

# WHITE PETERSON

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January 4, 2024

To: Planning & Zoning Commissioners  
City of Ketchum

From: Matthew Johnson, City Attorney

Re: 121 Badger Lane FDP Administrative Appeal – Decision

### Background:

This written Decision was drafted by the City Attorney from the discussion and determination at the Commission's 12/12/23 administrative appeal hearing on this matter. This Decision will formalize and final that determination, as is required within 30 days of the administrative appeal hearing.

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

### Recommended Motion:

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

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

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

In the Matter of the Administrative	)	
Appeal of:	)	
Nicholas & Stephanie Osborn	)	<b>FINDINGS OF FACT,</b>
(Appellant) related to 121 Badger Lane	)	<b>CONCLUSIONS OF LAW, AND</b>
(Applicant)	)	<b>DECISION</b>
	)	
Of a Planning Director Determination	)	
on a Floodplain Development Permit,	)	
P23-014	)	

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This matter comes before the Planning and Zoning Commission of the City of Ketchum ("Commission"), pursuant to Ketchum City Code 17.144.010, as an appeal by an applicant/affected party of a Planning Director determination. An appeal hearing on the matter was held before the Commission on December 12, 2023. The matter was heard for adoption of this written Decision on January 9, 2024. The Commission does hereby make and set forth the following Record of Proceedings and the Commission's Decision as follows:

**I. RECORD OF PROCEEDINGS**

The Appellants in this matter are Nicholas and Stephanie Osborne (“Appellant”), neighboring property owners and an affected party, related to development and a floodplain development permit at 121 Badger Lane (“Project”), owned by 121 Badger Lane, LLC (“Applicant”). The Applicant served as primary Respondent in replying to the issues raised on administrative appeal. Both parties were represented by legal counsel.

A Record of Documents before the Ketchum Planning Department and upon administrative appeal ("Record") was prepared and submitted to the Commission before the

December 12, 2023 hearing. That Record, including briefs and memos filed by the parties, is hereby referenced and incorporated in full into the Record and this Decision.

An appeal hearing on this matter was held on December 12, 2023, at which hearing the Commission heard oral arguments by the Parties, deliberated, and made a verbal determination. Such hearing was recorded and that recording is made a part of the Record in this matter.

## **II. JUDICIAL NOTICE AND REVIEW STANDARD**

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

Pursuant to KMC § 17.144.010 (C), the Commission makes its determination considering the administrator determination below along with written and oral legal arguments by the Parties. New facts or evidence are not considered in the appeal. The Commission may affirm, reverse or modify, in whole or in part, the order, requirement, decision or determination of the administrator.

## **III. FINDINGS, CONCLUSIONS, AND DECISION**

**1. The Administrator's Determination was not in error, but due to the special circumstances of floodplain development the Determination is remanded for additional analysis.**

Upon review of the Record and the argument of the Parties, the Commission finds that the Applicant appropriately submitted required information and the Planning Department reviewed the application appropriately. There is no clear error by the Planning Department that would be cause for a reversal of the Determination.

However, due to the special circumstances of this Application and the level of technical detail involved in floodplain development, this administrative appeal did raise questions and information such that the Commission would like the Department to conduct supplementary review and analysis of the Application/Permit in order to assure the analysis. In particular, the Commission would like further analysis on the modeling difficulties and the evaluation of the involved driveway area. Specifically, under City Code, the Commission remands this matter back to the Department for further work with the Applicant on evaluation and review of the Application in relation to Ketchum Municipal Code §17.88.050 (5) and (6).

This matter is remanded back to the Department for such further analysis and a follow-up administrative determination. The Application, upon further analysis, is not required to come back up to the Commission. The administrative appeal process will remain available to the parties upon the follow-up determination if necessary.

Based upon the foregoing review and analysis, and good cause appearing from the record in these proceedings, the Commission REMANDS the Administrator Determination as presented in this matter and authorizes the Chair to sign this Decision on behalf of the Commission.

\_\_\_\_\_  
Neil Morrow, Chair

ATTEST:

By: \_\_\_\_\_  
, Deputy City Clerk

**NOTICE OF APPEAL RIGHTS:**

This Decision constitutes the written decision of the Commission pursuant to KMC 17.144.010(D). The City Clerk is directed to transmit this Decision to the Appellant and any other affected person who has requested a copy in writing. All parties and affected persons are hereby notified of this decision and their option to consider further action, including further appeal, pursuant to the proceedings set forth in KMC 17.144.020 and Idaho Code § 67-6521.

A copy of this Decision has been provided to the Appellant, Planning Director, and City Attorney, and the original has been retained in the records of this City on this \_\_\_\_ day of \_\_\_\_\_, 2024.

By: \_\_\_\_\_  
, Deputy City Clerk