

**BEFORE THE PLANNING AND ZONING COMMISSION
OF THE
CITY OF KETCHUM**

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|------------------------------|---|--------------------------------------|
| IN RE: |) | AGREEMENT NO. 22847 |
| |) | |
| PEG KETCHUM HOTEL, LLC |) | FINDINGS OF FACT, CONCLUSIONS |
| |) | OF LAW, AND RECOMMENDATION |
| Permit Conditions Acceptance |) | TO THE CITY COUNCIL |
| Development Agreement |) | |
| |) | |
| |) | |

THE ABOVE ENTITLED MATTER coming before the Planning and Zoning Commission of the City of Ketchum (the "Commission"), on the 28th day of March, 2023, pursuant to the Applicant's and the City Staff's renegotiated 3-02-2023 draft Permit Conditions Acceptance Development Agreement (the "Renegotiated Development Agreement") which companions with the Applicant's Planned Unit Development/ Conditional Use Permit No. P19-063 (the "PUD/CUP Permit"). The Commission having reviewed the Renegotiated Development Agreement, and the information provided at the hearing on this matter, and the information provided at that hearing, does hereby make and set forth the Record of Proceedings, Findings of Fact, Conclusions of Law, and Recommendation to the City Council as follows:

SECTION 1

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

Notice of Hearing: Notice of this hearing was:

- Published March 8, 2023 in the Idaho Mountain Express, the City's official newspaper of general circulation; and
- Mailed on the March 8, 2023 to the property owners within 300 feet of the subject real property and affected agencies; and
- Posted on the subject real property on March 21, 2023; and
- Posted on the City's website on the March 13, 2023.

Exhibits

| | <i>DESCRIPTION OF EVIDENCE</i> | <i>Withdrawn</i> | <i>Refused</i> | <i>Admitted</i> |
|---|---|------------------|----------------|-----------------|
| 1 | <p>Staff Report dated March 28, 2023 with Attachments A-H and the following additional attachments:</p> <p>Attachments:</p> <p>A: June 14, 2022 staff report for Design Review Permit P22-028</p> <p>B: Findings of Fact, Conclusions of Law and Conditions of Approval for Design Review Permit P22-028 (the “Findings”) approved June 14, 2022 together with Findings Attachment A: May 11, 2022 Memo Outlining Design Changes in Response to November 20, 2021 Pre-Application Design Review Meeting; and Findings; Attachment B: May 27, 2022 Design Review Plans.</p> <p>C: 3-2-23 Permit Conditions Acceptance Development Agreement.</p> <p>D: Proposed amendment to PUD/CUP P19-63</p> | | | X |
| 2 | Noticing Checklist/Certification | | | X |

PERSONS TESTIFYING and COMMENT:

Staff Report: Suzanne Frick, presented and gave the City staff report with explanation and stood for questions from the Planning and Zoning Commissioners.

Public Comment: Scott Levy had questions about traffic issues related to Highway 75.

Written Comment Received: Two written comments were received prior to the distribution of the Planning and Zoning Commission packet. Those comments are provided in Attachment D of the Staff Report.

DECISION and RECOMMENDATION

WHEREUPON THE PLANNING AND ZONING COMMISSION 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 RECOMMENDATION TO THE CITY COUNCIL, to-wit:

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.

2.2 Findings Regarding Applications Filed:

2.2.1 The City Staff presented to the Commission the Renegotiated Development Agreement together with information that the renegotiation process began between June 14, 2022 and July 6, 2022 which various drafts of the agreement were negotiated concluding with PEG Ketchum Hotel LLC (the "Applicant") agreement with a redlined draft of the Renegotiated Development Agreement on February 27, 2023 that formed the clean 03.02.23 draft Renegotiated Development Agreement. The Renegotiated Development Agreement required that the Applicant file an application for an amendment of the Applicant's Planned Unit Development/ Conditional Use Permit No. P19-063 (the "PUD/CUP Permit") at page 29, Condition No. 5 paragraph 1.5.3 by an increase of the time period for a certificate of the occupancy to be issued for their hotel project after the issuance of a building permit from 18 months to 30 months. The Applicant's Requested Amendment is a part of a renegotiated Permit Conditions Acceptance Development Agreement which was also heard with this matter simultaneously by the Commission.

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

The Commission having reviewed the written comments and having listened to the Staff Report and comments and the comments presented by the public summarizes the same as follows:

- There was no objection to the Renegotiated Development Agreement; and
- The Staff recommended approval of the Renegotiated Development Agreement; and
- The Commissioners had three concerns with the Renegotiated Development Agreement which included the following:

- that section 1.31 Institutional Lender did not adequately define what “good standing” meant; and
 - that section 13.1.2.1 should provide that the Building Official may administratively grant a two (2) month extension if the Building Official determines that additional time is required to complete the Building Permit review; and
 - that section 13.3 Certificate of Occupancy Time Limits should include an additional subsection requiring the Owner (the Applicant) to complete all conditions precedent to issuance of an occupancy permit and submit timely requests for inspections and verification of compliance in sufficient time to obtain a certificate of occupancy no later than thirty (30) months after the building permit is issued.
- The Commission is recommending approval of the Renegotiated Development Agreement to the City Council subject to three concerns above referenced.

2.4 PUD/Conditional Use Ordinance Standards and Planning and Zoning Commission Evaluation Compliance Analysis and Findings:

KMC § 16.08.120 C

- The City of Ketchum is an Idaho municipal corporation and is required by I.C. § 67-6503 to exercise the powers conferred by the Local Land Use Planning Act codified at Chapter 65 of Title 67 Idaho Code; and
- PEG Hotel, LLC (the “Applicant”) has filed with the City the following applications for the development of a hotel within the City:
 - Building Demolition Development Application; and
 - Floodplain Development Permit Application; and
 - Lot Line Shift Development Application; and
 - Planned Unit Development/Conditional Use Permit Application; and
 - Design Review Development Application; and
 - Related PUD/CUP applications for the hotel development.
- The City has processed the Applications and has approved the same subject to numerous conditions; and
- The Ketchum City Code (“KMC”) provides at KMC § 16.08.120 C:

C. Prior to final approval of a PUD conditional use permit, the city council may require, but not limited to, the following:

1. *Such written agreements executed by the developer to secure performance of any requirement or condition to be imposed as part of the approval, including, but not limited to, development, services and/or annexation agreements.*

- In the process of staffing the Applications the City Planning and Building Department staff, in order to assure the Applicant will timely and in compliance with the Applications Permits conditions, has drafted the Renegotiated Development Agreement; and
- The Renegotiated Development Agreement provides for the timely performance by the Applicant of the conditions of the Applications permits granted by the City for the Applicant's hotel development and is in the best interests of the City to which the PEG Ketchum Hotel LLC is agreeable.

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 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.
- 3.3 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

IV. DECISION AND RECOMMENDATION TO THE CITY COUNCIL

Based upon the above and foregoing Findings of Fact/Conclusions of Law and good cause appearing from the record, IT IS HEREBY RECOMMENDED TO THE CITY COUNCIL THAT:

Recommendation No. 1: That the Renegotiated Development Agreement be approved and entered into by the City Council subject to and contingent upon the following terms and conditions:

Condition No. 1 Section 1.31 revision: That the definition of “institutional Lender” in section 1.31 be revised to read:

1.31 Institutional Lender: Means and refers to a national bank, savings association, state-chartered commercial and savings bank which is in good standing, and meets or exceeds all capital and liquidity requirements of the governing financial regulatory body, including passage of its most recent Stress Test, if applicable.

Condition No. 2 Sub-Sub Section 13.1.2.1 revision: That sub-sub section 13.1.2.1 be revised to read:

13.1.2.1 A Building Permit shall be obtained by the Developer/Owner within four (4) months of the date the Building Permit Application is filed with the City. The Building Official may administratively grant a two (2) month extension if the Building Official determines additional time is required to complete the Building Permit review.

Condition No. 3 Section 13.3 revision: That section 13.3 include a subsection 13.3.1 to read:

13.3.1 Owner shall complete all requirements in Section 14 and submit timely requests for inspections and verification of compliance in sufficient time to obtain the certificate of occupancy no later than thirty (30) months after the building permit is issued.

Findings of Fact **adopted** this _____ day of April, 2023.

Neil Morrow, *Chairman*
City of Ketchum Planning and Zoning
Commission