowed to provide public comment with said public comment to be included as part of the record of October 7th hearing which included the following:

1.2.1 The following persons making statements before the City Council [paraphrased] are as follows:

- **John Sahlberg**, 321 Leadville, Ketchum who expressed concern and frustration that the P & Z was relying upon a study from 2002 and that it was old and not useful and that the P & Z is recommending the granting of waivers because they have done it before. Referenced the Barriteau project.

- **Gary Hoffman**, 235 Spur Lane in Ketchum, found it refreshing that a large company is coming to Ketchum but would prefer they purchase the Barriteau Hotel property. Discussed proposed construction by ITD and positives and negatives of the proposal. He also mentioned housing and tourism and zoning, rentals and zoning laws need to be changed and would like to see a City stand against oversized construction.
- **Dr. Alexander**, 110 Sweetbrier in Blaine County wanted information as to why the Council and P & Z got to the root of why they recommend this project.
- **Vicky Graves**, resident of Ketchum concerned about safety at the corner and opposed to the hotel.
- **Kevin Livingston**, 115 S. Leadville started the digital petition and no one understands what is being proposed and that the Council needs to uphold with the public wants. He expressed concerns about the waivers granted to the Barriteau project.
- **Penelope Street**, born and raised in Ketchum currently works with homeowners and is concerned about high costs of living and working in Ketchum and concerned about project employee housing.
- **John Heaney**, 110 Williams St. is opposed to the height of the project.
- **Lisa Leach**, Blaine County resident Did not want to see variances granted. Recommended that an industrial psychologist be hired to study the proposed housing and was concerned about the adequacy of employee parking.
- **Pamela Sabel**, business owner at 180 Leadville Ave. N. concerned with the whole in the ground unfinished hotel project across Highway 75 and would like to see that project completed before starting another one and wanted more information.
- **Emily Nardel**, resident since 1983 and resides at the corner of River Street and 1st Ave. S. stated that the building will impact her ability to get out of her home and had concern with zoning changes.
- **Susan Scovell** has served on P & Z and urged Council to support P & Z recommendation.
- **Frank Dressman**, Blaine County Resident was frustrated by the P & Z waivers and recommended that the Marriott possibly build a building that blends with the community.
- **Susan Sahlberg**, 321 Leadville, Ketchum that the project does not fit in the space and that a smaller hotel could fit in the space.

1.3 Hearing Conducted On October 7, 2019:

The Public Hearing correctly noticed October 7, 2019. The public hearing was commenced by the Council, at 4:00 p.m. on October 7, 2019 at 4:00 p.m. for the receipt of testimony and comment from City Staff, the Applicant and the public.

1.3.1 Applicant Representatives [paraphrased]:

- **Cameron Gunter**, CEO of PEG Development. Presented his background information and discussed the benefits of the hotel brand {Marriot} which can be modeled to the community and can bring more people to the area and that onsite employee housing is critical to the success of the hotel project.
- **Nick Blayden**, Applicant Project Manager, presented the site plan provided information on what is currently on the site, the economics of the project and reviewed market study and estimated property tax and sale tax benefits. Stated that the project will have 30 beds for employee housing on site with some employees coming from off site.
- **Justin Heppler**, Applicant Architect, discussed that the Applicant allows design to cater a project to the local community. Discussed who they are trying to attract to the area and their process for creating the hotel. He reviewed the project design, public amenities for each level and the employee housing component of 30 beds for employees. That the project supports the City's comprehensive plan and clarified the height of the project and that it is lower than the neighboring hotel Limelighter and the Bariteau project. He stated the designs are not complete. He reviewed the waivers requested, size of the acreage, floor area ration waiver for employee housing and set back waivers on three sides. He also discussed changes made to the project based upon P & Z review process. Responded to Council questions and concerns.
- **Ryan Hales**, Hales Engineering for Applicant discussed the traffic study, liver of service and how they calculated traffic conditions, signalized, and stop controlled intersections. He also discussed existing conditions and future growth estimates and reviewed the traffic count and River St. and Maine Street intersections.

1.3.2 Public Comment [paraphrased]:

- **Scott Hanson**, Homeowner Trail Creek Crossing. He helped with the online petition. He is not opposed to hotels but objects to location of the Application. That the project is not in scale and would detract from the City's entrance and was concerned about traffic and waivers. That people rely upon zoning and waivers should not be granted. He discussed the survey's and petitions that have been circulated and that the project should not go forward.

- **Elaine Harks**, resident of Ketchum stated she is not anti-hotel concern is zoning are laws standards for only suggestions
- **Pat Duggan**, resident and property owner is Ketchum. She discussed her concerns about waivers granted in the past and that granting waivers needs to stop. Wants projects brought to the public in earlier time frame and references the petitions and other public comments.
- **Tom Benson**, Ketchum resident and property owner. Did not want exceptions to be made and not to grant waivers and discussed the number of employee housing needed and that the employee housing be moved to another location and how to change the design to fit the land.
- **Lars Guy**, Is a tenant in the building on the west side of the Project. He was concerned about the height of the building and was concerned about parking wanted continued review.
- **Jima Rice**, Blaine County resident. Recommended that the project be sent back to Planning and Zoning.
- **Gene Abrams** discussed the variances given to the Limelighter Hotel that should not be precedence for variances for this project. Questioned the occupancy and need for another hotel. Referenced another Marriot down the road and questioned employee housing did not make sense and questioned the tax income benefit to the City.
- **Dick Clotfelter**, resident of 151 S. Main lives on the top floor of the neighboring Limelighter Hotel. He was concerned with the plan and design of the project that he had hired and architect. He was concern with the traffic that will occur on River Street, fire safety on River Street due to the road being closed and that the project plan for parking, loading and garbage removal will cause problems.
- **Sally McCollum**, Ketchum resident, used to own the building to the west of the project. That the project is too large for the site and is too big along with the Limelighter Hotel for the City entrance.
- **Heidi Scherthanner**, Ketchum resident, complained about the City continuing to offer waivers for private homes and hotels and that traffic was a large problem.
- **Mark Penn**, President of East Fork concern that the application ignores the zoning by applying for variances. Wanted the T zone standards maintained. That the building height waiver request was not appropriate and voiced concerns about parking. He was not opposed to the project but wanted it designed to fit in the neighborhood better.
- **Pam Bailey**, Sun Valley Resident voiced concern over traffic and economic development impact.

- **Dell Ann Benson**, Trail Creek Crossing, was concerned about construction and noticing issues and object to the project across the street to the east as the hole in the ground at the entrance to the City and was opposed to the project.
- **Mickey Garcia** referenced the history of Ketchum, and was in favor of the development and the height no worse than the Limelighter across the street and that the public here does not want to let any other development in Ketchum.
- **Michael Brown**, from Aspen Colorado, He owns the Tamarack and Ketchum Hotel. He was against the project and that Ketchum was eclectic and that it should stay that way.
- **Jim Laski**, attorney representing the Limelighter Homeowner's Association, that his client objected to the design and was concerned with traffic. He discussed ITD's plan and not knowing when it would be implemented That the Limelighter did not have any waivers but employee housing and was concerned about traffic circulation plan.
- **Gary Slette**, represents Jan Clotfelter, his client is not against a hotel but concerned about traffic and circulation. He referenced his letter to the Council about River St. access and Main Street road closures.
- **Gary Lipton**, Resident of Ketchum, He is for the Hotel but wants waivers addressed appropriately. If this does not go forward will affect future investors.
- **Melissa Lipton** is against waivers being issued for the project. Concern over character of the entrance to Ketchum.
- **Ben Worst**, 220 River St., LLC His client is in support of a hotel at that location but concern of PUD's waivers and that these waivers make the zoning meaningless. Wants the hotel to be best it can be and was concerned about traffic, parking issues, view corridors.
- **Jerry Seifert** voiced support for the project
- **Ed O's Gara** on River Street, he is the closest resident to the project and the Limelight Hotel. Concern with parking.
- **Brian Barsotti**, Ketchum resident, discussed history of trying to put a hotel in Ketchum that slack is very hard for in this area and hospitality has changed. This is due to competition with Air BnB and other rentals in the area. Concern is waivers given to this project will have to be given everywhere.

1.3.3 Planning and Building Department Staff:

- **John Gaeddert**, Director of the City of Ketchum Planning and Building Department (the "Director") provided the Staff Report, discussed the history of the project Application and a study that had been done.

1.3.4 Mayor and Council issues of concern:

- **The Mayor and members of the Council** questioned the Applicant Representatives regarding the following issues related to the impact of the Application:
 - Traffic circulation and pedestrian safety; and
 - Employee housing and affordable housing; and pedestrian crossing. Responded to the Mayor's and Council's questions and concerns about affordable housing
 - Setbacks and height
- **The Mayor and members of the Council** questioned the Director regarding the following issues related to the impact of the Application:
 - Bulk reduction
 - What the Idaho Transportation Department's plans are for Highway 75 and road improvements
 - Height and traffic flows

1.3.5 Mayor and Council action: Approved a motion to continue the hearing to December 2, 2019 at 4:00 p.m. due to the complexity of this project and the need for more information to be presented.

1.4 Hearing Conducted on December 2, 2019:

The Public Hearing was continued to receive more information by motion of the City Council during the October 7, 2019 public hearing. The public hearing was commenced by the Council, at 4:00 p.m. on December 2, 2019 at 4:00 p.m. for the receipt of testimony and comment from City Staff, the Applicant and the public.

1.4.1 Applicant Representatives [paraphrased]:

- **Nick Blayden**, Applicant Project Manager discussed the Applicant's open house and had heard from the public and were show the changes they have made to the project contained in Applicant's Master Plan Version 2.
- **Justin Heppler**, Applicant Architect presented a power point showing 10 things they changed in the project design since the hearing of October 7th contained in Applicant's Master Plan Version 2. These included changes in the delivery and loading zone area as requested by Sherri Newlands P.E. City Engineering, access from Highway 75, sustainability, updated floor plans and the massing of the building and employee housing plans.

1.4.2 Public Comment [paraphrased]:

- **Heidi Scherthanner:** thanked applicant for improvements in the plans.
- **Jima Rice:** Thanked applicant for improvement in plans, was critical of the P & Z Commissioners review of this application. That the size of the project not small enough in mass and recommended eliminating the

employee housing and that the Applicant make a contribution in lieu of providing housing in the project and eliminate the roof top bar. Discussed the 2014 Comprehensive Plan.

- **Harry Griffith**, Executive Director of Sun Valley Economic Development: Spoke about the economic benefits of this project as being worth \$1.6 million to the community. That it directly impacts tourism and that it was an important project in that regard. He discussed the jobs the project will create and the number of new visitors it will bring to town. He stated that the 23-employee housing units is significant. He discussed the contribution to Local Option Sales Tax (“LOT”) that the project will bring. He referenced that the Marriott brand helps put Ketchum on the map. He obtained his information from the Applicant and found it consistent with the input and output model that has been used in the community.
- **Lucy Barrett**, expressed concern about the City’s infrastructure and if the City has addressed this concern. Expressed concern over parking and the conditions of the City’s Roads. Concern over the number of people this could bring and the ability of the hospital to hand it.
- **Mickey Garcia**, stated the P & Z did a wonderful job on this project, he is pleased with the design and that the people who are against it are selfish.
- **John Sahlberg**, lives in Trail Creek Crossing and was affected by the project and expressed is not wanting Ketchum to be like Jackson, Wyoming or Park City, Utah and opposes granting any waivers and respect for Ketchum’s values.
- **Susan Niemann**, 40 years of residency in Ketchum and agrees with John Sahlberg, and concerns about the Applicant’s renderings and that the project be build and landscaping consistent with project renderings.
- **Lars Guy**, immediate neighbor, questions regarding the T zone and setbacks and concerned about the relative scale and how it will look to the surrounding residents and that it is dangerous to grant waivers.
- **Dick English**, Ketchum resident concerned with utilities and natural resources. Questioned the City’s ability to provide water and accommodate the wastewater and was concerned about electrical power and natural gas needed for the Project effect on these systems.
- **Kevin Livingston**, Concern about transparency and there has been an overwhelming opposition response to the number of waivers applied for. He again discussed his opinion and that it cannot be good for Ketchum. That the people will be paying a lot more taxes that what the project will bring in. Stated the project needs to be scaled back.
- **Tom Benson**, Ketchum resident, opposed to the height variance and that it will devalue the property that surrounds the Project and discussed a

review that praised the Ketchum area and does not want Ketchum to turn into a Jackson, Wyoming or Park City, Utah.

- **Susan Sahlberg** liked the changes to the project that have been made but the waivers are still of concern and she opposed the height waivers.
- **Grace Summers.** She moved to Ketchum for the economy. That for young people this Project is a great opportunity to grow the economy. Discussed how Marriot is involved with corporate travel and how corporate employees then use Marriot hotels with they do personal travel. She was concerned that if this Project is turned down then Ketchum will not be attractive for other major brands of hotels. She also was in favor of the Roof Top bar which the Community could use.
- **DelAnn Benson,** Commended the Applicant on the amount of work they have done but not enough and that the project should meet the standard set for the zone. She questioned the statements of the Executive Director of Sun Valley Economic Development and the jobs this Project will bring. That the Project looks better than what is there now is no reason to grant this Application.
- **Pat Duggan,** stated that the Applicant needs to find another location, that the proposal is in the wrong spot and the P & Z Commissioners should have more thoroughly looked at the location.
- **Jim Laski,** Representing the Limelight Residents HOA. Their major concern is Highway 75 and River St. They oppose the angle parking scenario and the loading zone proposal. Concern about semi-trucks and the timing of deliveries and backing in and out for deliveries and expressed concern that the housing proposed as referenced at this hearing was different than what was in the Council Packet and that the biggest concern was traffic and vehicular use of Highway 75 and River St.
- **Ed Johnson,** Ketchum resident, stated no reason the housing should be on site and wanted the housing off site.
- **Mark Penn,** stated that the Applicant's current design was in response to public concerns but more work needs to be done to address those concerns. Discussed concern over P & Z Commissioners and zoning and concern about approval of the Project as presented creates a bad precedent in Ketchum.
- **Gary Slette,** represents Mr. & Mrs. Clotfelter. They are not opposed to the use if it fits and complies with the Zoning criteria. They are concerned with River St. right-of-way for delivery truck parking and that the Council look at River St. plan to come up with alternatives.

1.4.3 City Engineering Consultant:

- **Kordel Brayley,** Independent Engineer hired by the City of Ketchum, was introduced by the Mayor to discuss traffic circulation issues presented by

this Project. Mr. Brayley recommended the access to the Project be off of River St. He responded to Council question about elimination of the left turn regarding Highway 75 which he has not reviewed.

1.4.4 Mayor and Council issues of concern:

- Concerns about left turning regarding the intersection of River St. and Highway 75; and
- Access to the Project needing to be off of River St. not Highway 75; and
- Discussed encroachment proposals at page 86 and 87 of the Council Packet; and
- Discussion of retaining the middle of River St. where it is and not having diagonal parking move it which will reduce the size of the plaza and the effect on the length of the cross walk over River St.
- Discussion regarding the height waiver; and
- Discussion of benefits of employee housing and discussion of building affordable housing at another location and the need to see the Applicant comply with 1.6 Floor Area Ratio ("FAR") and had concern with the FAR waiver request; and
- Discussion of the setback waiver on the west side.

1.4.5 Mayor and Council action: Approved a motion to continue the hearing to January 21, 2020 at 4:00 p.m. due to the complexity of this project and the need for more information to be presented.

1.5 Hearing Conducted on January 21, 2020:

The Public Hearing was continued to receive more information by motion of the City Council during the December 2, 2019 public hearing. The public hearing was commenced by the Council, at 4:00 p.m. on January 21, 2020 at 4:00 p.m. for the receipt of testimony and comment from City Staff, the Applicant and the public.

1.5.1 Applicant Representatives (paraphrased):

- **Nick Blayden** Applicant Project Manager discussed that this was their third presentation of the Application. the Applicant's open house and had heard from the public and were show the changes they have made to the project contained in Applicant's Master Plan Version 2.
- **Justin Heppler**, Architect who referenced the Applicant's Master Plan Version 3 and discussed the 4 waivers that are being requested by the Applicant as a part of Applicant's PUD Application
 - #1 – Minimum Lot Size for PUD waiver is necessary in order to build a hotel on the site; and
 - #2 – Floor Area Ratio – The Master Plan Version 3 maintains the employee housing component but have reduce the FAR to 1.57 as

compared with the original Master Plan of 1.9. He used a power point to assist his statement about how they were able to make that reduction. He also referenced that the FAR 1.57 is lower than the request by the Council at the December 2nd hearing to reduce it to 1.6.

#3 – Average Setbacks – The Applicant was still seeking set back waivers on 3 sides and then described the Master Plan Version 3 on each of the 3 sides.

#4 – Height/Contextual Elevations – He explained showed that the elevations of the building in the Master Plan Version 3 is 27' lower than the Barriteau project across Highway 75 and 25' feet lower than the Limelight hotel. He talked about the Right of Way Waivers and outlined the curb lines.

He also referenced that the Applicant in discussion with Idaho Transportation Department on Highway 75 and making some headway.

He also discussed the sustainability facets of the project and briefly reviewed the floor plan and the views of the project and employee housing component.

1.5.2 City Attorney (paraphrased):

- **Bill Gigray**, Reviewed with the Council Planned Unit Development Standards and Process as it applies to the pending application.

1.5.3 Planning and Building Department Staff (paraphrased):

- **Abby Rivin Associate Planner**, Discussed the waivers and how the FAR is calculated and how setbacks and height is calculated for waiver purposes and what the standards were without waivers.

1.5.4 Public Comment (paraphrased):

- **Ben Worst**, Attorney representing 220 East LLC, neighboring property owner to the west of the Project. Stated that the waivers being requested are huge. Stated that Ketchum has never had average setbacks. That the formulas used to determine the setbacks that it is only 11'8" from the Project to his client's property line. He requested the Council to increase that distance as much as possible up to 24'. He questioned what the undue hardship was for the Applicant. He stated under the PUD ordinance there is a need to set conditions and the need to meet the standard by reducing the height, increase setback and primarily meet the City's standards and compatibility with the neighboring properties.
- **Scott Hanson**, homeowner at Trail Creek Crossing stated the City has misinterpreted its code. That the Applicant was aware of the Code requirements prior to the purchase of the subject property and that the waivers requested are detrimental to public health & safety and referenced the signed petitions and letters posted. He has concerns about

traffic and the traffic study and problems that will be created by the Project. He stated this project would decrease the value of property around the project. He stated the property owners have hired an attorney and will fight for their rights. He stated the Project is inconsistent with the Tourist zone it is in and inconsistent with the neighborhood. That granting the waivers constitutes spot zoning without a rezone of the property and requested the Council to deny the requests for waivers.

- **Jima Rice**, Complained that the Mayor and the head of P & Z had solicited the hotel and those communications were not given to the Council or the P & Z Commissioners and this was Open Meeting Law violation. She requested that the Council deny waivers that were defacto approved and if the Applicant cannot meet those standards then must withdraw the application.
- **Dick Clotfelter**, 151 S. Main St. Ketchum requested that the zoning standards of the Tourist Zone be followed and that the Council reject the application. He recommended that new plans be brought back to P & Z accordingly.
- **John Sahlburg**, homeowner at Trail Creek Crossing stated the height waiver requests are monumental and the process is frustrating the public. Concerned the project would forever change Ketchum. This project and waiver will be detrimental to the public welfare and referenced all the letters and petitions that have been submitted. He stated there is nothing being proposed that is for the public welfare and that the property owners on 3 of 4 sides have stated it will be detrimental to the surrounding are. He requested the Council to deny the application.
- **Sharon Patterson Grant**, representing the KSEAC discussed the groups support (not inclusive of City members) of the sustainability measures the Applicant has incorporated in the Master Plan Version 3 that reflect the group's goals. She recommended getting some level of 3rd party certifications to guarantee energy efficiency such as Lead Certification and that they are proceeding with Green House Inventory in Blaine County with all jurisdictions including Ketchum. She is only speaking for water/waste and energy reduction.

1.5.5 Mayor and Council action:

- Closed public comment
- Proceed to deliberate:
 - Sought legal clarifications from Bill Gigray City Attorney
 - Sought clarification on the procedure for design review of this Application and Project and average setbacks from John Gaeddert
 - Continued their deliberations

- Sought clarification from the Applicant's architect on setbacks
- Motion made by Councilor Hamilton, Seconded by Council President Breen to approve the Planned Unit Development Conditional Use Permit and CUP for the PEG Ketchum Hotel for Master Plan Version 3 as recommended in the Staff Report Findings with the condition in section 2.2.11 of the recommended Staff Report findings be revised for the west setback to be not less than 16' and that section 4.5.2 of the recommended Staff Report findings include that the building be LEED Silver Certified and to direct the City Engineer, consistent with condition 4.2.4 of Attachment E.4.A, to work with the Applicant to complete the State Highway 75 (SH75) Encroachment Permit with the Idaho Transportation Department (ITD) that excludes (other than emergency Access) and direct approach into the project; and Direct the City Attorney and Planning Staff to Prepare Findings of Fact, Conclusions of Law, Order of Decision of the City Council for the City Council's consideration, approval and adoption at the continuance of this hearing.
 - Voting Yea: Council President Breen, Councilor David, Councilor Hamilton
 - Voting Nay: Councilor Slanetz
- Motion to continue the public hearings to the Ketchum City Council meeting to be held on February 3, 2020 at 4:00 pm as follows:
 - Regarding the development agreement, to receive applicant reports, staff reports and public testimony for City Council consideration and action; and
 - Regarding the application for Planned Unit Development Use Permit and CUP in order, to receive the city attorney's and planning staffs prepared Findings of Fact, Conclusions of Law, Order of Decision as directed in first Motion for City Council consideration, approval and adoption and final action.
 - Regarding the application for Preliminary Plat in order, to receive prepared Findings of Fact, Conclusions of Law, Order of Decision as directed in second Motion for City Council consideration, approval and adoption and final action.

1.6 Hearing Conducted on February 3, 2020:

The Public Hearing was continued by motion of the City Council during the January 21, 2020 public hearing to receive the draft Findings of Fact, Conclusions of Law and Order of Decision presented by Staff and City Attorney and continue deliberation and review of the same. The public hearing was commenced by the Council, at 4:00 p.m. on February 3, 2020 at 4:00 p.m.¹

1.6.1 Mayor and Council action:

- Reviewed and considered the draft Findings of Fact, Conclusions of Law and Order of Decision presented by Staff and City Attorney.
- Motion to approve and authorized the Mayor to sign these submitted Findings of Fact, Conclusions of Law and Order of Decision.

DECISION

WHEREUPON THE COUNCIL being duly informed and having reviewed the record, evidence, and testimony received and being fully advised in the premises, DO HEREBY MAKE THE FOLLOWING FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER OF DECISION, to-wit:

¹ *Added to section 1.1 Exhibits and documents included in this proceeding as a part of Exhibit C-8 is Letter posted by Gary D. Slette attorney for Mr. & Mrs. Clotfelter posted and dated January 27, 2020

***City Attorney** (paraphrased): Bill Gigray presented to the Mayor and City Council an overview of the legal issues presented by the Letter posted by Gary D. Slette on January 27, 2020 as being and in the context of an issue of the City Council's construction of KMC §§ 16.08.080 A, 17.18.100, 17.124.040 and 17.124.050 as it related to the PUD Application which is the subject of the above entitled matter and provided the Mayor and Council with copies of these KMC ordinance provisions. He also responded to question on where the subject application is in the process.

***Public Comment** (paraphrased):

- **Jim Hunglemann** objected to the hotel application as not needed and incompatible with the space around it and urged the Council to play by the rules.
- **Ben Worst** attorney for owner of 220 River Street property expressed gratitude for changes in the master plan and wanted assurance there would be a full 16' setback. He also asked for clarification on where the subject application was in the process.
- **Ananda Kriya** expressed concern with the speed of the project application process does not see the need in another hotel.
- **Pamela Zabel** was concerned with the construction of the project and the streets. Did not believe the existing hotels were overcrowded and does not see the need for another hotel.

**II.
FINDINGS OF FACT and CONCLUSIONS OF LAW**

[As set forth in this section are findings of fact and corresponding citations to KMC provisions which are also Conclusions of Law]

2.1 Findings Regarding Notice:

2.1.1 **Notice Required:** Notice has been given in accordance with the Law as required by KMC Sections 16.08.110 and 17.116.040.

2.1.2 **Notice Provided:**

2.1.2.1 Notice was published for the October 7, 2019 public hearing in the Idaho Mountain Express, the official newspaper, which has general circulation within the boundaries of the City of Ketchum.

Newspaper	Date Published
Idaho Mountain Express	Wednesday, September 18, 2019

2.1.2.2 Notice of the October 7, 2019 hearing was mailed on Friday, September 18, 2019 to the property owners within 300 feet of the subject real property and affected Agencies and was posted on the subject property on September 30, 2019.

2.2 Findings Regarding Applications Filed:

2.2.1 PEG Ketchum Hotel, LLC has submitted and completed an Application for a Planned Unit Development of a Master Plan for a hotel development on a 1.09-acre site located at the southwest corner of the State Highway 75 and River Street intersection at 280 E. River, (the "Project Site") inclusive of a request for waivers to minimum lot size, setback (side yards), height, and floor area ratio (FAR) limitations.

2.2.2 The Application is made pursuant and is subject to the provisions of the Ketchum Planned Unit Development (PUD) Ordinance Codified at Chapter 16.08 Ketchum Municipal Code as a PUD conditional use permit within in the City Tourist District Zone (KMC § § 16.08.050 and 16.08.060.)

2.2.3 KMC §16.08.020 provides:

A. *This chapter is adopted pursuant to authority granted by Idaho Code section 67-6501 et seq., and article 12, section 2 of the Idaho constitution. It is enacted for the purpose of protecting and promoting the public health, safety and welfare; to secure the most appropriate use of lands, to encourage flexibility and creativity in the development of land in order to improve the design, character and quality of new development, and to provide usable open space; to preserve the scenic and aesthetic qualities of lands; to protect property rights and enhance property values; to ensure that adequate public facilities and services are provided; to ensure that the local economy is protected and*

enhanced; to encourage and promote the development of affordable housing; to ensure that the important environmental features are protected and enhanced; to avoid undue concentration of population and overcrowding of land; to ensure that the development on land is commensurate with the physical characteristics of the land; to protect life and property in areas subject to natural hazards; to protect fish, wildlife and recreation resources; to avoid undue water and air pollution; and to protect the quality of life offered by the city and surrounding resources enjoyed by residents and visitors alike.

- B. The provisions for planned unit developments contained in this chapter are intended to encourage the total planning of developments. In order to provide the flexibility necessary to achieve the purposes of this chapter, specified uses may be permitted subject to the granting of a conditional use permit. Because of their unusual or special characteristics, PUD conditional uses require review and evaluation so that they may be located properly with respect to the purposes of this chapter, the comprehensive plan, and all other applicable ordinances, and with respect to their effects on surrounding properties and the community at large. In the event of conflict between this PUD chapter and any other ordinance of the city, this PUD chapter shall control. The review process prescribed in this chapter is intended to assure compatibility and harmonious development between conditional uses and surrounding properties and the city at large. The provisions for planned unit developments contained in this chapter are intended to encourage the total planning of developments. In order to provide the flexibility necessary to achieve the purposes of this chapter, specified uses may be permitted subject to the granting of a conditional use permit. Because of their unusual or special characteristics, PUD conditional uses require review and evaluation so that they may be located properly with respect to the purposes of this chapter, the comprehensive plan, and all other applicable ordinances, and with respect to their effects on surrounding properties and the community at large. In the event of conflict between this PUD chapter and any other ordinance of the city, this PUD chapter shall control. The review process prescribed in this chapter is intended to assure compatibility and harmonious development between conditional uses and surrounding properties and the city at large.*

- 2.2.4 Applicant Master Plan Submittals:** Applicant originally submitted a Master Plan and subsequently on December 2, 2019 submitted Master Plan Version 2 and subsequently on January 21, 2020 submitted Master Plan Version 3 as part of its PUD Application, pursuant to Title 16, Chapter 16.08. KMC Subject Master Plan (also herein referred to as the “Project”) includes a request for waiver or deferral of requirements pursuant to (KMC §16.08. 070.F).

- 2.2.5 **Waiver Requests:** As set forth in the Applicant's PUD Application and Master Plan, Master Plan Version 2 dated December 2, 2019 and Master Plan Version 3 dated January 21, 2020, waivers are requested to the following dimensional standards: Floor Area Ratio (FAR), side yard setbacks, and height requirements. Additionally, a waiver is requested for the PUD to occur on a Project Site with a minimum lot size of less than three (3) acres, which is permissible subject to stipulations set forth in KMC §16.08.080. A.
- 2.2.6 **Minimum Lot Size:** The Council may waive the three (3) acre minimum lot size requirement consistent with KMC §16.08.080. A.4 as allowed for hotels. To do so, the Council must find the Project meets the definition of hotel as set forth in KMC §17.08.020 and complies with the purpose of the Tourist zone as set forth in KMC §17.180 by providing the opportunity for tourist use. Additional relevant analysis is consistency of the Project with the Subarea Analysis and Gateway Study Excerpts, as set forth in **Attachment A**.
- 2.2.7 **Waivers Part of PUD Ordinance:** Title 16, Chapter 16.04.020 defines Waiver as a:

Modification of a relevant provision and regulation of this chapter not contrary to public interest or public health, safety or welfare, and due to physical characteristics of the particular parcel of land and not the result of actions of the subdivision where literal enforcement of this chapter would result in undue hardship. The granting of waiver(s) ... rests with the sound discretion of the commission and council, on a case by case basis.

Similarly stated relevant standards for the analysis of waiver requests are set forth in KMC §16.08.070.L and KMC §16.04.120.

- 2.2.8. **Four (4) waivers are submitted for the Project:** These include waivers to minimum lot size, setback (side yards), height, and floor area ratio (FAR) limitations. These waivers were requested by the Applicant consistent with KMC §16.04.120, §16.08.080 and §17.124.050, in part, as the literal enforcement of city code in the context of the special physical characteristics and conditions affecting the property would result in undue hardship. In particular, the Hotel site has a large slope with a grade differential of approximately thirty-seven feet (37') from Trail Creek at the south end of the lot to the north end along River Street. The site is constrained by the river to the south and the City desires to setback structures from riparian and flood areas. The City also desires to setback structures from State Highway 75 (SH75) in this location to help preserve the entry to town and minimize shading of the highway during winter months. Further, the grade along SH75, future Idaho Transportation Department (ITD) bridge and highway expansion plans, and a desire for no access onto SH75 in this location create unique conditions for development.

- 2.2.9 **Floor Area Ratio:** KMC §17.124.050.A states: “Hotels may exceed the maximum floor area [0.5] ... requirements of this title subject to ... [a] Planned Unit Development ... which specifically outlines the waivers to bulk regulations requested.” A subarea analysis is also required in the review process (KMC §17.124.050. A.2). The total developed gross floor area of the Project, as defined in KMC §17.08.020, is proposed to not exceed a FAR of 1.57 exclusive of basement areas and underground parking as shown in **Attachment B**. Total building area when each of the three (3) basement and parking garage levels and four (4) hotel stories are calculated in aggregate, as set forth in the PUD Findings and **Attachment B**, total approximately 131,881 square feet for the Project.
- 2.2.10 **Height:** KMC§17.124.050.A states: “Hotels may exceed the ... height ... requirements of this title subject to ... [a] Planned Unit Development ... which specifically outlines the waivers to bulk regulations requested.” A subarea analysis is also required in the review process (KMC §17.124.050.A.2). As noted, the Project Site has a large slope from Trail Creek at the south end of the lot to the north end along River Street. The hotel is proposed as a four-story structure on River Street that then stair steps and terraces down to three floors near Trail Creek. As depicted in the **Attachment B** Height Analysis, the maximum height of the building along River Street does not exceed forty-eight feet (48’) and the building scales down to approximately twenty-eight (28’) closer to the river on the south end of the property. The exception to this height analysis is in the center of the structure where 4-stories of hotel use are sandwiched between two public amenities (employee housing and a roof top bar for the public). At this more central site location, the existing grade drops at a fairly acute angle resulting in a portion of the building having a maximum height of seventy-two feet (72’) as measured from existing grade. In comparison to both the built Limelight hotel and approved Bariteau / Harriman Hotel on opposing corners, the height of the proposed Project will be lower and more closely align to the fourth-floor elevation of each of these buildings.

2.2.11 Setback: No rear/river or front setback waivers are requested. However, a waiver of the side yard setbacks is requested. KMC §17.124.050.A, subsections 1 and 2, specifies that a PUD and Subarea Analysis process shall be used in the granting of waivers to bulk regulations for hotels. KMC §17.12.030 sets forth the following minimum side yard setbacks: (A) the greater of one-foot (1') for every three-feet (3') of building height, or five feet (5') for the west side setback; and (B) Twenty-five foot (25') to thirty-two foot (32') setbacks adjacent to State Highway 75 (SH75), as calculated based on the adjacent right of way width. The Project, as amended, proposes a 31.3' average setback along SH75 with portions of the building as close as 20' from edge of SH75 ROW. See the Setback Analysis in **Attachment B** for exact details on subject building setback intrusion adjacent SH75. On the west-side of the structure, portions of the building are proposed as close as 11.8' from the neighboring west property line. Council approves the following side setback waivers: a minimum of sixteen feet (16') west side yard setback waiver and a minimum east side setback of twenty feet (20') consistent with **Attachment B** provided the average east side setback is greater than thirty-one feet (31').

2.2.12 Project Details: Details of the Project are set forth in **Attachment B** and include both narratives and maps. Narratives include a written project description, development plan, project analysis, social impact study, schedule, parking analysis, traffic study, employee housing plan, Subarea Analysis, and contextual hotel component analysis. Exhibit maps include plans, elevations, sections, sun study, height analysis, civil drawings, landscape plan, exterior color palate, dark sky compliant fixtures, traffic study diagrams, plat map, and public way improvements. Also provided are application forms, analyses of code compliance, soils report, and a waiver list.

2.3 Findings Summarizing Public Comment Concerns and Objections to and Benefits of the Application:

The Council having reviewed the written comment and having listened to the oral comments presented by the public summarizes the same as follows:

- Objections to the granting of waivers to the regulations and standards of the subject Tourist zone; and
- Objections to Building edifice bulk, setback location and height
- Concerns for traffic circulation and safety regarding Project access to and use of River Street on the north, Highway 75 on the east and the intersection of Highway 75 and River Street and concern with the unknown improvements Idaho Transportation may make to Highway 75; and
- Concerns with parking, loading and vehicular access when the Project is operational; and
- Concerns regarding the look of the Gateway entrance to the City; and

- Concern about the character of the City
- Benefit of increase in tourism
- Benefit of additional employment opportunities and on-site employee housing
- Benefit of increased tax revenue
- Benefit of the addition to this tourist community of well-designed and landscaped hotel facility with natural area enhancements and public use availability features.

City Council Standards Findings Planned Unit Development Conditional Use Permit:

The Council having reviewed the Project Master Plan Version 3, as set forth in **Attachment B** to these Findings, as well as public comment, staff analyses, and agency/peer review/department inputs as set forth in **Attachments A, C and D** to these Findings and makes the findings as set forth in Sections 2.4, 2.5 and 2.6 below regarding the Planned Unit Development Conditional Use Permit standards:

2.4 PUD Ordinance Standards and City Council Evaluation Compliance Analysis and Findings:

EVALUATION STANDARDS: 16.08.080

The standards set forth in this section shall apply to review of all PUD conditional use permit applications. The standards shall be used to review and evaluate the proposal in comparison to the manner of development and effects of permitted uses and standard development allowed on the property in question. Modification or waiver from certain standard zoning and subdivision requirements may be permitted subject to such conditions, limitations and/or additional development standards, pursuant to section 16.08.130 of this chapter, as the city council may prescribe to mitigate adverse impact at the proposed planned unit development, or to further the land use policies of the city, or to ensure that the benefits derived from the development justify a departure from such regulations. Where the city council determines that conditions cannot be devised to achieve the objectives, and/or the standards contained in this chapter are not met, applications for conditional use permits shall be denied. The city council shall make findings that each of the following evaluation standards have been met. The evaluation standards are as follows:

KMC § 16.08.080.A

Minimum lot size of three (3) acres. All land within the development shall be contiguous except for intervening waterways. Parcels that are not contiguous due to intervening streets are discouraged. However, the commission and the council may consider lands that include intervening streets on a case by case basis. The commission may recommend waiver or deferral of the minimum lot size, and the council may grant such waiver or deferral only for projects which:4. For a hotel which meets the definition of "hotel" in section 17.08.020, "Terms Defined", of this code, and conforms to all other requirements of section 17.18.130, "Community Core District (CC)", or section 17.18.100, "Tourist District (T)", of this code. Waivers from the provisions of section 17.18.130 of this code may be granted for hotel uses only as outlined in section 17.124.040 of this code. Waivers from the provisions of section 17.18.100 of this code may be granted for hotel uses only as outlined in section 17.124.040 of this code.

City Council Findings: The Project Site is approximately 1.09 acres and does not meet the minimum standard of (3) acres for a PUD. However, as noted herein below, the Council finds that this requirement may be waived consistent with KMC §16.08.080.A.4 as allowed for hotels. Specifically, this Project:

(A) Meets the definition of hotel as set forth in KMC §17.08.020. The Project consists of ninety-two (92) rooms, includes on site food and beverage service with kitchen facilities, common reservation and cleaning services, meeting room space, combined utilities, on site management and reception services, access to all sleeping rooms through an inside lobby supervised by a person in charge no less than eighteen (18) hours per day, and adequate on site recreational facilities. There are no other residential uses proposed in connection with the hotel operation, other than the proposed 23 beds of employee housing.

(B) Complies with the purpose of the Tourist zone as set forth in KMC §17.180 by providing the opportunity for tourist use. Consistent with the sub-area analysis and Gateway Study Excerpts, as set forth in Exhibit A, the Project is compatible both in design and use with the surrounding uses and development.

(C) Allows the granting of waivers for hotel-related Tourist District Floor Area Ratio (FAR), setback, and height dimensional standards as outlined in KMC §17.124.040. The Project proposes to exceed the 0.5 Tourist Zone permitted Gross FAR as set forth in KMC §17.124.040.A and may exceed its FAR maximum in accordance with the pertinent code provisions allowing for fourth floor hotel uses, as set forth in KMC §17.124.040.B.3 and by reference KMC §17.124.050. In accordance with the aforementioned and also precedent (e.g., entitled Bariteau / Harriman Hotel site at 300 E. River Street across SH75 was also approved as a PUD on an approximately 0.9-acre site and the Limelight was approved as a PUD on an approximately 1.09-acre site), the Council finds this evaluation standard to have been met.

The City Council further finds: That it is the intent of the Council that paragraph 4 of subsection A of KMC Section 16.08.080 exclusively and directly applies to Hotel planned unit development waivers. That paragraph 4 of subsection A of KMC Section 16.08.80 requires that developments which meet the definition of a Hotel in KMC section 17.08.020 and conform to the requirements of KMC section 17.18.100 be granted waivers of the three (3) acre minimum lot size for their PUD Development. That KMC Section 17.18.100.A is a statement of purpose of the City's Tourist District and as such states the purpose of the district to provide the opportunity for high density residential and tourist use and development which can be justified as a primary use within the district. There is a general but not specific reference to the specific dimensional requirements of the Zoning ordinances in KMC Section 17.18.100. The zoning ordinance requirements of KMC section 17.124.040, which refers to KMC section 17.124.050, are not mandated by KMC Section 17.18.100 unless a waiver of 17.18.100 is required. In this instance the subject PUD application is a hotel use only, a waiver of 17.18.100 is not required, and the PEG Ketchum Hotel complies with the intent, purpose, and use requirements of the Tourist Zone set forth in KMC Section 17.18.100.

KMC § 16.08.080.B and KMC § 16.08.080.D

KMC § 16.08.080.B: *The proposed project will not be detrimental to the present and permitted uses of surrounding areas.*

KMC § 16.08.080.D: *The development shall be in harmony with the surrounding area.*

City Council Findings: As set forth in the Attachment A Gateway Study and the Attachment B Subarea Analysis, the proposed hotel is both by design and use consistent with envisioned plans for the corner of SH75 and River Street. Further, the proposed hotel project is consistent with current Tourist Zoning District zoning allowances for hotels. Each of the attendant uses, including restaurant/bar, meeting rooms, and employee housing are also permitted in the Tourist Zoning District. The site was defined as Site 2 in the 2007 Gateway Scale and Massing Study and was identified as a priority urban infill site for a potential hotel development, inclusive of a public plaza near the project intersection with SH75. As such, the Property is in the Ketchum Urban Renewal District (KURA) Revenue Allocation Area. The Project Site borders three other hospitality focused uses. The Limelight Hotel is located directly across River Street to the North. The Best Western Hotel is located diagonally across Main Street from the Project Site. The Planned Future Harriman Hotel by Bariteau is located directly across Main Street to the East. The two closest properties to the West are commercial office buildings, (220 and 200 East River Street). The site is bordered by commercial uses to its North, East, and West and is separated from the multifamily residential uses to the South by Trail Creek. Accordingly, the Council finds this Project will (A) not be detrimental to the present and permitted uses of surrounding areas and (B) be in harmony with the surrounding area.

KMC § 16.08.080.C

The proposed project will have a beneficial effect not normally achieved by standard subdivision development.

City Council Findings: The proposed hotel will benefit the city in ways not normally achieved by standard subdivision. These include public access to the river and, open space in excess of thirty-five percent (35%), and access to a 3,000 square foot bar patio terrace, which features landscaping and solar exposure unique for a built project. The Project will have significant economic and public amenity benefits to Ketchum that would not be achievable on this site without the PUD process due to the constraints created by the topography of the site (37' differential in grade between front property line on River and rear property line along Trail Creek), access constraints on the east side due to the east side bordering SH 75, and development constraints due to the south side of the property being Trail Creek. The provision of waivers through the PUD process allows the design of the building, interior layout, operations and programmatic aspects of the hotel to infuse economic and public benefits beyond what would be accomplished by hotel rooms alone.

Economic benefits of the development include local option taxes generated by the 92 new hotel rooms that will be booked through the international reach of the internationally recognized hotel brand's reservation network. The hotel will feature a number of public amenities, including a street front restaurant and lounge, banquet/meeting rooms, and a roof top bar with panoramic views of Bald Mountain and Dollar Mountain; there is no other publicly accessible rooftop space in Ketchum city limits with a similarly large footprint (approximately 2,035 net square feet of roof-top Bar Patio on Level 03 and 1,425 net square feet of roof-top Bar Terrace on Level 03 02) or that has 280-degree views and is operational in all four seasons. The hotel will also provide on-site employee housing, with a minimum of 23 beds, in a mix of traditional apartments and dorm style apartment units.

The hotel's inclusion of on-site employee housing will result in the project providing more on-site for employees than any other development in Ketchum city limits and the mix of housing unit styles will, as conditioned herein in §4.10, accommodate employees at different life stages and career stages (seasonal vs. long-term, full-time). Further, although the employee units are located on Lower Level 3 and Lower Level 2, which are partially below grade on the River Street portion of the building, because the grade of the site drops toward the south.

If the rooftop bar and lower floor employee housing units were removed from the project (or if the employee housing were located in a basement) the benefits of this project to the community would be lessened; the employee housing and roof-top amenity comprise approximately 12,883 square feet of the approximately 131,881 gross square foot development. Due to the site constraints, the allowance for waivers from the typical standards of the code is what makes inclusion of these public benefits truly benefits and is what makes these benefits possible.

Accordingly, the Council finds the PUD process as having a beneficial effect not normally achieved by standard development.

KMC § 16.08.080.D

The development shall be in harmony with the surrounding area.

City Council Findings: The Council finds this Project to be in harmony with the surrounding area. Details of this finding are presented jointly with KMC §16.08.080.B findings above stated.

KMC § 16.08.080.E

1. *Densities and uses may be transferred between zoning districts within a PUD as permitted under this chapter, provided, the aggregate overall allowable density of units and uses shall be no greater than that allowed in the zoning district or districts in which the development is located. Notwithstanding the above, the commission may recommend waiver or deferral of the maximum density and the council may grant additional density above the aggregate overall allowable density only for projects which construct community or employee housing and which:
 - a. *Include a minimum of thirty percent (30%) of community or employee housing, as defined in section 16.08.030 of this chapter; and*
 - b. *Guarantee the use, rental prices or maximum resale prices thereof based upon a method proposed by the applicant and approved by the Blaine County housing authority and/or the Ketchum city council.**
2. *Application for waiver or deferral of this criteria shall include a description of the proposed community or employee housing and the proposed guarantee for the use, rental cost or resale cost.*

City Council Findings: N/A. The Applicant is not requesting any density transfers.

KMC § 16.08.080.F

The proposed vehicular and nonmotorized transportation system:

1. *Is adequate to carry anticipated traffic consistent with existing and future development of surrounding properties.*
2. *Will not generate vehicular traffic to cause undue congestion of the public street network within or outside the PUD.*
3. *Is designed to provide automotive and pedestrian safety and convenience.*
4. *Is designed to provide adequate removal, storage and deposition of snow.*
5. *Is designed so that traffic ingress and egress will have the least impact possible on adjacent residential uses. This includes design of roadways and access to connect to arterial streets wherever possible, and design of ingress, egress and parking areas to have the least impact on surrounding uses.*
6. *Includes the use of buffers or other physical separations to buffer vehicular movement from adjacent uses.*
7. *Is designed so that roads are placed so that disturbance of natural features and existing vegetation is minimized.*
8. *Includes trails and sidewalks that create an internal circulation system and connect to surrounding trails and walkways.*

City Council Findings: **Attachment B** includes documents from the Applicant that address how vehicular and pedestrian traffic will circulate in and around the proposed Project. Included in **Attachment B** is an SH75 ingress/egress diagram and associated access analysis addressing safety, aesthetics, grading limitations, and Trail Creek Impacts, which was requested by a member of the public, duly analyzed by the Council, and determined by the Council after hearing from the project engineer, as well as the city independent traffic engineering consultant as not being in the public interest. No operational issues are found to exist with Project vehicular ingress / egress being on River Street with acceptable level of service (LOS) noted for each circulation component (parking garage access, hotel pick-up/drop-off, and SH75 approaches). See AECOM memo in **Attachment C**. Foremost of these exhibits is the detailed traffic impact study (TIS) prepared by Hales Engineering, which AECOM (on behalf of the city) has provided a peer analysis. **Attachment B** also includes River Street Public ROW Civil Plan Encroachment Options 1 and 2 that feature the Applicant's circulation plan, sidewalk improvements, and proposed snowmelt system for the Project. Finally, **Attachment A** includes two excerpts of professional studies. The first is an excerpt from the Idaho Transportation District (ITD) Record of Decision (ROD) and proposed Fiscal Year 2025 (FY25) road improvements to State Highway 75 (SH75) adjacent the property between the Trail Creek Bridge and River Street. These include a 3-lane urban section with curb, gutter and sidewalk. Importantly, the middle lane features a left turn lane for north bound traffic on SH75 that would permit adequate queuing and protected westbound (WB) turning movement onto River Street and the Project. The second excerpt is from Vitruvian and references a city-sponsored recommendation to upgrade the unsignalized crossing at SH75/River Street (north-side of intersection between Limelight Hotel and the Best Western) with a Rectangular Rapid Flashing Beacon (RRFB) to enhance pedestrian safety. After receiving input from ITD, as shown in Attachment A.4., including the August 8, 2019 Minutes of the Ketchum Transportation Authority, KCC recommends that enhancements to pedestrian safety are better accommodated with a HAWK system on River Street than an RRFB system. Also proposed to improve vehicular LOS movements is making east bound (EB) and WB River Street at the intersection with SH75 right turn only movements (signing and striping required). To further reduce traffic and to meet City sustainability goals, as expressed throughout the Ketchum Comprehensive Plan, the operation of the hotel will integrate strategies to reduce vehicular impact on Ketchum's streets from this Project. These include strategies such as a Guest Shuttle (airport and to local destinations), Employee Car Share Program, and Employee Transit Passes. As conditioned herein, the Council finds this standard to have been met. The Project will be adequately served by necessary vehicular and nonmotorized transportation systems.

KMC § 16.08.080.G

The plan is in conformance with and promotes the purposes and goals of the comprehensive plan, zoning ordinance, and other applicable ordinances of the city, and not in conflict with the public interest:

1. Pursuant to subsection 16.08.070D of this chapter, all of the design review standards in chapter 17.96 of this code shall be carefully analyzed and considered. This includes detailed analysis of building bulk, undulation and other design elements. The site plan should be sensitive to the architecture and scale of the surrounding neighborhood.
2. The influence of the site design on the surrounding neighborhood, including relationship of the site plan with existing structures, streets, traffic flow and adjacent open spaces, shall be considered.
3. The site design should cluster units on the most developable and least visually sensitive portion of the site.

City Council Findings: As previously set forth in the findings for KMC §16.08.080 subsections B, D and F (above), the Project as conditioned, will be adequately served by necessary vehicular and nonmotorized transportation systems and will be in harmony with the surrounding area. The Project will pay applicable fees, from Local Option Taxes (LOT) for construction materials to applicable building permit fees and connection fees for such items as water and sewer connections. The Conditionally Granted Project shall pay the plan check and building permit fees that are in effect at the time of plan check and building permit submittal and all fees required by law prior to issuance of building permit. Further, details have been added as conditions of approval to assure that Marriott or other reward stays pay LOT to the city. Pursuant to KMC §16.08.070.D, all of the design review standards set forth in KMC §17.96 are conditionally attached to the City's approval of the Planned Unit Development and are memorialized in the Project Development Agreement. Staff has analyzed and the Council has found, as noted in **Attachment A**, Staff Analysis Project Compliance with the Ketchum Comprehensive Plan subsection, that the Project both conforms with and promotes the purposes and goals of the comprehensive plan. As noted in **Attachment B** and the Applicant's site design drawings, Project massing has been carefully designed with a four-story bench design on River Street that terraces down (southward) to follow the topography drop from River Street to Trail Creek. Subject terraces then become gathering spots for guests and the public to enjoy the outdoor and take in the scenic views from the hotel. As noted by the Applicant, "the massing also provides for a façade that steps in and out of plane, which is enhanced by a layer balconies and articulation of those forms. The building pulls back over 35' from Trail Creek and has minimal visual impact on Forest Service Park." The building footprint near the front property line is setback 15' from the River Street frontage where it has an appropriate relationship to the sidewalk and street scape. The footprint is then pulled back to respect the riparian setback along Trail Creek to minimize the impact of the new building adjacent to a natural feature. Site landscape design has been designed to complement the bench topography and creek bank features of the site." As conditioned herein, this standard has been met.

KMC § 16.08.080.H

The development plan incorporates the site's significant natural features.

City Council Findings: Three significant natural features are recognized by the Council, including: the site's location on a bench; Trail Creek along the south property line; and, the 360-degree scenic views from the site including Bald Mountain and Dollar Mountain. The hotel has been designed to step down, following the bench topography, creating rooftop terraces and public spaces that take advantage of solar orientation and available views. The landscape plan includes pedestrian pathways for hotel guest and the public to access Trail Creek viewpoint areas set outside of the riparian zone setback. As conditioned herein, this standard has been met and the Master Plan is found to properly incorporate the site's significant natural features.

KMC § 16.08.080.I

Substantial buffer planting strips or other barriers are provided where no natural buffers exist.

City Council Findings: As noted in KMC §17.12.040, 21,362 square feet of the property will remain open space, which is forty-three percent (45%) of the 47,591 square foot site. The Project has greater than the required thirty-five percent (35%) minimum open space set forth in the KMC for the Tourist Zoning District. Three notable buffer strips that benefit the public are proposed. The first is the twenty-five foot (25') setback from SH75/Main Street that will be landscaped. Subject setback, as set forth in **Attachment B**, averages 31.3'. Portions of this area are proposed to include an outdoor dining patio toward the intersection of Main Street and River Street and will have landscape and architectural barriers such as raised planters, raised water features, and architecturally integrated railings separating the dining patio from the street. The second buffer is a twenty-five foot (25') Riparian Easement along with a ten foot (10') Utility Easement that combine to create a thirty-five foot (35') setback from the property line adjacent Trail Creek. The third design element includes the placement of a buffer landscape island between the hotel's Porte Cochere drive along River Street. Given the significant public amenities integrated into the hotel design and invitation of the public into the building, the Council finds a favorable exchange to exist with details to be enumerated in the pending River Street encroachment permit request by the applicant. This design element is subject to a separate Encroachment Permit application that will be reviewed by Council concurrently with the PUD. As conditioned herein, this standard has been met.

KMC § 16.08.080.J

Each phase of such development shall contain all the necessary elements and improvements to exist independently from proposed future phases in a stable manner.

City Council Findings: As set forth in **Attachment B**, the Applicant proposes to develop the Project in a single phase. To assure that that the development contains all the necessary elements and improvements to exist in a stable manner, the Council finds this standard (KMC §16.08.080.J) to be met, provided as a conditioned of the issuance of any Building Permit for the construction of the Project that an appropriate project completion assurance (e.g., an irrevocable letter of credit on a bank acceptable to the City in an amount equal to 130% of engineering estimates of the Master Plan) and all fees required by law prior to and for issuance of a building permit.

KMC § 16.08.080.K

Adequate and usable open space shall be provided. The applicant shall dedicate to the common use of the homeowners or to the public adequate open space in a configuration usable and convenient to the residents of the project. The amount of usable open space provided shall be greater than that which would be provided under the applicable aggregate lot coverage requirements for the zoning district or districts within the proposed project. Provision shall be made for adequate and continuing management of all open spaces and common facilities to ensure proper maintenance.

City Council Findings: As previously noted, 21,362 square feet of the property will remain open space, which is approximately 45% of the 47,591 square foot site. Further, subject rooftop bar also includes patio space plus an additional 1,425 net square feet of landscaped terrace area devoted to public use. The open space, green roofs and patios that are provided exceeds the requirement by more than 8%, which is an amount “greater than that which would be provided under the applicable aggregate lot coverage requirements for the zoning district or districts within the proposed project.” The Council finds that subject open space is both adequate and useable and complemented by the Project’s addition of the outdoor roof top bar space with adjacent living garden terrace, which is available to the public and managed and maintained by the Project.

KMC § 16.08.080.L

Location of buildings, parking areas and common areas shall maximize privacy within the project and in relationship to adjacent properties and protect solar access to adjacent properties.

City Council Findings: The Council has reviewed the Applicant's response to this standard of evaluation, including reference to its sun study and height analysis/compatibility view drawings as set forth in **Attachment B**, and generally concurs with the finding that "The Ketchum Boutique Hotel is configured along a northwest spine that has allowed for the building's mass to be pulled back from the roadway view corridor leading to Main Street. All onsite parking is contained below grade and will have no visual impact on the site. The hotel features an interior courtyard located on level 2 that faces south, the courtyard will be hotel's 'private' exterior amenities space that is reasonably shielded from the view of most adjacent properties. The hotel features many architectural balcony elements that serve to create another layer of structure between the guests and the exterior, enhancing a sense of a perimeter of privacy in those guest rooms. The Sun Studies provided ... demonstrate that the massing of the hotel will have very minimal shade impact on adjacent buildings, only during the December studies do any shadows from the hotel intrude appreciably on any adjacent properties, and in those cases the shadow impacts from [the PEG Ketchum] hotel are not any more intrusive than the affected buildings have on their adjacent neighbors." As conditioned herein, the Council finds this standard to have been met.

KMC § 16.08.080.M

Adequate recreational facilities and/or daycare shall be provided. Provision of adequate on site recreational facilities may not be required if it is found that the project is of insufficient size or density to warrant same and the occupant's needs for recreational facilities will be adequately provided by payment of a recreation fee in lieu of such facilities to the city for development of additional active park facilities. On site daycare may be considered to satisfy the adequate recreational facility requirement or may be required in addition to the recreational facilities requirement.

City Council Findings: Programmed recreation facilities within the Project, as depicted in **Attachment B**, include a 1,002 square foot fitness center and a 3,301 square foot outdoor terrace, including hot tubs. The Council finds these on-site guest amenities to adequately meet the recreational needs appropriate to the scale of the Project. In addition, the Council finds that the proposed use, inclusive of the employee housing units, does not warrant the provision of on-site daycare services.

KMC § 16.08.080.N

There shall be special development objectives and special characteristics of the site or physical conditions that justify the granting of the PUD conditional use permit.

City Council Findings: As noted in the Gateway Study set forth in **Attachment A**, the City of Ketchum has established special development objectives for the four corners surrounding the intersection of River Street/SH75. The Council has reviewed and analyzed this Study and recognizes subject Project Site is on a bench with approximately 37 feet of grade change and without the PUD process would unlikely be developable as a hotel as it would have to have one building along River Street, and a second building at the bottom of the hotel accessible via SH75 Street. This latter access is not desirable for site visibility and safe ingress/egress as attested to by the city's independent traffic consultant upon review of project development drawings, Hales access memorandum, and ITD highway specifications. Accordingly, the Council finds there to be special development objectives and special characteristics of the site and its physical conditions that justify the granting of the PUD conditional use permit.

KMC § 16.08.080.O

The development will be completed within a reasonable time.

City Council Findings: As set forth in the Applicant's submittal, as set forth in **Attachment B**, a Spring 2020 construction start and an Autumn 2021 opening are proposed. Similar to the Council's finding on KMC §16.08.080.J, the Council finds this standard is met; provided that a project completion assurance agreement is entered into between the Applicant and City Council for the Project prior to the issuance of any Building Permit for the construction of the Project.

KMC § 16.08.080.P

Public services, facilities and utilities are adequate to serve the proposed project and anticipated development within the appropriate service areas.

City Council Findings: Street, water, sewer, and fire personnel have met with the Applicant and found that adequate city services are available to serve the Project. See **Attachment C** for details on various departmental reviews. The Applicant and the City have also met with ITD regarding the Project and, as conditioned herein, is requesting improvements be installed by the Applicant at the intersection of SH75/River Street as a condition of Certificate of Occupancy. Formally, this will occur upon acceptance by ITD of a specific Encroachment Permit application submitted by the Applicant in conjunction with city recommendations to ITD for approval. Prior to building permit issuance, the Applicant will need will-serve letters from other utility providers (gas, electric, waste and recycling). To date, no issues of service have been identified. The payment of impact, local option tax, and building permit fees pursuant to approved city schedules are required. The Council finds this standard has been met. Subject to the conditions set forth herein, public services, facilities and utilities are adequate to serve the Project and anticipated development within this area.

KMC § 16.08.080.Q

The project complies with all applicable ordinances, rules and regulations of the city of Ketchum, Idaho, except as modified or waived pursuant to this section

City Council Findings: KMC §16.08.080 Subsections G and Q both stipulate that the Project conform with and promote the purposes of applicable ordinances and not conflict with the public interest. This Project involves six (6) interrelated permits (floodplain, subdivision, design review, PUD, CUP, and a development agreement), as well as encroachment permits that will be required for SH75 from ITD and for River Street from the Ketchum City Council. Each of these eight (8) sets of approvals, as well as future compliance of Project construction drawings with other city regulations, such as Building, Fire, and Green Building Codes are required of the Applicant. As conditioned herein, the Council finds that this Project complies with all applicable rules and regulations of the City. The Council makes this finding in recognition of its previous finding in favor of waiving the three (3) acre minimum PUD eligibility criteria as detailed under KMC §16.08.080.A as allowed for hotels. Further, the Council makes this finding in recognition of the following dimensional standard and project waiver analysis for the proposed FAR, height/story, and setbacks proposed for the Project. Further, as noted in general finding 2.2.3 herein, Ketchum’s planned unit development ordinance is intended to encourage the total planning of developments, provide flexibility, and work with unusual or special characteristics of the land or a development project. Notably, KMC §16.08.020.B states, “[i]n the event of conflict between this PUD chapter and any other ordinance of the city, this PUD chapter shall control.”

2.5 Tourist Zoning District Dimensional Standards and Project Waiver Analysis and City Council Evaluation Compliance Analysis and Findings:

KMC § 17.12.030

Minimum Lot Area & Lot Width: 9,000 square feet minimum & 80’ average.

City Council Findings: The property is 47,249 square feet in size and has a lot width with the one-lot subdivision application that exceeds the minimum lot size and widths required in the Tourist Zone.

KMC § 17.12.030

Minimum Open Space

City Council Findings: As set forth in **Attachment B**, 21,362 square feet of the property will remain open space, which is approximately 45% of the 47,249 square foot site. The Project has greater than the required thirty-five percent (35%) minimum open space set forth in the KMC for the Tourist Zoning District. The Council finds that this standard has been met.

KMC § 17.12.030

Setbacks

Front: 15’

Riparian: 25’

SH75: 25’ / 32’

Side: the greater of 1’ for every 3’ in building height, or 5’

City Council Findings: The project as set forth in **Attachment B** complies with the city's 25' riparian and 15' front setback requirements. A waiver of the side yard setbacks is requested. KMC §17.124.050.A, subsections 1 and 2, specifies that a PUD and Subarea Analysis process shall be used in the granting of waivers to bulk regulations for hotels. KMC §17.12.030 sets forth the following minimum side yard setbacks: (A) the greater of one-foot (1') for every three-feet (3') of building height, or five feet (5') for the west side setback; and (B) Twenty-five foot (25') to thirty-two foot (32') setbacks adjacent to State Highway 75 (SH75), as calculated based on the adjacent right of way width. The Project, as amended, proposes a 31.3' average setback along SH75 with portions of the building as close as 20' from edge of SH75 ROW. See the Setback Analysis in **Attachment B** for exact details on subject building setback intrusion adjacent SH75. On the west-side of the structure, portions of the building are proposed as close as 11.8' from the neighboring west property line. Council approves the following side setback waivers: a minimum of sixteen feet (16') west side yard setback waiver and a minimum east side setback of twenty feet (20') consistent with **Attachment B** provided the average east side setback is greater than thirty-one feet (31').

KMC § 17.12.030

Permitted Gross Floor Area Ratio: 0.5 or greater for hotels

City Council Findings: The Council finds the Project meets the definition of hotel as set forth in KMC §17.08 and, as a consequence, is eligible to exceed listed FAR consistent with the Council's previous finding within KMC §17.08.080, subsections B and D. A FAR of 1.57 is proposed for the hotel, which incorporates employee housing and other public amenities within the Project. Significantly, the Council has reviewed the **Attachment B** Subarea Analysis and two **Attachment A** documents - the Gateway Study and a Comparative Hotel PUD Summary Chart. The Council finds the proposed hotel is both by design and use consistent with envisioned plans for the corner of SH75 and River Street. The FAR of the Project is significantly less than the CC-Limelight Hotel and Tourist Zone Harriman Hotel Project - neither of which incorporate community housing on the hotel site. The Project Site was defined as Site 2 in the 2007 Gateway Scale and Massing Study and was identified as a priority urban infill site for potential hotel development. As such, the Property is in the Ketchum Urban Renewal District (KURA) Revenue Allocation Area. The allowance of a 1.57 FAR, as herein conditionally approved by the Council, is warranted due to special development objectives and special characteristics of the site and its physical conditions. In reaching this finding, the Council finds that the proposed FAR, as stipulated, will not be detrimental to the public welfare, health and safety nor injurious to property owners in the immediate area.

Subject to the approval of the PUD application with conditions as noted herein, the Council finds that the Project FAR warrants a waiver and, as a result, complies with this provision of the Tourist Zoning District.

KMC § 17.12.030

Building

Height

Maximum Permitted: 35' or greater for hotels

City Council Findings: The Project proposes to exceed the thirty-five foot (35') height limit, which is permissible subject to the city's fourth floor hotel use allowance in the Tourist Zoning District provisions, as set forth in KMC §17.124.040.B.3 and by reference KMC §17.124.050.A and B.6. Evidence in support of the Project height waiver up to seventy-two feet (72') from existing grade and an interpretation that the "hotel" does not exceed four floors are as follows:

- (A) The Project site has a large slope from Trail Creek at the south end of the lot to the north end along River Street. The hotel is proposed as a four-story structure on River Street, and step / terrace down to three and then two stories nearest Trail Creek.
- (B) The KMC does not specify the maximum height of a four-story building. Historic references in the KMC, as well as the top floor plate of the adjoining Limelight Hotel show the hotel fourth floor to equal approximately forty-eight feet (48') while the top of the Limelight hotel penthouse parapet is 73.5'.
- (C) Maximum height of the building shall not exceed 48' when the building is measured from the highest elevation of the property (along River Street) or 72' when building height is measured from the lowest elevation of the property (along Trail Creek), as depicted in the **Attachment B** Height Analysis.
- (D) During the transition where the four-story building along River Street steps down approximately thirty feet (30') toward Trail Creek, the forty-eight foot (48') high 4-story building reads like 6-stories at seventy-two feet (72') high. This is permissible consistent with KMC §16.08.020.B and desirable as follows: first, the height of the building at subject central location is below the forty-eight (48') 4-story horizontal plane established by precedent and with the top of the fourth floor at the adjacent Limelight; second, the Council recognizes that in this central location of the structure, that the 4-stories of hotel use are sandwiched between two public amenities (employee housing and a roof top bar for the public). The unique characteristics of the site at this location, where the existing grade drops quickly in the center of the site, result in a portion of the building having a taller element of seventy-two feet (72') as measured from existing grade. The Council finds this consistent with general finding 2.2.3 herein and KMC §16.08.020.B, "[i]n the event of conflict between this PUD chapter and any other ordinance of the city, this PUD chapter shall control."
- (E) In comparison to both the Limelight and approved Harriman Hotels on opposing corners, the height of the proposed Boutique Hotel is lower and more closely aligned to the fourth floor of each building.

(F) The **Attachment A** Gateway Study and **Attachment B** Subarea Analysis indicate that the proposed hotel is both by design and use consistent with envisioned plans for the corner of SH75 and River Street.

(G) Further, the proposed hotel project is consistent with current Tourist Zoning District zoning allowances for hotels. Each of the attendant uses, including restaurant/bar, meeting rooms, and employee housing are also permitted in the Tourist Zoning District. The Project proposes a height waiver for hotels in the Tourist Zone District and, subject to approval of the PUD application with conditions as noted herein, complies with this zoning standard.

KMC § 17.125.030.H

Curb Cut Permitted: *A total of 35% of the linear footage of any street frontage can be devoted to access off street parking.*

City Council Findings: There are no curb cuts proposed along State Highway 75. The new configuration results in less than thirty-five percent (< 35%) of the linear footage of street frontage devoted to access the off street parking within the parking garage.

KMC § 17.125.020.A.2 and KMC § 17.125.050

Parking Spaces: *Off-street parking standards of this chapter apply to any new development and to any new established uses.*

City Council Findings: As analyzed by staff and consistent with KMC §17.125 and the revised Project parking analysis, a minimum of eighty-four (84) parking spaces in the underground parking garage are required. The Project proposes eighty-four (84) spaces in the parking garage. Of the 84 spaces provided for the Project not less than thirteen (13) spaces are reserved for public use and eighteen (18) spaces are reserved for employee housing use. As conditioned herein, the Project complies with this standard.

2.6 Conditional Use Permit Standards Analysis and City Council Evaluation Compliance Analysis and Findings:

KMC § 17.116.030 (A)

The characteristics of the conditional use will not be unreasonably incompatible with the types of uses permitted in the applicable zoning district.

City Council Findings: The proposed hotel and each of the attendant uses within the Project, including restaurant/bar, meeting rooms, and employee housing, are permitted uses in the Tourist Zoning District. The characteristics of the conditional use for the Planned Unit Development CUP and the waivers approved herein pursuant to KMC §17.124.050 are compatible with the types of uses permitted in the Tourist Zoning District. The Council finds this standard of evaluation has been met.

KMC § 17.116.030 (B)

The conditional use will not materially endanger the health, safety and welfare of the community.

City Council Findings: The Project will be served with essential public services and facilities, an acceptable level of service for traffic operations and pedestrian safety as set forth in the applicable findings noted in §16.08.080.F and §17.116.030 (B). As conditioned herein, the Council finds this standard has been met.

KMC § 17.116.030 (C)

The conditional use is such that pedestrian and vehicular traffic associated with the use will not be hazardous or conflict with existing and anticipated traffic in the neighborhood.

City Council Findings: The Council found in KMC §16.08.080.F herein above that the Project will be adequately served by necessary vehicular and nonmotorized transportation systems. This finding was made after reviewing **Attachment B**, which includes documents from the Applicant that address how vehicular and pedestrian traffic will circulate in and around the proposed Project. Foremost of these exhibits is the detailed traffic impact study (TIS) prepared by Hales Engineering, which AECOM (on behalf of the city) has provided a peer analysis. **Attachment B** also includes River Street Public ROW Encroachment details that feature the Applicant's circulation plan, sidewalk improvements, and proposed snowmelt system for the Project. Finally, **Attachment A** includes two excerpts of professional studies. The first is an excerpt from the Idaho Transportation District (ITD) Record of Decision (ROD) and proposed Fiscal Year 2025 (FY25) road improvements to State Highway 75 (SH75) adjacent the property between the Trail Creek Bridge and River Street. As conditioned herein, the Council finds this standard to have been met. In particular, three off-site mitigation measures that will be required as a condition of development, including:

- (A) Developer to accommodate a northbound left-turn lane plus taper at River/Main. The developer will need to coordinate with ITD to determine where the west edge of SH-75 will be and whether ITD will accept temporary paving. The developer would install sidewalk, curb and gutter to the city's standard. As noted in **Attachment C**, AECOM suggests that "ITD and the City consider creating an opposing left-turn lane and better aligning the approach and departure lanes through the intersection. In addition, it's understood that this will help prevent queuing and also be a safety improvement.
- (B) Developer to install "right-turn only" signs on the eastbound and westbound approaches (City would likely pay for the cost on the westbound approach).
- (C) At the discretion of the Ketchum City Council, the developer shall install a HAWK system on the crosswalk on the north leg. No crosswalk required on the south leg. However, as noted by AECOM in **Attachment C**, "Before constructing a HAWK signal at River Street, an engineering study should be performed using the guidance provided in Section 4F.01 of the MUTCD."

KMC § 17.116.030 (D)

The conditional use will be supported by adequate public facilities or services and will not adversely affect public services to the surrounding area or conditions can be established to mitigate adverse impacts.

City Council Findings: Consistent with the findings made for KMC §17.116.03 subsections B and C, the Council finds this standard to have been met.

KMC § 17.116.030 (E)

The conditional use is not in conflict with the policies of the Comprehensive Plan or the basic purposes of this Section.

City Council Findings: The proposed conditional use is supported by the following goals and policies of the 2014 Comprehensive Plan. Specific findings and analysis are as set forth in **Attachment A**. As noted herein, the proposed conditional does not conflict with the policies of the Comprehensive Plan or the basic purposes of Chapter 17.116 Conditional Uses.

2.7 Findings Regarding Applicant's PUD Bulk Area Waivers:

- 2.7.1 The Applicant's Project includes waivers to the floor area ratio, side yard setbacks, and height requirements and, subject to compliance by the Applicant with conditions as noted herein, the Project complies with each of the Tourist Zone dimensional standards for hotels.
- 2.7.2 The proposed Planned Unit Development and Conditional Use Permit Application meets the standards of approval under KMC Title 16 and Title 17, subject to conditions of approval.
- 2.7.3 The Project may exceed the maximum floor area, height, setback or minimum lot size requirements of Title 17 KMC, subject to a planned unit development having been prepared for the Project's proposed hotel and subject to approval by the City Council which outlines the waivers to bulk regulations requested.
- 2.7.4 All height and bulk Project limitations shall be in accordance with Tourist District except those items waived as an incident of the PUD Development Plan approval. The approved Project plans illustrate areas where buildings may exceed height and bulk limitations. As conditioned herein, the Council refers to the zoning and subdivision waivers set forth in these PUD Findings.

**III.
CONCLUSIONS OF LAW**

The following are the legal principles that provide the basis for the Ketchum City Councils' decision which the Councilors have applied to the facts presented at the hearing of the above entitled matter:

- 3.1 The City is a municipal corporation established in accordance with Article XII of the Constitution of the State of Idaho and Title 50 Idaho Code and is required and has exercised its authority pursuant to the Local Land Use Planning Act codified at Chapter 65 of Title 67 Idaho Code; and
- 3.2 The City pursuant to Chapters 3, 9 and 13 of Title 50 Idaho Code has the authority to enact the Ordinances and regulations which the City has exercised and approved Ordinances codified in the Ketchum City Code (“KMC”), and which are identified in Section II of these Findings of Fact, and which are herein restated as Conclusions of Law by this reference, and which City Ordinances govern the Applicant’s Project Applications for the Development and use of the Project Site.
- 3.3 The City pursuant to Idaho Code Section 67-6515 has the authority, which it has exercised by ordinance, codified at Chapter .08 of Title 16 of the KMC, which is separate from its zoning ordinance for the processing of applications for planned unit development permits.
- 3.4 KMC section 16.08.120 C provides that prior to final approval of a PUD conditional use permit, the City Council may require a written agreement executed by the Applicant to secure performance of any requirement or condition to be imposed as part of the approval, including, but not limited to Development and may also require recordation of documents establishing and guaranteeing the operation and maintenance of the Project; and
- 3.5 The Project Applications, which includes waivers to the floor area ratio, side yard setbacks, and height requirements is governed under KMC Sections 16.08.020 B, 16.08.030, 16.08.040, 16.08.070, 16.08.080 and 17.124.050 are reviewed and considered by the Council in accordance with the following:
 - 3.5.1 In the event of a conflict Chapter 8 of Title 16 KMC controls over any other City ordinance; and
 - 3.5.2 A planned unit development involves a development of land in which the standard land use regulations of the City may be modified or waived in order to promote beneficial development of an entire tract of land in conformance with an approved planned unit development conditional use permit accentuating usable open space, recreational uses, public amenities, community housing, and harmonious development with surrounding properties and the city at large; and
 - 3.5.3 Any person wishing to develop a planned unit development shall comply with the requirements of chapter 8 of Title 16 KMC in addition to the zoning, subdivision and other applicable laws, ordinances, regulations and rules, subject to any modification or waiver granted as part of the planned unit development (PUD) conditional use permit; and

- 3.5.4 The Planning and Zoning Commission can make recommendations and the City Council has authority to grant waivers or deferrals of any of the requirements of sections 16.08.070 and 16.08.080 KMC on a case-by-case basis when the waiver or deferral will not be detrimental to the public welfare, health and safety nor injurious to property owners in the immediate area; and
- 3.5.5 The proposed Planned Unit Development and Conditional Use Permit meets the standards of approval under Title 16 and Title 17 KMC, subject to conditions of approval.

IV. ORDER OF DECISION

Based upon the above and foregoing Findings of Fact/Conclusions of Law and good cause appearing from the record, IT IS HEREBY ORDERED AND THIS DOES ORDER THAT:

Order No. 1 PEG Ketchum Hotel, LLC Application for a Planned Unit Development Conditional Use Permit Version 3 Master Plan (“Project”) for a hotel development on a 1.09-acre site located at the southwest corner of the State Highway 75 and River Street intersection at 280 E. River, (the “Project Site”) inclusive of a request for waivers to minimum lot size, setback (side yards), height, and floor area ratio (FAR) limitations as set forth in **Attachment B** (the “Conditionally Granted Project”) is granted subject to and contingent upon the following terms and conditions:

Condition No. 1 Revised Master Plan West Side Set Back: Applicant shall revise the Version 3 Master Plan with a redesign of the subject Hotel structure within the same locations on the north, east and south with an additional setback on the west side of four feet four inches (4’-4”) from the property line than is shown in Version 3 Master Plan; and

Condition No. 2 Emergency Services Conditions: The following are emergency services and safety terms and conditions:

- 2.1 **Completion of Fire Improvements:** The City Building Official or the City Fire Marshal may withhold building and/or fire inspection approval for any phase of construction until all necessary components of the water and/or fire alarm system sufficient to provide protection for that portion of the Conditionally Granted Project are complete.
- 2.2 **Fire Access During Construction:** Vehicle parking and material storage during Conditionally Granted Project construction shall not restrict or obstruct public streets or access to any building. Emergency vehicle access shall be maintained as required by the Fire Chief. Once construction begins on the second floor and above, 26-foot aerial ladder truck access is required along one entire side of the building, in a location approved by the Fire Marshal, for evacuation of injured persons from upper floors. All required Fire Lanes, including within 15 feet of fire hydrants, shall be maintained clear and unobstructed at all times.

- 2.3 **Fire Code Requirements:** The Conditionally Granted Project shall comply with all the terms and conditions set forth in the Ketchum Fire Department Pre-application Requirements Memo dated June 24, 2019 from Tom Ancona, Assistant Chief & Fire Marshall, inclusive of subsequent amendments thereto, as well as all 2012 International Fire Code requirements and any additional specific City Building (Chapter 15.04 and 15.06) and Fire Ordinances (Chapter 15.08).

Condition No. 3 ROW Improvements Conditions: The following ROW Improvements are required of the Applicant:

- 3.1 **DIG:** The Applicant shall submit a Street and Alley Digging, Excavation, and Trenching (“DIG”) Permit application with an associated traffic control plan for all construction work within the City ROW to be reviewed and approved by the City Streets Department.
- 3.2 **TURP:** The use of City right-of-way for construction which includes the closure of adjacent streets or sidewalks requires a Temporary Use of Right-of-Way Permit (“TURP”).
- 3.3 **River Street Encroachment Permit Improvements:** KMC §17.96.030.C states: “The City Council shall approval all permanent encroachments within the City-owned ROW associated with a development Conditionally Granted Project.” Applicant has made application as a part of the Conditionally Granted Project to the City for a license to encroach into the River Street Public Right of Way (“River Street ROW”) with a preference for Civil Plan Option 1, as set forth in the 1/21/20 design update **Attachment B**, which includes the following improvements: guest pick-up/drop-off, underground utilities, landscaping, street trees with decorative tree grates, public art, bike racks, sidewalks, pedestrian walkway lighting, and street lighting, and related improvements along River Street, pursuant to KMC §12.08.040. Further, the Applicant proposes that all walkway and driving surfaces within this encroachment area be hooked into its private boiler or similar snowmelt system within the Conditionally Granted Project mechanical room. The snow melt system is proposed to be operational every winter after the Hotel Operations begins operations. Final approval of the River Street ROW improvement plans is required and is subject to review and approval by the Ketchum City Council through a separate encroachment agreement. If approved via separate City encroachment process, such order or decision on encroachment, including any and all conditions thereon, is hereby incorporated by reference and made a part of these findings.
- 3.4 **SH75 Encroachment Permit:** ITD has an approved Record of Decision (“ROD”) that includes a 3-lane section with a six-foot (6’) wide sidewalk abutting the Subject Real Property. Subject ITD improvements to the SH75 ROW are proposed to be installed by ITD in Fiscal Year 2025 with road work in the vicinity, at the earliest, occurring in October of 2025. The installation of these SH75 Improvements by ITD and, particularly, the striping of a dedicated left turn lane West Bound onto River Street with adequate queuing for cars turning onto River Street is important to traffic flow both along SH75 and into the Conditionally Granted Project.

- 3.4.1 Given the Applicant's timeframe for construction and Certificate of Occupancy, subject SH75 work will not be conducted by ITD prior to the Developed Conditionally Granted Project and the commencement of Hotel Operations opening. Given that the City finds that a center turn lane with adequate queuing of approximately fifty to one hundred feet (50' – 100') is necessary for the SH75/River Street intersection to retain its current Level of Service ("LOS") for vehicular car movement, therefore the Applicant shall file with ITD an application for an encroachment permit. The Applicant and City shall work together to attain approval from ITD for the construction and striping of a partial center turn near the River Street intersection north of the Trail Creek bridge. The Applicant shall pay for engineering, traffic control and construction costs for subject SH75 improvements adjacent to the Conditionally Granted Project.
- 3.4.2 Further, to avoid excessive delays for East Bound traffic on River Street, the Applicant shall work with the City and ITD to install appropriate signage and improvements to allow only a right turn onto southbound SH75 at this intersection.
- 3.4.3 **Pedestrian Safety:** To help assure pedestrian safety and consistent with KMC, at the discretion of the Ketchum City Council upon the recommendation of the Ketchum Transportation Authority and the city's peer review engineering firm (AECOM), the Applicant shall work with the City and ITD to upgrade the unsignalized SH75 and River Street crossing (on north-side) to include a HAWK system. The circulation design shall meet all standards as specified in KMC §17.96.060.G. Further, as recommended by AECOM, "Before constructing a HAWK signal at River Street, an engineering study should be performed using the guidance provided in section 4F.01 of the MUTCD."
- 3.5 **Letter of Credit:** The Applicant shall provide an irrevocable letter of credit to the City for the aforementioned ROW Improvements affecting both the SH75 and River Street ROWs.

Condition No. 4 Terrace Walls: Construction of terrace walls or features of the outdoor dining patio with landscaping and architectural features adjacent to SH75 may be subject to future design review at the time the application is filed for approval at the discretion of the Administrator.

Condition No. 5 Time Limits: The following are the time limits that govern this Conditionally Granted Project:

- 5.1 Pursuant to KMC §17.96.090, a design review permit is valid for twelve (12) months from the date of final decision on the associated Findings of Fact, Conclusions of Law, and Decision. The Application for the Conditionally Granted Project building permit must be filed within the time as specified in KMC §17.96.090(A)(2). Any extension shall only be as allowed and specified in KMC §17.96.090.

- 5.2 Unless extended by the Ketchum City Council, a building permit shall be issued within twelve (12) months from the date of the last issued Permit.
- 5.3 A certificate of occupancy shall be issued for the Conditionally Granted Project no later than 18 months after the building permit is issued unless the time for completion of the Conditionally Granted Project is extended by the City Council.

Condition No. 6 Certificate of Occupancy: No Certificate of Occupancy shall be issued for the use and occupancy of this Conditionally Granted Project until the following items are complete:

- 6.1 All Design Review elements of the Conditionally Granted Project have been completed and approved by the Planning & Building Department; and
- 6.2 All occupancies in the Conditionally Granted Project (residential, commercial, etc) shall meet the Leadership in Energy and Environmental Design (LEED) Silver or equivalent standards consistent with (A) representations of the Applicant as set forth in **Attachment B** and its 1/21/20 design update Sustainability Integration representations (building system / geothermal, high performance building and site, material and product sustainability assessment) and (B) provisions of the City of Ketchum Green Building Code as set forth in KMC §15.20, inclusive of additional recommendations of the Planning & Zoning Commission during Conditionally Granted Project Design Review; and
- 6.3 All proposed encroachments within the City's River Street right-of-way have been installed in accordance with the Conditionally Granted Project Master Plan and approved by the City Engineer; and
- 6.4 All rooftop mechanical and electrical equipment is fully screened from public vantage points and approved by the Planning & Building Department; and
- 6.5 The City's Fire, Utilities, Building, Arborist, Streets, and Planning Departments have conducted final inspections and authorized issuance of Certificate of Occupancy; and
- 6.6 Prior to Certificate of Occupancy, a Parking Plan verifying free public use, the thirteen (13) displaced public parking spaces, and other details at the discretion of the City, shall be provided and approved by Ketchum City Council for the Conditionally Granted Project Parking Garage.

Condition No. 7 City Permit Performance Fees: The Applicant shall be charged and shall pay the City Permit Performance Fees for the administration of the City's performance of the Permit Conditions Acceptance Development Agreement.

Condition No. 8 Conditions to Applicant's Obligations: The Applicant's obligations hereunder are conditioned upon (1) receiving all the referenced approvals from the City and (2) securing financing as provided in the Permit Conditions Acceptance Development Agreement.

Condition No. 9 Drainage: Conditionally Granted Project Drainage system plans shall be submitted to the City Engineer for review and approval. Pursuant to KMC §17.96.060.C, all

storm water shall be retained on site, drainage improvements constructed shall be equal to the length of the Subject Real Property boundary lines, and all drainage facilities shall be constructed per City standards. All drainage improvements shall meet the applicable design criteria as specified in KMC §12.04.030.

Condition No. 10 Utilities Plan: The Applicant shall submit a Conditionally Granted Project Utility Plan indicating the location and size of water and sewer mains as well as gas, electric, TV and phone services (KMC §17.96.040.C.2c & KMC §17.96.060.D.1-3). Per KMC §17.96.060.D.2, utilities shall be located underground and utility, power, and communications lines within the Conditionally Granted Project Site should be concealed from public view.

Condition No. 11 Employee Housing Units: The Applicant shall either maintain or enter into a master lease with the Hotel Operator for apartment units within the Developed Conditionally Granted Project containing not less than 23 beds, as materially set forth in the 1/21/21 employee housing plan design update set forth in **Attachment B**, and thereby fulfill and satisfy the employee housing obligation of this Conditionally Granted Project consistent with the KMC.

- 11.1 Notwithstanding, consistent with the recommendations of the BCHA and the Commission, the Applicant may as part of the Design Review process seek to amend the employee housing plan configurations to have fewer shared bedroom configurations, improved bathroom to bed ratio, and more individual or couple employee housing suites; and
- 11.2 All leased apartment units must be subleased, assigned or otherwise made available to employees of the Hotel Operator on terms and conditions that emphasize the retention of a local workforce consistent with Blaine County Housing Authority (BCHA) community housing guidelines, and providing employee housing at a price point that is commensurate with its employees' ability to pay. The Applicant may enter into a master lease with the Hotel Operator for apartment units containing twenty-three (23) beds and thereby fulfill and satisfy the employee housing obligation of this Conditionally Granted Project consistent with KMC §17.124.050.
- 11.3 All leased apartment units must be subleased, assigned or otherwise made available to employees of the Hotel Operator on terms and conditions determined by it in the exercise of its discretion consistent with the goals of retaining a local workforce and adhering to the BCHA community housing guidelines.
- 11.4 Apartment leases and the management of this covenant of the developer to provide employee housing in the hotel are subject to annual recertification audits by the City and / or its designee. A fee established by resolution of the City may be charged for this service and associated compliance and monitoring activities.

Condition No. 12 Hotel Operations: The core feature of the Conditionally Granted Project is a hotel building operated at an industry acknowledged Four Star Hotel Operations Standard. Adherence to a Four-Star Hotel Operations Standard, particularly during Peak Travel Season, affects the sufficiency of on-site parking and traffic circulation in the

immediate vicinity of the Conditionally Granted Project and is a requirement of the occupancy and use of the Developed Conditionally Granted Project.

Condition No. 13 Lower Parking Demand and Traffic Impacts: To assure that the Applicant and/or Hotel Operator provides guest shuttle, employee shuttle, car share program, transit passes, carpool program, alternative transportation (such as bike storage for employees), and strict monitoring and management of deliveries and garbage pick-up, as set forth in §4.13, the Applicant and/or Hotel Operator shall include in the irrevocable letter of credit a Lower Parking Demand and Traffic Impacts amount of fifty thousand dollars (\$50,000) for a period of not greater than five (5) years upon which the City Council may request a draw to cover the City's costs in the mitigation of lowering traffic impacts and/or parking demands associated with the Applicant and/or Hotel Operator's failure to comply.

Condition No. 14 Parking & Loading: The Applicant shall present a Conditionally Granted Project Parking Plan for review and consideration by the Commission as part of its full Design Review Submittal. Prior to Certificate of Occupancy, a Conditionally Granted Project Parking Plan verifying public use, validation processes for determining parking charges (if any) for the public and the thirteen (13) displaced public parking spaces, and other details at the discretion of the City, shall be provided and approved by Ketchum City Council for the Conditionally Granted Project Parking Garage. The Conditionally Granted Project is required to have a minimum of eighty-four (84) parking spaces in the underground parking garage. Of these spaces, 53 spaces are required for the Four-Star Hotel Operations Standard, 18 spaces are required for employee housing, and 13 are required for the public to mitigate displaced public parking spaces from River Street. Of this total, not less than:

- 14.1 Eighteen (18) stalls shall be allocated for employee housing, inclusive of at least one (1) car share vehicle; and
- 14.2 Thirteen (13) underground parking stalls will be available to the general public at no charge to the public while visiting the property or using the conference center, spa, restaurant and bar. Subject to city final approval, a validation system may be employed by the Applicant and/or Hotel Operator with regard to the monitoring of public use of the thirteen, free-of-charge, underground public spaces located in the Conditionally Granted Project Parking Garage; and
- 14.3 Guest shuttle, employee shuttle, car share program, transit passes, and bike storage shall be provided as a part of the Four-Star Hotel Operations Standard.
- 14.4 During and upon completion of the construction of the Conditionally Granted Project, delivery vehicles associated with the Conditionally Granted Project shall not interfere with the regular flow of traffic surrounding the Conditionally Granted Project Site. Delivery vehicles shall not block the regular flow of traffic along River Street. Accordingly, deliveries will be made (a) preferably with single-unit trucks, not large tractor-trailer trucks; (b) during off-peak hours; and, (c) with hand trucks from the designated on-street loading zone. The Applicant shall strictly monitor and manage deliveries and garbage pick-up to ensure these activities do not occur during peak traffic periods, and that they do not occur simultaneously.

Condition No. 15 Local Option Tax: The Conditionally Granted Project shall be subject to the provisions of KMC Section 3.12, relating to local option taxes.

- 15.1 **Beverage, Food & Retail Sales:** All retail, food and beverage sales on the Conditionally Granted Project Site and in the Conditionally Granted Project shall be subject to the local option tax.
- 15.2 **Building Materials:** The Conditionally Granted Project and Conditionally Granted Project Site shall be subject to the local option tax on building materials.
- 15.3 **Employee Housing:** The obligation to pay local option tax shall not apply to the rental of employee housing units.
- 15.4 **Future Amendments to LOT Ordinance:** Any amendments to or repeal of Ketchum's Local Option Tax Ordinance and/or Idaho law relating to such local option taxes shall also apply to and modify this Section to the extent of such amendment(s) and/or repeal.
- 15.5 **Hotel Rooms:** All hotel rentals in the Conditionally Granted Project Four-Star Hotel Operations Standard shall be subject to the local option tax, regardless of who makes the reservation, including independent third-party travel agencies or other independent parties.
- 15.6 **Short-term rentals:** All non-hotel rentals, if any, shall be subject to the local option tax on short-term rentals.
- 15.7 **Marriott Rewards:** Reward stay bookings for any evening shall be assigned a room rate in accordance with the Idaho Administrative Procedures Act (IDAPA) and similar Idaho State Tax Commission rules and regulations. In all cases, subject reward stay booking shall be tracked as room revenue and charged the applicable local option tax rate. Local option taxes shall be remitted for all stays.

Condition No. 16 Waivers: Setbacks, FAR, and height for the Conditionally Granted Project shall comply with final Design Review for the Conditionally Granted Project as approved by the City. The final plans once approved and integrated into the Permit Conditions Acceptance Development Agreement by the Ketchum City Council illustrate areas where buildings may exceed height and bulk limitations. As conditioned herein above, Ketchum acknowledges the zoning and subdivision waivers set forth in the PUD Findings.

Condition No. 17 City Department Requirements: All requirements of the Fire, Utility, Building, Planning and Public Works departments of the City of Ketchum shall be met. All public improvements shall meet the requirements of the Public Works Department.

Condition No. 18 Compliance with the Applicable Laws and Ordinances: All other provisions of Ketchum Municipal Code, Chapters 16 and 17 and all applicable ordinances rules and regulations of the City and other governmental entities having jurisdiction shall be complied with by the Conditionally Granted Project.

Condition No. 19 Building Permit Requirements: The building permit for the Conditionally Granted Project shall not be issued until:

- 19.1 The Conditionally Granted Project is subject to completion assurances and a letter of credit, which shall be detailed by the City Attorney and Finance Director and approved by the Ketchum City Council as provided in the Permit Conditions Acceptance Development Agreement governing this Conditionally Granted Project; and
- 19.2 The Conditionally Granted Project shall pay the plan check and building permit fees that are in effect at the time of plan check and building permit submittal and all fees required by law prior to and for the issuance of a building permit.
- 19.3 Storm Water Management Pollution Prevention Plan (“SWPPP”) in accordance with local, state and federal laws and regulations is in place for the Conditionally Granted Project; and
- 19.4 A detailed Conditionally Granted Project Construction Staging and Mitigation Plan which is consistent with the standards specified in Chapter 15.06 of KMC, including provisions for off-site parking for contractors, sub-contractors, and other trades associated with the construction of the Conditionally Granted Project, off-site storage of bulk materials, and required right of way encroachments during construction, shall be submitted and approved by the City Planning and Building Administrator prior to building permit approval.
- 19.5 The Applicant has secured a will serve letter from Idaho, Clear Creek Disposal and other applicable public and private utility providers prior to issuance of a Building Permit.
- 19.6 The River Street Encroachment Permit encroachment agreement shall be obtained.
- 19.7 The Applicant shall cause to be issued in irrevocable letter of credit for the aforementioned Public ROW Improvements affecting both the SH75 and River Street ROWs. The amount of the financial guarantee shall be at 150% of engineering estimates for the guaranteed improvements. Partial and/or full release(s) of the letter of credit may be made upon: (i) Acceptance of subject River Street ROW improvements by the City; (ii) formal commencement of work by ITD of the SH75 ROW improvements adjacent the Subject Real Property and/or upon complete installation of the SH75 ROW improvements adjacent the Property.

Condition No. 20 Written Permit Conditions Agreement: The City Council has approved and the Applicant has entered into a Permit Conditions Acceptance Development Agreement inclusive of all the conditions of approval and consistent in form with Attachment E but subject first to inclusion of conditions of the Planning and Zoning Commission’s Design Review of Conditionally Approved Project and which Permit Conditions Acceptance Development Agreement is finalized and Approved by the City Council having completed its public hearing process regarding the same.

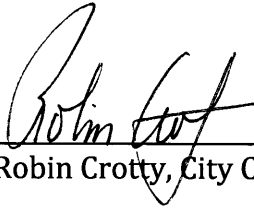
Order No. 2 Not a Final Action: These Findings of Fact, Conclusions of Law and Order of Decision are not a final action of the City Council on this Matter by reason of the fact that:

- 2.1 The Conditionally Approved Project must proceed with Design Review before the Planning and Zoning Commission; and
- 2.2 The City Council shall receive and consider, together with notice and the conduct of a public hearing, the final draft of the Permit Conditions Acceptance Development Agreement which shall be inclusive of the terms and conditions of the Planning and Zoning Commissioners' Design Review Order, the Terms and Conditions of Order No.1 and the Applicant's revisions to Version No. 3 Master Plan in compliance with Order No. 1.

Findings of Fact **adopted** this 3rd day of February, 2020.



Neil Bradshaw, Mayor
City of Ketchum



Robin Crotty, City Clerk



Attachment

- **Slette 2/14/20 Letter**

Robertson & Slette, p.l.l.c.

ATTORNEYS AT LAW

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GARY D. SLETTE
gslette@rsidaholaw.com

February 14, 2020

US MAIL & VIA-EMAIL

rcrotty@ketchumidaho.org

nbradshaw@ketchumidaho.org

Ketchum Mayor Bradshaw & City Council
Robin Crotty, City Clerk
P.O. Box 2315
Ketchum, ID 83340

RE: Ketchum Boutique Hotel – Request for Reconsideration

Dear Mayor Bradshaw & Members of the Ketchum City Council,

This is a request for reconsideration filed by the undersigned as counsel for owners of the following properties in Ketchum, Idaho:

- a) Mr. and Ms. Richard Clotfelter, Limelight Hotel, Unit 503, 151 Main Street S.
- b) Big Burn, LLC, Limelight Hotel, Unit 505, 151 Main Street S.
- c) Kevin Livingston, Trail Creek Crossings Condominiums, Unit N, 321 Leadville Ave. S.
- d) Scott & Karen Hanson, Trail Creek Crossings Condominiums, Unit K, 321 Leadville Ave. S.
- e) John & Susan Sahlberg, Trail Creek Crossings Condominiums, Unit D, 321 Leadville Ave. S.
- f) Thomas & Del-Ann Benson, Trail Creek Crossings Condominiums, Unit L, 321 Leadville Ave. S.
- g) Pat Duggan, Trail Creek Crossings Condominiums, Unit M, 321 Leadville Ave. S.

This reconsideration request pertains to (a) the “PEG PUD Conditional Use Permit” (hereinafter “PEG PUD CUP”) filed by PEG Ketchum Hotel, LLC and approved by the City on February 3, 2019; and (b) the Preliminary Plat of Lot 3A, Block 82, Ketchum Townsite approved on the same date. I understand that Paragraph 15 of the Preliminary Plat approval indicates that physical activities and construction work can be undertaken on the applicant’s property prior to approval of a final plat thus rendering that decision subject to the reconsideration and the judicial review process pursuant to I.C. § 67-6535. *See, e.g., Johnson v. Blaine County, 146 Idaho 916, 204 P.3d 1127 (2009).* My clients are

aware of the statement regarding “Order No. 2” on page 49 of the PEG PUD CUP, but because both of these approvals pertain to an application for a permit required or authorized pursuant to the Local Land Use Planning Act (“LLUPA”), and because both Idaho Code § 67-6521 and § 67-6535 compel an affected person to timely undertake certain procedural steps upon approval of such applications, my clients are left with no choice but to file the written request for reconsideration as set forth herein.

The deficiencies in the decisions for which reconsideration is sought are identified below.

1. A waiver may only be granted due to an undue hardship and the physical characteristics of the particular parcel of land and not the result of actions of the subdivision [subdivider].

The term “waiver” is defined in Ketchum City Code (“KCC”) § 16.04.020, and may only be granted “due to physical characteristics of the particular parcel of land” as well as an “undue hardship”. The physical characteristics of the applicant’s property were well known in advance of its purchase by the developer, PEG. The waivers contemplated by the City and the developer are predicated upon making the development financially viable as opposed to being based on an undue hardship or the physical characteristics of the site. If the applicant had sought to develop the property in a manner consistent with the physical characteristics and the zoning of this particular parcel, the waivers would not have been required. The City attorney has apparently cited the case holding in *Canal/Norcrest/Columbus Action Committee v. The City of Boise*, 137 Idaho 377, 48 P.3d 1266 (2002) as a basis to bypass the express verbiage in the subdivision ordinance regarding the issue of “waiver”. However, a decade after that case was decided, the Idaho legislature enacted Idaho Code § 67-6512(f) which allowed a municipality to issue waivers only in accordance with “such conditions as may be imposed pursuant to a local ordinance”. The fact that the City of Ketchum previously chose to embrace the “undue hardship” language of the LLUPA variance statute in its ordinance, as well as the “due to physical characteristics of the site” language was a choice the City made when it amended its ordinance to provide for the allowance of waivers. Having enacted those requirements in order to allow for the issuance of a waiver of the standards in its ordinance, the City cannot now avoid the express language of its own ordinance and issue waivers on the basis of convenience and/or financial viability of a project. *See, e.g., City of Burley v. McCaslin Lumber Co.*, 107 Idaho 906, 693 P.2d 1108 (Ct. App. 1984).

Furthermore, KCC § 16.04.020 provides, in pertinent part, as follows, “The granting of waiver(s) shall be upon written application...”. KCC § 16.04.120 specifically governs the written waiver applications, and provides that those individual applications are to be filed contemporaneously with the subdivision application. As expressly provided by the City’s code, the granting of any waiver shall be based on a written application with such related data and maps as are necessary to illustrate the relief sought in each waiver application. According to KCC § 16.04.020, “The word ‘shall’ is always mandatory.” Although a public records request was submitted by the undersigned in order to obtain copies of the statutorily required written waiver applications, such applications have not been provided as of this writing.

2. The provisions of Title 17 of the Ketchum Code apply to the applications proposed for reconsideration.

According to the Idaho Mountain Express, it was apparently suggested at the City's recent meeting that the zoning ordinance standards of Title 17 of the Ketchum Code were "trumped" by the City's PUD ordinance. Issues pertaining to the required minimum land area of a parcel proposed for a PUD, as well as the allowable number of stories in the Tourist district, were previously advanced in a letter dated January 27, 2020, which I sent to the City on behalf of the Clotfelters. The alleged deficiency in the City's "trumping" interpretation can be found in KCC § 16.04.010(F) which provides, in pertinent part, as follows:

The regulations of this chapter are in addition to all other regulations, and where at variance with other laws, regulations, ordinances or resolutions of the City, or any other governmental body having jurisdiction, the more restrictive requirements shall apply.

Stated otherwise, **all** proposed subdivisions of land, including PUD's, are governed by the regulations of the subdivision ordinance, in addition to all other ordinances of the City, including the zoning ordinance. In fact, one of the purposes of the subdivision ordinance itself is to ensure "design and construction of improvement in conformance with the standards and purposes of this chapter and **all other municipal ordinances** relating to this chapter, including subsequent amendments". See KCC § 16.04.010(B)(15). Were it otherwise, the zoning ordinance would be rendered nugatory, and an "anything goes" approach to land use would be the order of the day. Based on Ketchum's own subdivision code, the provisions of the zoning ordinance must necessarily apply to land being proposed for subdivision, whether as a PUD or not. Furthermore, KCC § 16.08.040 expressly states that "a planned unit development **shall comply** with the requirements of this chapter in addition to the zoning, subdivision and other applicable laws...". (emphasis added). Clearly, a PUD must comply with the requirements of the City's own zoning law.

3. Even if a waiver were to be granted with regard to the minimum lot size of 3 acres for a PUD, a parcel of land less than 1.5 acres in size does not qualify for a PUD.

According to the various applications submitted to the City by PEG, the property located at 260 East River Street is 1.048 acres in size. KCC § 16.08.080(A) establishes a minimum lot size of three (3) acres for a PUD. However, the ordinance also provides that the Council may grant a waiver as to the three acre minimum lot size if the property meets all of the four enumerated criteria in that code section. The third criteria requires that the parcel of land be no less than 1.5 acres (65,340 square feet) in size if a waiver of the three acre size minimum is to be granted. Because the project parcel in question is less than the minimum 1.5 acre size requirement if a waiver is granted, this failure constitutes a specific deficiency

in the decision of the City. The City Council apparently made a decision to waive the three (3) acre minimum for a PUD, but that waiver does not obviate the 1.5 acre bare minimum lot size criteria of the Code. See page 35 of the PEG PUD CUP Findings of Fact, Conclusion of Law, Order of Decisions by the Ketchum City Council dated February 3, 2020.

4. The Ketchum Subdivision Ordinance does not allow a hotel in the Tourist zone to have more than four (4) floors.

KCC § 17.124.050(B)(6) allows a hotel to have a fourth (4th) floor, but subsection (a)(1) of that Code provision limits a five (5) story hotel to only property that is located in subdistrict A of the retail core of the community core district. The term “lowest floor” is defined by the Code to specifically include a basement as a “floor”. See KCC § 17.08.020. In the Design Review Application submitted to the City of Ketchum, and certified complete by the City on June 19, 2019, PEG completed the criteria for “TOTAL FLOOR AREA” by indicating there were three basement “levels”, i.e., three floors, consisting of 62,177 square feet, and four additional floors consisting of 75,368 square feet. Even if a height waiver was deemed to have been appropriately granted to PEG, it is apparent that the allowance of more than four floors or stories on a hotel property situated in the Tourist zone is not permissible. (As an aside, PEG indicated that the building height is 55 feet tall in its Design Review Application. According to City calculations, that number is actually 72 feet tall.) Without the written waiver applications expressly required by KCC § 16.04.130 [which applications were required to be made in writing and submitted at the time of the submission of the subdivision application], there is no written justification showing that physical characteristics of the site led to the need for any waivers. Suffice it to say, the Code’s limitation on the maximum allowable four story hotel in a Tourist zone was not the subject of any waiver application. A waiver of the height of a building does not translate to a waiver of the number of stories allowed by the zoning ordinance for a hotel in the Tourist zone. Common sense indicates that there can only be one “lowest floor” in a building, and it seems unrealistic to say that the proposed hotel has three basement floors which make up 45% of the hotel floor area atop which are situated four more floors for a total of seven floors. Even if one or two floors have been removed in PEG’s revised plans, the four story requirement in the Tourist zone is still applicable as a matter of law. The interpretation of a city zoning ordinance is a question of law over which a court exercises free review. *Dry Creek Partners, LLC v. Ada County*, 148 Idaho, 217 P.3d 1282 (2009).

5. The zoning process and decision were flawed on the basis of a violation of the right to due process.

On November 29, 2018, Eric Peterson of PEG Development sent an email to the Mayor of Ketchum demanding the Mayor email him a letter showing his support for the project which Peterson could present to PEG’s investment committee. See Exhibit “A” attached hereto. On the very next day, Mayor Bradshaw sent Peterson the letter of support for the project which is attached hereto as Exhibit “B”.

According to the letter of Benjamin Worst dated August 12, 2019, sent to the Ketchum Planning and Zoning Commission, Mayor Bradshaw also attended the P&Z Commission meeting on July 30, 2019, at which time he heard the applicant's presentation of evidence related to the project. Neither meaning nor intending any disrespect to Mayor Bradshaw, a person acting in a quasi-judicial capacity must only take such evidence as is presented to the body of which he or she is a member. *Idaho Historic Presentation Council v. City Council of City of Boise*, 134 Idaho 651, 8 P.3d 646 (2000). This is a basic element of due process. Based upon his letter to Peterson, and the Mayor's vocal prodding of council members at council meetings, my clients contend that Mayor Bradshaw was biased in favor of the project, and he strongly encouraged members of the Council to vote to approve the project despite its lack of compliance with the relevant standards articulated in the City's code. It matters not that Mayor Bradshaw did not cast the decisive vote in this case. The case of *Floyd v. Board of Commissioners of Bonneville County*, 137 Idaho 718, 53 P.3d 863 (2002) is instructive on this issue. The Idaho Supreme Court stated:

To avoid the appearance of impropriety and to assure impartial decision-making, however, it is the role of the court to determine the effect of a conflicted vote:

Initially, the court must determine whether a member with a disqualifying interest cast the decisive vote. If so, the ordinance must be invalidated. If the ordinance would have passed without the vote of the conflicted member, the court should examine the following three factors: (1) whether the member disclosed the interest or the other council members were fully aware of it; (2) the extent of the member's participation in the decision; and (3) the magnitude of the member's interest. *Grisworld v. City of Homer*, 925 P.2d 1015 (Alaska 1996).

137 Idaho at 726.

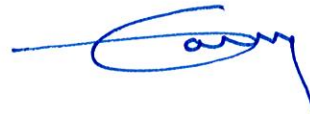
Only after the public records request was made by Kevin Livingston, and the Mayor's letter to PEG was discovered and placed into the record, did Mayor Bradshaw disclose his letter of support for the project to the members of the City Council. It is unknown whether he disclosed to them the email from Eric Peterson (Exhibit "A") which explicitly commanded the Mayor to submit a letter to PEG showing his support of the project. My clients believe that the role of the Mayor in this entire proceeding cannot be overstated as he not only participated in all facets of the meetings and hearings leading to the decisions, but he was the chief supporter and proponent of the project, and repeatedly expressed his views to the council members on the acceptability of the waivers and the desirability of the project.

6. Conclusion.

It is requested that this reconsideration be granted and that the Ketchum City Council schedule a hearing to consider this request and the effect upon its prior decisions. Upon considering the same, the City of Ketchum should act on the reconsideration of its prior decisions of February 3, 2020, and remand the applications to the Planning and Zoning Commission with instructions to the applicant to redesign the project in light of the foregoing.

My clients reserve all objections to the final findings of fact and conclusions of law to be issued by the Ketchum City Council, and it is anticipated that an additional request for reconsideration may be filed once those written findings have been issued by the City of Ketchum.

Yours truly,



GARY D. SLETTE

cc: Clients
John Gaeddert
William Gigray, III
Matthew Johnson

From: Eric Peterson
To: John Gaeddel; Neil Bradshaw; Barrett Molter; Michael Doty (external); Mike Allaire; Abby Rivin; Brittany Skelton
Subject: Meeting Follow-up
Date: Thursday, November 29, 2018 9:48:27 AM

Good morning all.

Thank you for making time for the project yesterday. It is great to have this much involvement and support from the city. I am writing to just follow-up on a few action-items as I'm putting the finishing touches on the presentation for investment committee.

John:

Prepare a letter that outlines the hotel program as we went through yesterday with a demonstration of support for the program and your belief that we will be able to get through P&Z as designed and your general support for the hotel project; commitment of staff, meeting schedules, etc. I am curious which ordinance Abby was reading from yesterday that said hotel projects were permitted to some variance from some of the other requirements. Either way, we will need some variances approved as we go through the PUD.

Hotel Program:

- 100-110 hotel rooms
- 5 story off river-street
- Up to 1.8 FAR
- Restaurant/ Bar
- Spa and/or Spa Suites
- On-site employee housing
- 68 parking stalls on site

Mayor Bradshaw:

Email to me a letter showing your support and overall thoughts on the project. This will be a good piece to include in the presentation to investment committee... The city approval process and entitlement risk will be one of the biggest concerns for the team and knowing we have the Mayor's support will be very helpful.

Let me know if anyone has questions -- I'll be focused on this pretty much for the rest of the week so will be available if anything comes up.

Thanks again,

EP

Eric Peterson | PEG Development
1300 Broadway, Suite 2000 | Portland, OR 97201





City of Ketchum

November 30, 2019

Eric Peterson
PEG Development
180 N. University Ave, Ste. 200
Provo, UT 84601

Dear Eric,

It's been a pleasure discussing your proposed hotel project in the city of Ketchum. Hotels are important to the vibrancy and economic prosperity of our community. Your project is a good fit for Ketchum and I applaud you for including workforce housing. We welcome this new project.

We will endeavor to make this project a success. City staff will work closely with your team to facilitate the city planning and zoning approval process. I'm excited about the project and thank you for supporting our community. I look forward to working with you.

Sincerely,

Neil Bradshaw
Mayor, City of Ketchum



Attachment

- **Nelson 3/11/20 Letter**

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Kelly Greene McConnell
Alex P. McLaughlin
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Christopher H. Meyer
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Judson B. Montgomery
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Randall A. Peterman
Jack W. Relf
Michael O. Roe
Jamie Caplan Smith
Robert B. White

William C. Cole (Of Counsel)

Kenneth L. Pursley (1940-2015)
James A. McClure (1924-2011)
Raymond D. Givens (1917-2008)

March 11, 2020

VIA E-MAIL: jgaeddert@ketchumidaho.org

City of Ketchum City Council
c/o John Gaeddert
P.O. Box 2315
Ketchum, ID 83340

Re: Ketchum Marriott Tribute Hotel – Preliminary Plat (P19-064) and Planned Unit Development Conditional Use Permit (P19-063)

Dear Members of the Ketchum City Council:

On behalf of applicant PEG Ketchum Hotel LLC for the above-referenced project, we provide this response to the February 14, 2020 request for reconsideration submitted by attorney Gary Slette for certain neighbors of the project (“Neighbors”). The request for reconsideration does not present a valid basis for the Council to reconsider its approval of the project. The Neighbors simply desire a different outcome. We respectfully ask the Council to deny the Neighbors’ request.

The Council’s decision follows an extensive public review process, is based on a detailed record and complies with the Ketchum City Code. The City’s planning staff spent considerable time analyzing the applications and making recommendations to the Commission and Council. The applicant provided detailed narratives, plans and studies supporting the applications and responding to requested changes. Members of the public had multiple opportunities to provide written and verbal testimony. The City conducted at least three hearings before the Planning and Zoning Commission and four hearings before the City Council, spanning eight months from July 2019 to February 2020. The City’s written findings provide a detailed explanation of the Council’s reasoning based on the relevant criteria and standards and the relevant facts.

The Council is entitled to a strong presumption that its decision is valid and that it has correctly interpreted its own ordinances. *Hawkins v. Bonneville Cty. Bd. of Comm’rs*, 151 Idaho 228, 231, 254 P.3d 1224, 1227 (2011). Courts defer to the council’s interpretation of their own ordinance. *Angstman v. City of Boise*, 128 Idaho 575, 578 (1996). Courts also defer to the council’s

findings of fact unless they are clearly erroneous. *Marcia T. Turner, L.L.C. v. City of Twin Falls*, 144 Idaho 203, 209, 159 P.3d 840, 845 (2007).

The following response sections correlate to the five sections in the Neighbors' request for reconsideration.

1. The Council appropriately considered the physical characteristics of the project site in approving the project.

According to the Neighbors, waivers are only allowed “due to physical characteristics of the particular parcel of land as well as an undue hardship.”¹ The Neighbors cite to Sections 16.04.020 and 16.04.120 of the City's subdivision ordinance.

The city code contains several waiver provisions that provide the Council with the flexibility to alter standard requirements of the code. As to the “undue hardship” standard asserted by the Neighbors—which is only in the subdivision ordinance (chapter 16-04) and not in the Planned Unit Development (“PUD”) ordinance (chapter 16-08)—the Council did find that “the literal enforcement of the city code in the context of the special physical characteristics and conditions affecting the property would result in undue hardship.”² The Council's PUD Findings explain:

In particular, the Hotel site has a large slope with a grade differential of approximately thirty-seven feet (37') from Trail Creek at the south end of the lot to the north end along River Street. The site is constrained by the river to the south and the City desires to setback structures from riparian and flood areas. The City also desires to setback structures from State Highway 75 (SH75) in this location to help preserve the entry to town and minimize shading of the highway during winter months. Further, the grade along SH75, future Idaho transportation Department (ITD) bridge and highway expansion plans, and a desire for no access onto SH75 in this location create unique conditions for development.³

The Neighbors incorrectly suggest that the “undue hardship” language in chapter 16-04 invokes additional standards from the Local Land Use Planning Act's (“LLUPA”) variance statute, I.C. § 67-6516, and associated case law interpreting the variance statute. The application at issue in this project is a PUD, not a variance. The LLUPA variance standards do not apply.

According to the Idaho Supreme Court in *Canal/Norcrest/Columbus Action Comm. v. City of Boise*, “[t]he very purpose of a PUD is to allow for flexibility in planning, which would be inhibited if the developer were required to meet the rigid variance requirements set forth in the ordinance.”⁴ The neighbors in that case opposed a mobile home development that required setback

¹ Neighbors' Request for Reconsideration, p. 2 (quoting KCC § 16.04.020).

² Council Findings (PUD), Feb. 3, 2020, p. 21.

³ Council Findings (PUD), Feb. 3, 2020, p. 21. *See also*, Council Findings (PUD), Feb. 3, 2020, p. 34.

⁴ 137 Idaho 377, 381, 48 P.3d 1266, 1270 (2002).

waivers.⁵ The waivers were granted as part of the PUD standards rather than the variance standards in the ordinance.⁶ Based on language in the PUD ordinance that “[c]hanges from the development standards of the underlying zone may be approved,” the court held that the “City properly waived the setbacks as a part of the PUD process.”⁷

The Neighbors claim that I.C. § 67-6512(f) supersedes *Canal/Norcrest* and requires the City to apply the undue hardship standard to waivers for a PUD. In fact, the opposite is true. I.C. 67-6512(f) codifies the decision in *Canal/Norcrest* by providing that waivers of standards in a zoning ordinance may be permitted with a conditional use permit or by other administrative process subject to conditions imposed pursuant to the local ordinance. The City’s approval comports with the language specified in the city ordinance.

The Neighbors also argue the waivers approved by the Council were based on financial viability of the project rather than undue hardship due to the physical characteristics of the site. The Neighbors’ argument is not supported by the record. Instead, as illustrated above, the Council identified physical characteristics of the site that it reasonably believed caused undue hardship. Accordingly, the Council properly approved the PUD and waivers.

2. The Council properly allowed deviations from standard zoning requirements with the PUD.

The Neighbors argue the PUD ordinance does not “trump” other city ordinance standards, such as standards in the City’s Title 17 zoning ordinance. This claim is directly contradicted by the following language in the “Authority and Purpose” section of the PUD chapter (16-08): “In the event of conflict between this PUD chapter and any other ordinance of the city, this PUD chapter shall control.”⁸

The Neighbors further argue that all PUDs “shall comply” with all other City regulations, in the subdivision ordinance, the zoning ordinance and “all other ordinances of the City.”⁹ This claim ignores the many provisions in the city code addressing waivers and modifications and, more broadly, ignores the purpose of a PUD, which allows a departure from other city regulations “to encourage flexibility and creativity in the development of land in order to improve the design, character and quality of new development.”¹⁰

To support their position, the Neighbors selectively quote from the city code, omitting key relevant portions. For example, the Neighbors claim: “Furthermore, KCC § 16.08.040 expressly states that ‘a planned unit development **shall comply** with the requirements of this chapter in

⁵ *Id.* at 378.

⁶ *Id.* at 381.

⁷ *Id.*

⁸ KCC § 16.08.020(B).

⁹ Neighbors’ Request for Reconsideration, p. 3.

¹⁰ KCC § 16.08.020(A).

addition to the zoning, subdivision and other applicable laws....”¹¹ The quoted sentence, when presented in its entirety, states something very different than the Neighbors’ claim:

Any person wishing to develop a planned unit development shall comply with the requirements of this chapter in addition to the zoning, subdivision and other applicable laws, ordinances, regulations and rules, subject to any modification or waiver granted as part of the planned unit development (PUD) conditional use permit.¹²

Other city code provisions similarly direct that a PUD provides a means for varying from other city ordinances, including:

- The city code defines “planned unit development” as:

A project located on no less than three (3) contiguous acres of land controlled by one owner, partnership or corporation, including usable open space for the mutual benefit of the entire tract, and planned and designed as a unit to provide variety and diversity of land use through and including the variance of normal zoning requirements and restrictions so that the maximum long range benefit can be gained and the unique features of the site preserved and enhanced.¹³

- KCC § 16.08.080 (PUD Standards) in the PUD ordinance explains at the outset:

The standards set forth in this section shall apply to review of all PUD conditional use permit applications. The standards shall be used to review and evaluate the proposal in comparison to the manner of development and effects of permitted uses and standard development allowed on the property in question. Modification or waiver from certain standard zoning and subdivision requirements may be permitted subject to such conditions, limitations and/or additional development standards, pursuant to section 16.08.130 of this chapter, as the city council may prescribe to mitigate adverse impact at the proposed planned unit development, or to further the land use policies of the city, or to ensure that the benefits derived from the development justify a departure from such regulations.¹⁴

The Council properly allowed deviations from standard zoning requirements with the PUD. The Neighbors’ argument that the City is bound to apply *all* provisions of the city code despite the PUD is unsupported and contradicted by city code.

¹¹ Neighbors’ Request for Reconsideration, p. 3 (emphasis is in Neighbors’ letter, not in city code).

¹² KCC § 16.08.040 (emphasis added).

¹³ KCC § 17.08.020. The Council may waive the three-acre minimum pursuant to KCC § 16-08-080(A).

¹⁴ KCC § 16.08.080 (emphasis added).

3. The Council’s decision approving the PUD on a 1.048-acre site complies with applicable standards in the city code.

The Neighbors argue the minimum lot size for a PUD is three acres, or one and one-half acres with a waiver. Neighbors’ argument is contradicted by KCC § 16.08.080(A)(4), which allows a waiver for hotels that meet the purpose of the Tourist Zone and which does not impose a one and one-half acre minimum.

KCC § 16.08.080(A) provides:

A. Minimum lot size of three (3) acres. All land within the development shall be contiguous except for intervening waterways. Parcels that are not contiguous due to intervening streets are discouraged. However, the commission and the council may consider lands that include intervening streets on a case by case basis. The commission may recommend waiver or deferral of the minimum lot size, and the council may grant such waiver or deferral only for projects which:

1. Include a minimum of thirty percent (30%) of community or employee housing, as defined in section 16.08.030 of this chapter;
2. Guarantee the use, rental prices or maximum resale prices based upon a method proposed by the applicant and approved by the Blaine County housing authority and/or the Ketchum city council; and
3. Are on parcels that are no less than one and one-half (1^{1/2}) acres (65,340 square feet). Application for waiver or deferral of this criteria shall include a description of the proposed community or employee housing and the proposed guarantee for the use, rental cost or resale cost.
4. For a hotel which meets the definition of "hotel" in section 17.08.020, "Terms Defined", of this code, and conforms to all other requirements of section 17.18.130, "Community Core District (CC)", or section 17.18.100, "Tourist District (T)", of this code. Waivers from the provisions of section 17.18.130 of this code may be granted for hotel uses only as outlined in section 17.124.040 of this code. Waivers from the provisions of section 17.18.100 of this code may be granted for hotel uses only as outlined in section 17.124.040 of this code.¹⁵

Subsections (A)(1)-(3) are conjunctive; subsection (A)(4) is separate. The Council may grant a waiver from the three-acre minimum requirement for PUDs if subsections 1, 2 and 3 are met. Also, the Council may grant a waiver from the three-acre minimum requirement for PUDs if the project meets the definition of “hotel” and conforms to the referenced code section for the Community Core or Tourist District.

¹⁵ KCC § 17.18.080(A)(1)-(4) (emphasis added).

This project meets the definition of “hotel,” as a building designed for short-term occupancy by the general public for a fee with the required services and amenities.¹⁶ And, consistent with KCC § 17.18.100 for the Tourist District, the project provides the opportunity for high density residential and tourist use, which is compatible with surrounding uses, with articulation and quality design in a new building.¹⁷

The Council’s decision approving the PUD on a 1.048-acre site complies with the city code. The Neighbors’ argument to the contrary has no merit.

4. The Council’s decision approving the PUD for the proposed hotel dimensions complies with applicable standards in the city code.

The Neighbors argue the subdivision ordinance does not allow a hotel in the Tourist Zone to have more than four floors. Presumably, the Neighbors intended to say the *zoning* ordinance given that their argument cites Title 17. Either way, the Neighbors fail to acknowledge the Council’s authority to approve the PUD pursuant to the PUD ordinance.

As described above, the city code allows the Council to approve a PUD in deviation from other city ordinances by applying the standards in the PUD ordinance and by imposing other conditions or additional development standards as needed to mitigate impacts. Hotels have particularly broad flexibility in the city code.¹⁸ The Council properly found that the proposed hotel could be approved as a PUD under the city code for several reasons.

First, the Council found that the hotel was consistent with the purpose of the Tourist District “to provide the opportunity for high density residential and tourist use”¹⁹ The PUD ordinance in KCC § 16.08.080(A)(4) allows waivers of KCC § 17.18.100, which is the statement of purpose for the Tourist District and implicates dimensional standards of the zoning ordinance. Here, since the PUD is for a hotel, and a hotel is consistent with the purpose of the Tourist District, no waiver is needed of the purpose statement or any standards it references.

Second, the Council found that the hotel was only four stories with exposed subfloors on a portion of the site due to the steeply sloping grade.²⁰ The City’s ordinances provide that the number of floors in a building are counted from the ground up. “Ground Floor” is defined as “[t]he floor of a building that is at or nearest to the level of the ground around the building; also referred to as first floor, or ground level.”²¹ The hotel is four stories tall at its entrance on River Street and two

¹⁶ See KCC § 17.08.020.

¹⁷ See KCC § 17.18.100.

¹⁸ KCC §§ 16.08.080(A)(4); 17.08.020; 17.124.040; 17.124.050.

¹⁹ KCC § 17.18.100.

²⁰ Council Findings (PUD), Feb. 3, 2020, pp. 22, 30. Although the City often uses the terms “floors,” “levels” and “stories” interchangeably, the building includes three sub-floors that appear as two stories on the exterior.

²¹ KCC § 17.08.020 (emphasis added).

stories at the rear of the building. The building height and number of floors decline in a stair-step pattern from the front of the building to the back of the building.²²

Third, the applicant requested and the Council approved waivers for setbacks, floor-area-ratio and height, including floors, in the PUD. Since the number of floors is substantially related to both floor-area-ratio and height, those waivers are inclusive of a waiver for the number of floors. Further, the application materials requested a waiver for height that encompasses both dimensions and stories, as shown in the floor plans, elevations and perspectives and as described in the Exhibit 2.15 “Waiver List,” which states in part:

HEIGHT – 17.12.030

Tourist zone is typically 35’0” maximum.

Currently, the site is zoned as a “T-Tourist zone”, which allows hotels to be 4-stories along River Street.

Based on fitting into the context of the adjacent Limelight Hotel at 68’0”, and the proposed hotel across Main Street at 58’0”, we are proposing a waiver of the 50’0” maximum to allow a 60’0” maximum height along River Street. This height will still allow the upper levels of the adjacent developments clear views over the top of the hotel, while providing nice views from the Boutique Hotel to the surroundings.²³

The application narrative also explained that the building as designed into the sloped site includes only four stories above grade along River Street and four stories (subsequently reduced) at the rear near Trail Creek, with the massing terracing down the hillside following the slope of the terrain.²⁴

The City’s planning staff determined the application was complete and described the requested height waiver in the waivers section of the Staff Report under the header “**Height/Story**,” explaining in part:

Along with the height waiver, the proposed hotel is requesting a waiver and/or interpretation of height relative to KMC and the City’s definition of story or the allowance of four stories for a hotel....²⁵

The Council’s findings also describe the height waiver in terms of dimensions and stories. For example, PUD Findings section 2.2.10 titled “**Height**” states in part:

²² Council Findings (PUD), Feb. 3, 2020, p. 22.

²³ Application Narrative, Exhibit 2.15 “Waiver List” at 307.

²⁴ Application Narrative, Exhibit 01.11, p. 107. Based on feedback throughout the hearing process, the applicant modified the plans to reduce the massing and height, including removing one story from the entire back half of the hotel. The applicant provided updated plans, elevations and perspectives, dated December 2, 2019, showing the new height dimensions, floors and terracing down the sloped site.

²⁵ Staff Report to the Council for the October 7, 2019 hearing, Attachment A, p. 4.

... The hotel is proposed as a four-story structure on River Street that then stair steps and terraces down to three floors near Trail Creek. As depicted in the **Attachment B** Height Analysis, the maximum height of the building scales down to approximately twenty-eight (28') closer to the river on the south end of the property. The exception to this height analysis is in the center of the structure where 4-stories of hotel are sandwiched between the two public amenities (employee housing and a roof top bar for the public). At this more central site location, the existing grade drops at a fairly acute angle resulting in a portion of the building having a maximum height of seventy-two feet (72') as measured from existing grade. In comparison to both the built Limelight hotel and approved Bariteau/Harriman Hotel on opposing corner, the height of the proposed Project will be lower and more closely align to the fourth-floor elevation of each of these buildings.²⁶

Based on the many provisions in the city code that provide for waiver and modification of standards and its findings that the hotel meets the purpose of the Tourist Zone, is a four-story building and is entitled to waivers, Council's approval of the PUD was proper.

5. The Neighbors' due process rights were not violated.

The Neighbors argue that the application process and decision of the Council are "flawed" because their due process rights were violated.²⁷ The Neighbors' arguments fail to establish any due process violations that warrant reconsideration.

The Idaho Supreme Court has established four elements of due process in quasi-judicial land use cases: "(a) notice of the proceedings, (b) a transcribable verbatim record of the proceedings, (c) specific, written findings of fact, and (d) an opportunity to present and rebut evidence." *Cowan v. Bd. of Comm'rs of Fremont Cty.*, 143 Idaho 501, 510, 148 P.3d 1247, 1256 (2006); *Spencer v. Kootenai Cty.*, 145 Idaho 448, 454, 180 P.3d 487, 493 (2008). Neighbors were afforded all four components of due process and do not advance any argument that any of these four enumerated due process rights was violated.

Instead, the Neighbors argue that their due process rights were violated because: (1) Mayor Bradshaw attended a July 30, 2019 Commission hearing for the project, which they claim constituted *ex parte* information gathering; and (2) written communications from 2018 between Mayor Bradshaw and the applicant show the Mayor's bias in favor of the project.²⁸ Neither argument has merit.

²⁶ Council Findings (PUD), Feb. 3, 2020, p. 22 (emphasis added, except that "Attachment B" is bolded and underlined in original).

²⁷ Request for Reconsideration, pp. 4-5.

²⁸ The letter from Mayor Bradshaw to the applicant includes a typo in the date. The letter is dated November 20, 2019, but it was actually prepared and sent on November 20, 2018.

A. The Council did not have or consider *ex parte* information in approving the project.

“A quasi-judicial officer must confine his or her decision to the record produced at the public hearing.” *Eacret v. Bonner Cty.*, 139 Idaho 780, 786, 86 P.3d 494, 500 (2004) (overruled on separate grounds by *City of Osburn v. Randel*, 152 Idaho 906, 277 P.3d 353 (2012)).

Mayor Bradshaw’s attendance at a Commission hearing on this project does not constitute an unconstitutional *ex parte* contact. First, Mayor Bradshaw is not a “quasi-judicial officer” in this matter. He did not cast a vote on any of the project applications; that duty has been fulfilled by the Council, the City’s “governing board” under LLUPA. Neighbors do not offer evidence that any of the decision makers on the PUD or the Preliminary Plat relied on any *ex parte* information outside of the record.

Even if Mayor Bradshaw was a decision maker, attendance at a public hearing before the Commission does not constitute an *ex parte* contact. First, all of the testimony from the Commission hearing was distilled into the Commission’s written decisions on the project applications, which were provided to the Council. Second, the testimony presented was publically available to all interested parties. Additionally, some of the Neighbors were actually present at the Commission hearing to hear all of the information and were given multiple opportunities to address and rebut that information at the Council’s multiple public hearings.

B. Mayor Bradshaw’s 2018 communications with the applicant do not establish actual bias on the part of a decision maker.

A “showing of actual bias” is required to “disqualif[y] a decision maker” in a quasi-judicial land use proceeding. *Cowan v. Bd. of Comm’rs of Fremont Cty.*, 143 Idaho 501, 514, 148 P.3d 1247, 1260 (2006). The *Cowan* court rejected an “appearance of fairness” standard advanced by Neighbors’ citation to *Floyd v. Bd. of Comm’rs of Bonneville Cty.*, 137 Idaho 718, 726, 52 P.3d 863, 871 (2002).

As discussed above, Mayor Bradshaw was not a “decision maker” on any of the project applications; accordingly, even if he was actually biased, which there is no evidence of, it would be irrelevant because he did not vote and the project was unanimously approved by the Council.²⁹ See *Floyd v. Bd. of Comm’rs of Bonneville Cty.*, 137 Idaho 718, 726, 52 P.3d 863, 871 (2002) (holding that even a voting decision maker’s actual bias was not grounds to overturn a unanimous 3-0 decision because the biased vote was not a “swing vote” and could be disregarded and the measure would still pass).

Even if Mayor Bradshaw was a decision maker, the 2018 communications do not show actual bias such that Mayor Bradshaw had predetermined he would approve the project. First, the communications were made *before* any of the project applications were made. Second, the communications are only general statements of support for a hotel project. Mayor Bradshaw states that the City will “endeavor” to make the project a success and expressly states that the City will

²⁹ See Hearing Video from Council’s February 3, 2020 Hearing at 01:44:00.

work with the applicant to “facilitate the planning and zoning process,” correctly indicating that future approvals would be required. General support for a project or a land use policy does not show actual bias. *Eacret v. Bonner Cty.*, 139 Idaho 780, 785, 86 P.3d 494, 499 (2004) (“A decision maker is not disqualified simply because he has taken a position, even in public, on a policy issue related to the dispute, in the absence of a showing that the decision maker is ‘not capable of judging a particular controversy fairly on the basis of its own circumstances.’”).

Finally, Mayor Bradshaw’s 2018 communications with the applicant were placed in the record and fully disclosed to the Council, the actual decision makers, prior to the Council’s approval of the project. The communications were also available to the public prior to the final public hearing on the applications where Mayor Bradshaw read a statement that included his 2018 letter to the applicant,³⁰ and the public provided actual testimony on the issue³¹ prior to the Council voting to approve the project applications.

Neighbors’ due process arguments do not provide any reason to reconsider the Council’s approval of the project.

CONCLUSION

The City conducted a lengthy and thorough process and carefully considered the project applications and facts in the record in accordance with applicable standards in the Ketchum City Code. The City’s fact findings and interpretation of its own ordinances are entitled to deference. The Neighbors have not presented any valid reason for the City to reconsider its approval of the Preliminary Plat or PUD. We respectfully ask the Council to deny the Neighbors’ request for reconsideration.

Sincerely,



Deborah E. Nelson

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Clients

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³⁰ See Hearing Video from Council’s January 21, 2020 Hearing at 01:10:00 to 01:13:50.

³¹ See Hearing Video from Council’s January 21, 2020 Hearing at 01:20:30 to 01:22:56.