



Samuel L. Linnet | sam@aiturasiawgroup.com

December 16, 2022

City of Ketchum
Planning and Building Department
Morgan Landers, Director
mlanders@Ketchumidaho.org

RE: Demand to halt design review for the 208 Condos project and terminate FAR Exceedance Agreement 22811

Dear Planning & Building Director Morgan Landers:

I represent 240 North Leadville, LLC, which owns property adjacent to the 208 Condos project. This a demand letter to cease consideration of the design review application for the 208 Condos project. Upon review of the City Council's November 21, 2022 meeting, the Council's consideration and approval of FAR Exceedance Agreement 22811 violated Ketchum City Code ("KMC") and Idaho's Local Land Use and Planning Act ("LLUPA" or "Idaho Code 67-6501 et seq.") because the Council made quasi-judicial determinations reserved for the the Planning and Zoning Commission and failed to notice and conduct a public hearing concerning the same.

By allowing the Council to consider and approve a Far Exceedance Agreement prior to the Planning and Zoning considering design review standards, and doing so outside of a public hearing, the City has jeopardized the lawfully required process for considering 208 Condos design review application. As you are no doubt aware, the remedy to this situation is to void Far Exceedance Agreement 22811, and re-notice and re-hear the 208 Condos design review application in front of the Planning and Zoning Commission. Accordingly, on behalf of my client, I respectfully demand that the currently scheduled consideration of the 208 Condos application be pulled from the upcoming December 20, 2022 Planning and Zoning Commission meeting.

The primary rules and laws applicable to this matter are Idaho's LLUPA and KMC, Title 17. Under LLUPA, city councils may either retain their planning and zoning authority or delegate it to a commission. Idaho Code § 67-6504. Ketchum elected to establish a planning and zoning commission pursuant to Idaho Code § 67-6504, and the only planning and zoning power retained by the Council is the authority to adopt ordinances, to finally approve land subdivisions, and to act in an appellate capacity for appeals from the Planning and Zoning Commission. See

KMC § 4.12.020; Idaho Code § 67-6504; *Brower v. Bingham Cty. Comm'rs* (In re The Application for Zone Change), 140 Idaho 512, 514, 96 P.3d 613, 615 (2004). Importantly, LLUPA requires governing boards to adopt hearing procedures that “provide an opportunity for all affected persons to present and rebut evidence.” Idaho Code § 67-6534.

Under Ketchum City Code, the Planning and Zoning Commission is required to conduct design review for mixed use buildings and projects in all zoning districts. KMC §§ 17.96.010 and 030.b. Specifically, KMC § 17.96.050.A states that the Commission, not the City Council, shall determine whether an application for design review conforms to all standards under Title 17. KMC § 17.124.040 is a development standard that applies to all projects in CC zoning districts, which constrains projects to a maximum floor area ratio (FAR), unless some community housing benefit is provided. Subsection B.2 of this code states that an increased FAR may be permitted by the Planning and Zoning Commission subject to design review, which necessarily requires that an applicant must go through design review to receive a FAR Exceedance Agreement. Lastly, KMC § 17.144.020 establishes the Council as an appellate body for decisions made by the Planning and Zoning Commission.

Only the Planning and Zoning Commission can approve a FAR Exceedance Agreement after, or concurrently with, design review because the Council dedicated its planning and zoning powers to the P&Z Commission. The Idaho code sections and KMC sections cited above lay out clear, legally defensible procedures for projects subject to design review. The Planning and Zoning Commission is vested with the sole authority to evaluate whether an application for design review meets the standards under KMC Title 17. Once the Planning and Zoning Commission has made its quasi-judicial determinations about whether an application meets all standards, then that decision can be appealed. The maximum floor area ratio standard is a standard of evaluation that the Planning and Zoning Commission, not City Council, must consider during design review.

Here, the City Council's consideration and determination that the 208 Condos project met the FAR standard and the amount of a community housing in-lieu fee was improper because that determination is reserved for the Planning and Zoning Commission. FAR Exceedance Agreement 22811 contains a recital of the FAR standard under KMC § 17.121.040 and an analysis of the standard as it relates to the 208 Condos design review application. While the City may intend for the Planning and Zoning Commission to have “final” say over this matter, the City Council's determination that the FAR standard was met and that a sum certain for the in-lieu fee is appropriate prejudices the Planning and Zoning Commission's ability to impartially and independently consider all design review standards, especially when such determination is reduced to an enforceable contract. Furthermore, since the City Council sits in an appellate capacity, it has biased itself against any appeals that may concern the project or the FAR agreement. Lastly, and potentially most significant, the public and impacted neighbors were not given

notice or an opportunity to be heard when the Council considered whether to approve FAR Exceedance Agreement 22811.

As stated above, the corrective action requested by my client is for the 208 Condo design review application to be considered in its entirety by the Planning and Zoning Commission and without any undue influence from the City Council. This requires FAR Exceedance Agreement 22811 to be terminated and the 208 Condos design review public hearing to be postponed. Eventually, the Planning and Zoning Commission may elect to enter into or advise the City Council to enter into a similar agreement, but it must do so without the undue influence of knowing that the City Council has already reviewed and approved the FAR standard for this project. The imminence of the upcoming Planning and Zoning hearing to consider the 208 Condos design review application requires your response as soon as possible, but no later than Monday, December 19, 2022 at 5:00 PM.

My client supports and understands the need for the community housing in-lieu fee, but both the public and City need to ensure that it is extracting those fees with a legal and defensible process that will not jeopardize the utility of the funds received or divert attention and resources from community housing and towards appeals and litigation.

ALTURAS LAW GROUP, PLLC



Samuel L. Linnet
Attorney for 240 Leadville, LLC

Cc: Mayor Neil Bradshaw
City Attorney Matt Johnson
City Council President Michael David
Councilor Amanda Breen
Councilor Jim Slanetz
Councilor Courtney Hamilton

From: [Participate](#)
To: [Morgan Landers](#); [Heather Nicolai](#)
Subject: FW: P & Z Meeting on December 20
Date: Monday, December 19, 2022 12:59:26 PM

Public comment.

LISA ENOURATO | CITY OF KETCHUM

Public Affairs & Administrative Services Manager

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From: John Melin <johntmelin@gmail.com>
Sent: Monday, December 19, 2022 11:43 AM
To: David Hutchinson <david@vpcompanies.com>
Cc: Participate <participate@ketchumidaho.org>
Subject: Re: P & Z Meeting on December 20

No doubt he got to Neil with an offer of in lieu fees.

Please let me know if the meeting is a go.

Thanks,

John

On Mon, Dec 19, 2022 at 10:18 AM David Hutchinson <david@vpcompanies.com> wrote:

John,
Thanks for this ! Need to stop this stuff.

The other thing about this is the applicant is trying to “buy” these size bonuses, which makes no sense in this location.

Dave

From: John Melin <johntmelin@gmail.com>
Sent: Monday, December 19, 2022 10:11 AM
To: participate@ketchumidaho.org
Subject: P & Z Meeting on December 20

P & Z Commissioners
City of Ketchum

Dear Commissioners,

I whole heartedly support Dave Hutchinson in his opposition to the proposed building at the corner of Leadville Ave and Second Street. While I have limited knowledge of the specifics of the project, I am aware of the impact that these large buildings can have on the downtown parking and the downtown image.

As the owner of the Elephant's Perch and Ketchum Kitchens, I fought against the poorly conceived Blue Bird project which is dramatically under-parked and over-sized. Parking is the life blood of retail and, in Ketchum, as you all know, the Town Square area is significantly under parked during our peak tourist seasons of December and Summer. This is important because local retailers need to generate significant sales during these three months to survive for the full year.

Further, these lot-line to lot-line, very tall buildings will destroy the small town feeling of Ketchum that is so essential to attracting tourists. A 40' concrete block firewall on a small lot can ruin the character of any street.

The proposed building is a great example of the type of development that P&Z should be driving out of the CC zone.

- A large, square building that runs lot-line to lot-line, with a 40' fire wall abutting an adjacent property owner is unsightly and unfairly damages numerous nearby buildings.
- Fourth Street off Sun Valley Road is one of the charm streets in Ketchum. The idea that it gets developed with oversized buildings is repugnant. Whatever is allowed on this lot will set a precedent for the lot across the street.
- The lot is too small to have adequate parking, which will lead to more street parking during peak season. The area around the Kneadery already has a parking issue during peak tourist season. This shortage of parking will eventually affect the parking at Elephant's Perch and other businesses on East Avenue.
- All of the recent buildings with expensive condos on the upper floors will be populated by 2nd homeowners who will not bring year-round pedestrian traffic downtown but will rather increase parking use during peak seasons.

Finally, I do not believe that I was properly noticed about this project. I have a 20-year lease on the Elephant's Perch and I did not receive any communication. The Perch building is owned by an 97 year-old out-of-town owner who is battling health issues and he did not forward any communication.

It is essential that the P & Z and the City Council take a hard line with developers to ensure that they create projects that meet the high-character standards of Ketchum.

John Melin
30 Year Resident