

WHITE PETERSON

ATTORNEYS AT LAW

KATELIN E. BARTLES
KELSY R. BRIGGS
MARC J. BYBEE
WM. F. GIGRAY, III
DANIEL W. GOODMAN
MATTHEW A. JOHNSON
JACOB M. JONES
WILLIAM F. NICHOLS *

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

BRIAN T. O'BANNON *
PHILIP A. PETERSON
WILLIAM L. PUNKONEY

TERRENCE R. WHITE
OF COUNSEL
WILLIAM F. "BUD" YOST
OF COUNSEL

* Also admitted in OR

September 28, 2023

To: Mayor and Councilmembers, City of Ketchum

From: Matthew Johnson, City Attorney

Re: 200 Leadville Administrative Appeal – Decision

Background:

This written Decision was drafted by the City Attorney from the discussion and determination at the Council's 9/18/23 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 Council to reflect its determination and the reasons for such. In the event of modifications, an alternative motion is provided below.

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

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

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

In the Matter of the Appeal of:)
)
240 Leadville, LLC (Appellant)) FINDINGS OF FACT,
) CONCLUSIONS OF LAW, AND
Of Approval and Recommendation for) DECISION
Design Review and Preliminary Plat;)
P22-035, 035A)

This matter comes before the City Council of the City of Ketchum ("Council"), pursuant to Ketchum City Code 17.144.020, as an appeal by an affected party of Planning and Zoning Commission ("Commission") decisions. An appeal hearing on the matter was held before the Council on September 18, 2023. The matter was heard for adoption of this written Decision on October 2, 2023. The Council does hereby make and set forth the following Record of Proceedings and the Council's Decision as follows:

I. RECORD OF PROCEEDINGS

The Appellant in this matter is 240 Leadville, LLC, an affected party. The Applicant (Owner/Respondent) is 755 S. Broadway, LLC, an applicant.

A Record of Proceedings before the Ketchum Planning and Zoning Commission and upon administrative appeal ("Record") was prepared and submitted to the Council before the September 18, 2023 hearing. That Record is hereby referenced and incorporated in full into the Record and this Decision. The Record includes the following Attachments:

- A. Application for Appeal and Initial Appeal Letter. April 26, 2023
- B. Appellant Memorandum in Support of Appeal, August 14, 2023

- C. Applicant Reply Memorandum, August 26, 2023
- D. Appellant Reply Memorandum, September 8, 2023
- E. Application – Final Design Review
- F. Project Plans – Final Design Review
- G. Application – Condominium Preliminary Plat
- H. Project Plans – Condominium Preliminary Plat
- I. Public Notice
- J. Notice Certification
- K. Staff Report: P&Z Commission, November 29, 2023
- L. Hearing Transcript, November 29, 2023
- M. Staff Report: P&Z Commission, December 20, 2023
- N. Hearing Transcript, December 20, 2023
- O. Staff Report: P&Z Commission, February 28, 2023
- P. Hearing Transcript: February 28, 2023
- Q. Public Comment (all hearings)
- R. Findings of Fact, Conclusions of Law, and Decision – Final Design
Review
- S. Findings of Fact, Conclusions of Law, and Decision – Condominium
Preliminary Plat
- T. FAR Exceedance Agreement #22811

On August 2, 2023, upon receipt of the Record, the Council made procedural determinations and set deadlines as to submission of written argument by the Parties. All submitted Memoranda are referenced above and made a part of the Record in this matter.

An appeal hearing on this matter was held on September 18, 2023, at which hearing the Council 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 Council takes judicial notice of the Ketchum Municipal Code (KMC).

Pursuant to KMC § 17.144.020 (C), the Council makes its determination considering only the Record below along with written and oral arguments by the Parties. No new facts or evidence are considered in the appeal.

III. FINDINGS, CONCLUSIONS, AND DECISION

1. Incorporation of Commission Findings.

The Commission Findings, Conclusions, and Decisions are hereby affirmed and incorporated herein by reference, unless specifically excepted below.

2. The Council's approval of the FAR Exceedance Agreement did not unduly bias the Commission on design review.

The Council finds that the timing of approvals of FAR exceedance agreements have varied over time. However, it was not unusual, as occurred in this case, for the Council to approve an FAR Exceedance Agreement before a matter was taken up for design review. What the Council may determine with respect to what may be acceptable as to exceedance of FAR standards, or which the Applicant may pursue pursuant to KMC 17.124.040, is a separate process, and does not alter the design review authority delegated to the Commission.

Additionally, efficiency of the review process may be assisted by the FAR exceedance being generally resolved in advance.

The Council's decision on the applicable FAR Exceedance Agreement did not determine in advance or prejudice the Commission's design review authority. The Council, as is its prerogative, has kept authority over FAR exceedance agreement matters while delegating the separate authority for design review decisions to the Commission. The Council finds that the Record shows that when the Commission had questions about the FAR Exceedance Agreement that it was made clear the Commission retained full authority to apply the design review standards to the application. There were no improprieties or bias created by the timing of these different steps (FAR Exceedance Agreement and Design Review) in this matter.

3. The Project application was complete, and it was within the discretion of the Commission as to whether to continue to request a 3D model.

Appellants argue that the Project application was incomplete because Applicant did not provide a 3D model of the Project as requested at a hearing. *Appellant Memorandum*, 3.

The Council finds that the Record shows the Commission had requested Applicant to provide a 3D model for a future continued hearing. The Commission is provided discretion to request such additional modelling, but a 3D model is not an outright requirement under KMC.

At the continued hearing, the Applicant provided additional renderings of the Project to illustrate and address the issues for the Commission. The Commission accepted these as sufficient in lieu of the 3D model, as is within the Commission's discretion.

The Council finds that the Commission appropriately acted within its discretion and defers to the judgment of the Commission to accept the alternate renderings and not further require a 3D model.

4. The Commission appropriately allowed for public comment at the February 28, 2023 public hearing.

Appellants argue that the Chair of the Commission made a procedural error at the February 28, 2023 hearing in allowing for re-opening of public comment and a comment from Jeff Swanson. Appellant argues that Appellant should have been given an opportunity to rebut Mr. Swanson's comments.

The Council finds that the Record shows the Chair appropriately inquired about additional public comment during the re-opening of the hearing. The Chair was not required to take additional comment or rebuttal comments from those who had already provided their public comment, which included Appellant. A public hearing is not intended to allow for rebuttal comments back and forth by any and all individuals that may have commented¹. A true rebuttal is provided simply for the applicant in order to provide an opportunity for applicant to respond/address the various public comments that may have been made. Such was appropriately done in this matter and Appellant was not prejudiced in any way.

5. The Commission appropriately evaluated standards as to undulation and relief and as to neighborhood compatibility.

Appellants argue the Project violates certain portions of the KMC and the Comprehensive Plan, due to lack of undulation and relief, as well as incompatibility with the neighborhood.

The Council finds that the Commission appropriately used and applied the relevant standards on these issues of undulation/relief/bulk and compatibility. The Record does not provide reasons to show at this time that the Council should substitute its judgment for that of the Commission, which had the benefit of a full presentation of the materials and comments. The

¹ Those wishing to provide public comment are generally given one opportunity to comment within a time limit. Appellant (who was not the applicant) was appropriately afforded that opportunity.

Council has delegated this design review authority to the Commission, and upon an administrative appeal will generally defer to the fact-finding and application of the Commission absent a showing of misinterpretation or misapplication of City laws or standards. The Council finds no evidence to cause it to not defer to the Commission's reasoned judgment in this matter.

6. Additional Conclusions of Law.

- i The design review decision of the Commission (P22-035) is affirmed and is hereby final.
- ii The condominium plat decision of the Commission (P22-035A) is a recommendation and is affirmed as to that recommendation, but will proceed through additional review steps as provided for by Ketchum Municipal Code.
- iii Every City in the State of Idaho shall exercise the powers conferred upon it by the Local Land Use Planning Act, codified at Chapter 65 Title 67 Idaho Code [I.C. § 67-6503] ("LLUPA").
- iv The City Council may delegate powers required and authorized under LLUPA except the power to adopt ordinances by the establishment of a Planning and Zoning Commission by ordinance pursuant to Idaho Code § 67-6504, which the City Council of Ketchum has established at KMC 4.12.020.
- v The City Council is empowered to establish administrative review and appeal procedures pursuant to its authority under LLUPA, including pursuant to Idaho Code § 67-6521, and which the City of Ketchum has established for zoning regulation matters under KMC 17.144.

Based upon the foregoing review and analysis, and good cause appearing from the record in these proceedings, the Council **AFFIRMS** the Decisions of the Commission as presented in

this matter, with no changes, and authorizes the Mayor to sign this Decision on behalf of the City Council.

Neil Bradshaw, Mayor

ATTEST:

By: _____
Trent Donat, City Clerk

NOTICE OF APPEAL RIGHTS:

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

A copy of this Decision has been provided to the Appellant, the Applicant and the City Attorney, and the original has been retained in the records of this City on this ____ day of _____, 2023.

By: _____
Trent Donat, City Clerk