



City of Ketchum

CITY COUNCIL MEETING AGENDA MEMO

Meeting Date: May 15, 2023 Staff Member/Dept: Paige Nied, Associate Planner
Planning and Building Department

Agenda Item: Recommendation to Approve Right-of-Way Encroachment Agreement #22848 for the placement of driveway pavers in the public right-of-way at 591 E 9th Street.

Recommended Motion:

I move to authorize the Mayor to sign Right-of-Way Encroachment Agreement #22848 with Andrew and Kim Castellano.

Reasons for Recommendation:

- The improvements will not impact the use or operation of 9th Street.
- The improvements will not impact drainage or snow removal within the public right-of-way.
- The project complies with all standards for Right-of-Way Encroachment Permit issuance specified in Ketchum Municipal Code §12.12.060.

Policy Analysis and Background (non-consent items only):

The new single-family residence located at 591 E 9th Street within the Tourist 4000 (T-4000) Zoning District requires a Right-of-Way Encroachment Permit for a driveway snowmelt system and pavers within the City’s right-of-way along 9th Street. The proposed encroachment complies with all standards for permanent right-of-way encroachments specified in Ketchum Municipal Code §12.12.060. Permanent encroachments within the right-of-way must be in the public interest pursuant to Ketchum Municipal Code §12.12.060.A. Snowmelt systems reduce icy conditions on driveways and circulation areas creating a safe pathway for property owners accessing their individual homes.

During the April 3, 2023, City Council meeting, the Council determined that due to the carbon dioxide emissions produced by snowmelt systems that they are not in the public interest and informed staff that they will no longer permit residential snowmelt systems within the public right-of-way, unless required by the Streets or Fire Department for nonconforming driveways. However, the Council did acknowledge certain residential projects which include snowmelt systems within the right-of-way that already had building permits issued for and decided to move forward and approve those applications. The subject Encroachment Agreement for a residential snowmelt system within the right-of-way is included as one of the projects with a previously issued building permit that the Council has agreed to approve.

Pursuant to Ketchum Municipal Code §12.12.040.C, a Right-of-Way Encroachment Permit is required for any permanent encroachment within the public right-of-way where a permanent fixture in the ground or attached to a building will occur. The standards for issuance of a Right-of-Way Encroachment Permit are specified in Ketchum Municipal Code §12.12.060. The City Council has the authority to review and approve

all permanent encroachments within the public right-of-way associated with a development project pursuant to Ketchum Municipal Code §17.96.030.C. The associated Right-of-Way Encroachment Agreement is intended to help protect the City in the event the proposed encroachments were to ever pose an issue requiring repair, relocation, or removal of the encroachment. The agreement also obligates the property owner to install, maintain, and repair the permanent encroachments.

Sustainability Impact:

The City Council has determined that residential snowmelt systems within the public right-of-way hinder the City's ability to meet the Sustainability Action Plan – 2020 and asserted that they will no longer approve these encroachments moving forward. The subject Right-of-Way Encroachment Agreement for a residential snowmelt system had a building permit issued prior to this determination, therefore, the Council has agreed to approve of it.

Financial Impact:

None OR Adequate funds exist in account.	There is no financial requirement from the city for this action at this time.
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Attachments:

- | |
|--------------------------------------|
| 1. ROW Encroachment Agreement #22848 |
| 2. Exhibit "A" |
| 3. Exhibit "B" |

WHEN RECORDED, PLEASE RETURN TO:

**OFFICE OF THE CITY CLERK
CITY OF KETCHUM
POST OFFICE BOX 2315
KETCHUM, IDAHO 83340**

RIGHT-OF-WAY ENCROACHMENT AGREEMENT 22848

THIS AGREEMENT, made and entered into this ____ day of ____, 2023, by and between the CITY OF KETCHUM, IDAHO, a municipal corporation ("Ketchum"), whose address is Post Office Box 2315, Ketchum, Idaho and ANDREW JOSEPH CASTELLANO ("Owner"), whose mailing address is Post Office Box 1180, Ketchum, Idaho and who owns real property located at 591 East 9th Street, Ketchum, Idaho 83340 ("subject property").

RECITALS

WHEREAS, Owner is the owner of real property described as 591 East 9th Street ("Subject Property"), located within the City of Ketchum, State of Idaho; and

WHEREAS, Owner wishes to permit the placement of a driveway snowmelt system and pavers within the right-of-way on 9th Street. These improvements are shown in Exhibit "A" attached hereto and incorporated herein (collectively referred to as the "Improvements"); and,

WHEREAS, Ketchum finds that said Improvements will not impede the use of said public right-of-way at this time subject to the terms and provisions of this Agreement;

WHEREAS, the Owner will restore the street, curb and gutter and any landscaping back to the original condition acceptable to the Streets and Facilities Director;

NOW, THEREFORE, in contemplation of the above stated facts and objectives, it is hereby agreed as follows:

TERMS AND CONDITIONS

1. Ketchum shall permit Owner to install a driveway snowmelt system and pavers identified in Exhibit "A" within the public right-of-way on 9th Street, until notified by Ketchum to remove the infrastructure at which time Owner shall remove infrastructure at Owner's expense.

2. Owner shall be responsible for the maintenance of said Improvements and shall repair said improvements within 48 hours upon notice from Ketchum that repairs are needed. Any modification to the improvements identified in Exhibit "A" shall be approved by the City of Ketchum prior to any modifications taking place.

3. Snowmelt systems installed in the public right-of-way shall be installed as certified in Exhibit "B - Residential Snowmelt Installation Certificate" and operate at all times during the winter according to the following:
- The system shall meet the requirements of the International Energy Conservation Code (2018 IECC, 403.12.2)

- The system shall have an electronic main control board to operate the system that is programmable and optimizes the way the system functions.
- Installation of in-ground control sensors linked to the main control board that detect snow and ice on the surface, monitor the sidewalk or driveway temperature, and automatically activates the system to be turned on or off based on the snow condition and air temperature.

4. Owner shall be responsible for restoring the street, curb and gutter, and landscaping that is altered due to the construction and installation of the Improvements, to the satisfaction of the Director of Streets and Facilities.

5. In consideration of Ketchum allowing Owner to maintain the Improvements in the public right-of-way, Owner agrees to indemnify and hold harmless Ketchum from and against any and all claims of liability for any injury or damage to any person or property arising from the Improvements constructed, installed and maintained in the public right-of-way. Owner shall further indemnify and hold Ketchum harmless from and against any and all claims arising from any breach or default in the performance of any obligation on Owner's part to be performed under this Agreement, or arising from any negligence of Owner or Owner's agents, contractors or employees and from and against all costs, attorney's fees, expenses and liabilities incurred in the defense of any such action or proceeding brought thereon. In the event any action or proceeding is brought against Ketchum by reason of such claim, Owner, upon notice from Ketchum, shall defend Ketchum at Owner's expense by counsel satisfactory to Ketchum. Owner, as a material part of the consideration to Ketchum, hereby assumes all risk of damages to property or injury to persons in, upon or about the Improvements constructed, installed and maintained in the public right-of-way arising from the construction, installation and maintenance of said Improvements and Owner hereby waives all claims in respect thereof against Ketchum.

6. Ketchum shall not be liable for injury to Owner's business or loss of income therefrom or for damage which may be sustained by the person, goods, wares, merchandise or property of Owner, its tenants, employees, invitees, customers, agents or contractors or any other person in or about the Subject Property caused by or resulting from the Improvements constructed, installed, removed or maintained in the public right-of-way.

7. Owner understands and agrees that by maintaining the Improvements in the public right-of-way pursuant to this Agreement, Owner obtains no claim or interest in said public right-of-way which is adverse to that of Ketchum and that Owner obtains no exclusive right to said public right-of-way nor any other right to use the public right-of-way not specifically described herein.

8. In the event either party hereto retains an attorney to enforce any of the rights, duties and obligations arising out of this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party reasonable attorney's fees at the trial and appellate levels and, whether or not litigation is actually instituted.

9. This Agreement shall be governed by, construed, and enforced in accordance with the laws and decisions of the State of Idaho. Venue shall be in the District Court of the fifth Judicial District of the State of Idaho.

10. This Agreement sets forth the entire understanding of the parties hereto and shall not be changed or terminated orally. It is understood and agreed by the parties hereto that there are no verbal promises or implied promises, agreements, stipulations or other

representations of any kind or character pertaining to the Improvements maintained in the public right-of-way other than as set forth in this Agreement.

11. No presumption shall exist in favor of or against any party to this Agreement as the result of the drafting and preparation of this document.

12. This Agreement shall be recorded with the Blaine County Recorder by Ketchum.

13. The parties fully understand all of the provisions of this Agreement, and believe them to be fair, just, adequate, and reasonable, and accordingly accept the provisions of this Agreement freely and voluntarily.

OWNER:

CITY OF KETCHUM:

By: _____
Andrew Joseph Castellano

By: _____
Neil Bradshaw
Its: Mayor

STATE OF _____,)
County of _____,) ss.

On this ____ day of _____, 2023, before me, the undersigned Notary Public in and for said State, personally appeared _____, known to me to be the person who executed the foregoing instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Notary Public for _____
Residing at _____
Commission expires _____

STATE OF IDAHO)
County of Blaine) ss.

On this ___ day of _____, 2023, before me, the undersigned Notary Public in and for said State, personally appeared NEIL BRADSHAW, known or identified to me to be the Mayor of the CITY OF KETCHUM, IDAHO, and the person who executed the foregoing instrument on behalf of said municipal corporation and acknowledged to me that said municipal corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year in this certificate first above written.

Notary Public for _____
Residing at _____
Commission expires _____

EXHIBIT "A"

City of Ketchum
Approved
BL 0220-00044
06/07/22

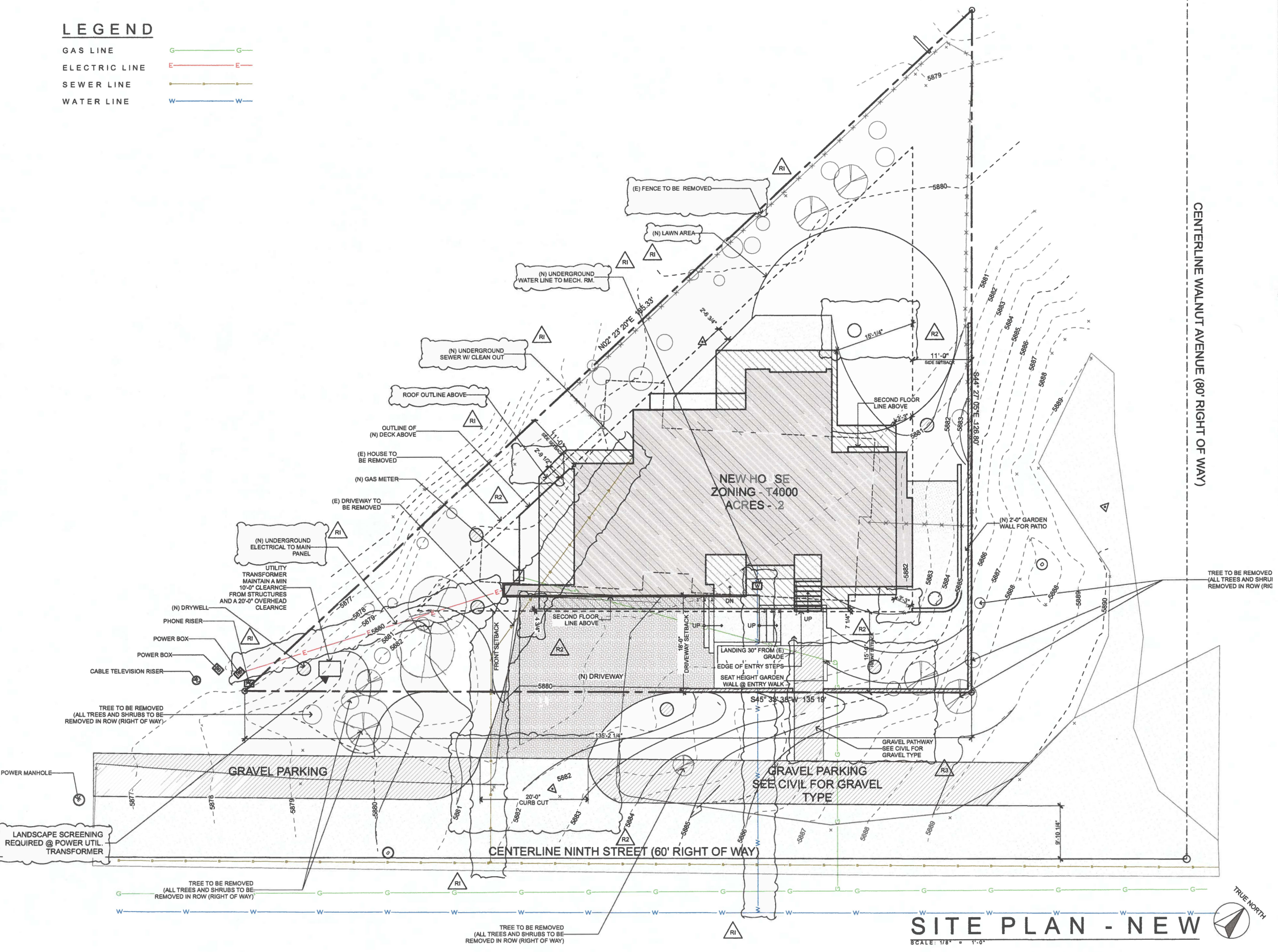
591 9TH STREET, LOT 1, BLOCK 1, MEDEGENUG SUBDIVISION
Prepared for Andy & Kim Castellano

Utmost (208) 720-0432
Email: evgottech@gmail.com

SCALE OF STREETS
STEPHEN

LEGEND

GAS LINE	G
ELECTRIC LINE	E
SEWER LINE	S
WATER LINE	W



TOBIN DOUGHERTY ARCHITECTS

OFFICE OF ARCHITECTURE
PLANNING
INTERIORS / DESIGN

TOBIN T DOUGHERTY AIA
PRINCIPAL ARCHITECT
914 INDUSTRIAL AVE
PALO ALTO, CA
OFFICE: 650.323-1890
email @ info@tobinarchitects.com



STAMP:

The Architect expressly reserves its common law copyright and other property rights in these plans. These plans are not to be reproduced, altered or copied in any form or manner what so ever, nor are they to be assigned to a third party without first obtaining written permission and consent from the Architect. In the event of unauthorized reuse of these plans by a third party, the Architect shall be held harmless. Copyright © 2022
Tobin T. Dougherty Architects PA

PROJECT:
CASTELLANO FAMILY
K-HOUSE

PROJECT LOCATION:
591 EAST NINTH STREET
KETCHUM, ID 83340

PROJECT LOG:

PLN SUB. 02.22.22
RI PLAN CHECK 4.27.22
R2 PLAN CHECK 5.09.22
R3 STREETS DEPT. 5.31.2022

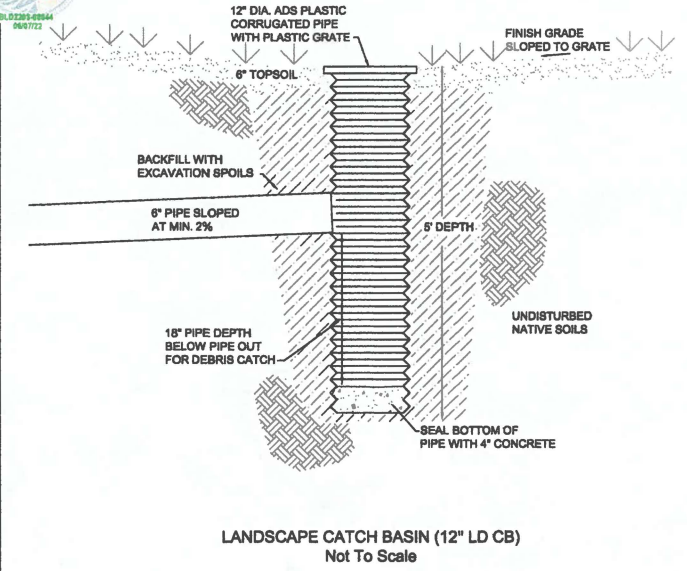
A1.1

Project Number: #Project ID
Sheet Date: 5/31/22

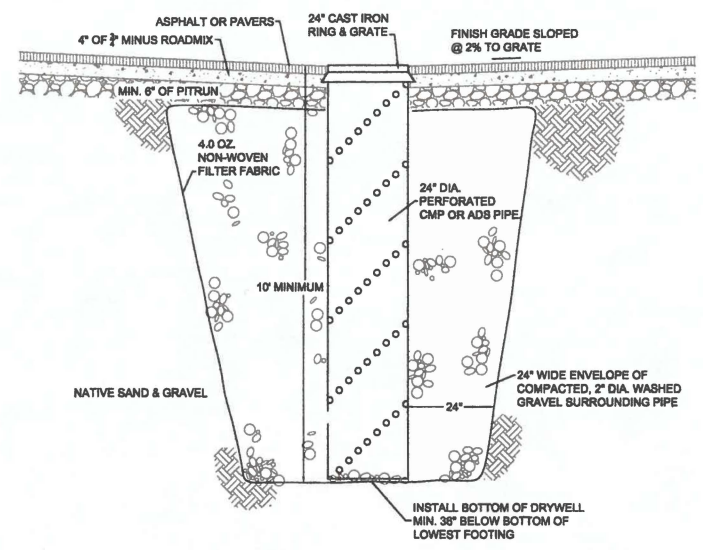
SITE PLAN - NEW
SCALE: 1/8" = 1'-0"



City of Ketchum
Approved
03.02.2022
03/22



LANDSCAPE CATCH BASIN (12" LD CB)
Not To Scale



STORMWATER DRYWELL (SW-DW) PROFILE

- GRADING & DRAINAGE NOTES**
- The entire lot area consisting of patios, walkways, roof, driveway and landscaping totals approximately 0.20 s.f.
 - Bedrock is anticipated to be encountered during the geotechnical investigation based on reports of adjacent projects so all surface runoff shall be collected by catch basins and trench drains and piped to a drywells located in the west and north corners of the lot.
 - A 4" solid PVC collector pipe shall be installed on top of the footing or at least 2 feet below finish grade around the entire structure to collect runoff from catch basins & trench drains. The pipe shall be sloped at a min. of 1% and terminate in the drywells.
 - See the "Patio Drywell Infiltration System Sizing Worksheet" for drywell dimensions.
 - Runoff from the 9th Street and Walnut Avenue right-of-ways shall be directed to catch basins that terminate in a stormwater drywell located within the right-of-way.
 - See the "Stormwater Drywell Profile" for drywell dimensions.
 - The contractor is responsible for contacting Digline Utility Locate to mark all existing utilities in order to protect all utilities.
 - Any revision during installation of the drainage plan should be reviewed by the engineer.
 - The paver driveway is snowmelted by a hydronic heating system.
 - Catch basins on private property can consist of a 12" solid ADS pipe with a minimum 12" catch below the lowest invert/outvert with concrete poured in the bottom.
 - Owner is required to remove snow in ROW parking area.
 - The centerline of the drainage swales in the ROW shall be a minimum of 36" from the back of the 4 foot tall landscape walls to minimize surcharging the wall.
 - There is no surcharge loading on the grading plan retaining walls.

Infiltration System Sizing Worksheet

The proposed infiltration system consists of a drywell to infiltrate stormwater from the entire lot.

Onsite Native Soil Infiltration			
Infiltration Rate:	120 in/hr	Assumed T _c :	15 min
Factor of Safety:	2	Intensity (25-yr, 15 min):	0.43 in/hr
Design Infiltration Rate:	60 in/hr	Intensity (25-yr, 1 hr):	1.72 in/hr

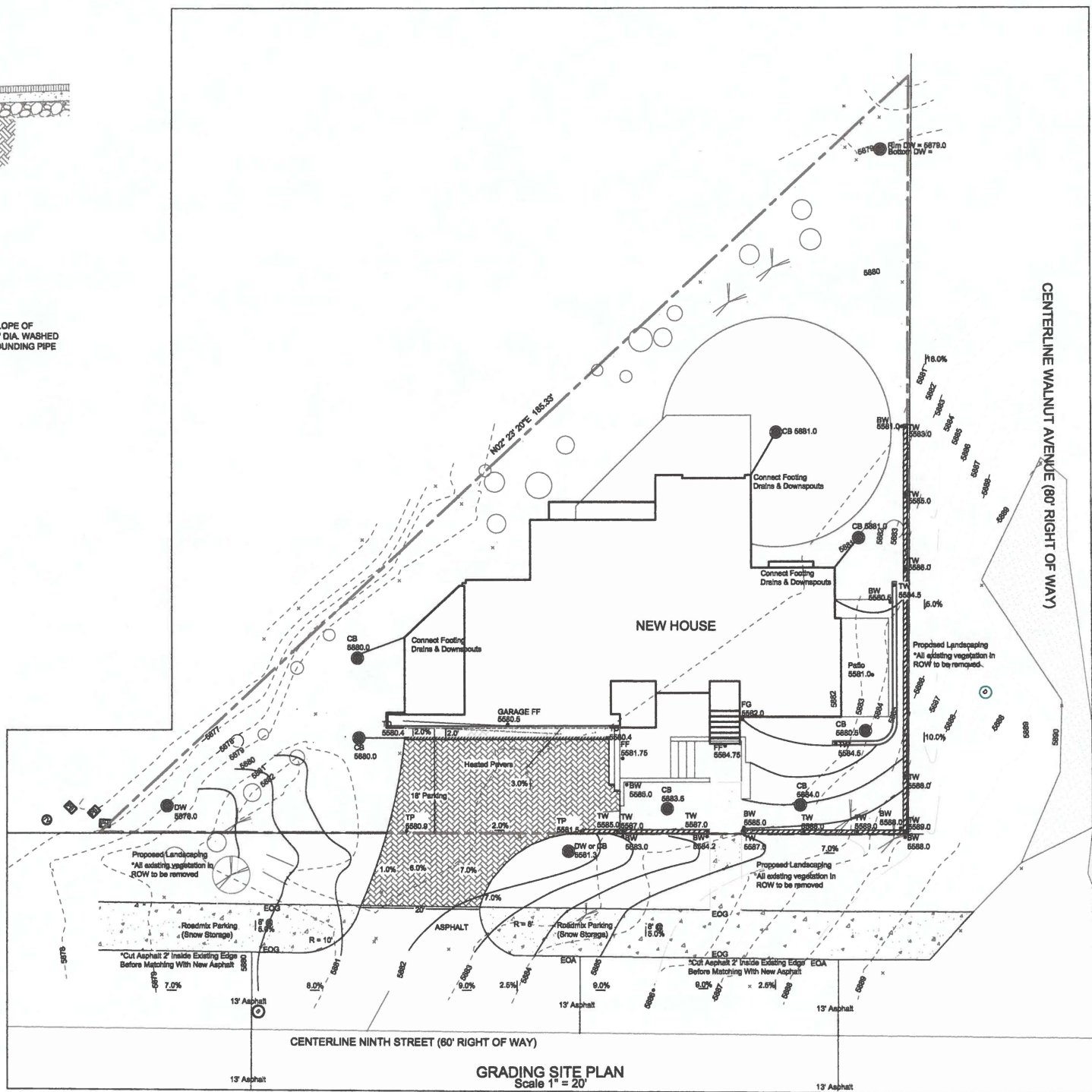
Total Site Infiltration Sizing			
Proposed Impervious Area:	8712 sf	Proposed Pervious Area:	8712 sf
Proposed Impervious Area:	0.20 ac	Proposed Pervious Area:	0.20 ac
Runoff Coefficient:	1	Runoff Coefficient:	0.35
25-Year Design Runoff:	0.34 cfs	25-Year Design Runoff:	0.12 cfs

Drywell Structure Dimensions			
Drywell Manhole Diameter:	24 in		
Drain Rock Thickness:	24 in		
Drain Rock Void Ratio:	0.4		
Drywell Rim Elevation:	5879.00		
Lowest Inlet Invert Elevation:	5877.00		
Depth to Bottom of Drywell:	10.0 ft		
Bottom Elevation:	5869.00		

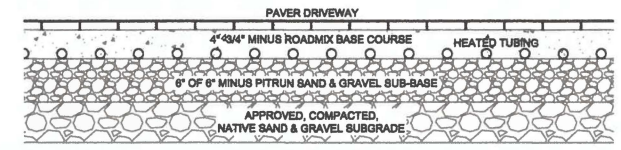
Drywell Stage-Storage-Discharge									
Drywell Stage	Water Surface Depth	Elevation	Storage in MH	Storage in Drain Rock	Total Storage	Bottom Wetted Area	Side Wetted Area	Total Wetted Area	Drywell Infiltration Flow Rate
(ft)	(ft)	(ft)	(cf)	(cf)	(cf)	(sf)	(sf)	(sf)	(cfs)
0.00	10.00	5869.00	0.0	0.0	0.0	28.3	0.0	28.3	0.039
0.80	9.20	5869.80	2.5	8.0	10.6	28.3	15.1	43.4	0.060
1.60	8.40	5870.60	5.0	16.1	21.1	28.3	30.2	58.4	0.081
2.40	7.60	5871.40	7.5	24.1	31.7	28.3	45.2	73.5	0.102
3.20	6.80	5872.20	10.1	32.2	42.2	28.3	60.3	88.6	0.123
4.00	6.00	5873.00	12.6	40.2	52.8	28.3	75.4	103.7	0.144
4.80	5.20	5873.80	15.1	48.3	63.3	28.3	90.5	118.8	0.165
5.60	4.40	5874.60	17.6	56.3	73.9	28.3	105.6	133.8	0.186
6.40	3.60	5875.40	20.1	64.3	84.4	28.3	120.6	148.9	0.207
7.20	2.80	5876.20	22.6	72.4	95.0	28.3	135.7	164.0	0.228
8.00	2.00	5877.00	25.1	80.4	105.6	28.3	150.8	179.1	0.249

DRYWELL DESIGN FOR PROPOSED SUBDIVISION

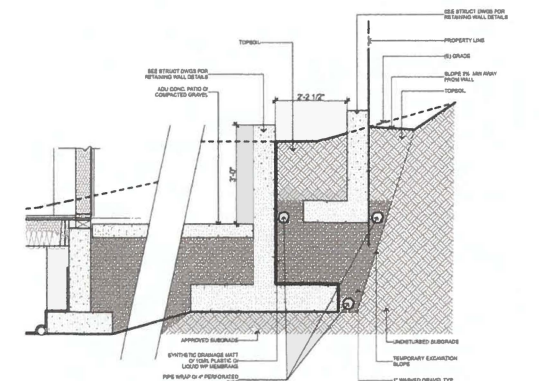
Castellano Residence
Surface Drainage Drywell Design
Ketchum, Idaho
BY: SB DATE: 03/07/22



GRADING SITE PLAN
Scale 1" = 20'



HEATED PAVERS SECTION
NOT TO SCALE



RETAINING WALLS SECT. @ ADU



GRAVEL PARKING SECTION
NOT TO SCALE

- NOTES:**
- All uncontrolled fill, organics & native silty sand soils shall be removed to expose free-draining sand & gravel subgrade.
 - If 18" of native silty sand soil is removed and subgrade is silty fine sand soil the engineer should proof-roll subgrade before approving construction of structural road section or authorizing the excavation of additional silty fine sand to expose a competent subgrade.
 - Exposed sand & gravel subgrade shall be watered and compacted with multiple passes of a 5-ton smooth drum roller.
 - The subgrade, sub-base and base course shall be compacted to at least 95% of the maximum dry density of the material according to ASTM D-698 and approved by this office before constructing subsequent layer of structural section.
 - Any soft areas shall be removed and backfilled with approved on-site or imported, sand and gravel structural fill compacted to at least 95% of the maximum dry density of the material according to ASTM D-698.
 - The engineer shall observe exposed subgrade prior to constructing sub-base.
 - All imported structural fill or on-site sand and gravel structural fill shall be approved by the engineer prior to placing material.

- NOTES:**
- All uncontrolled fill, organics & native silty sand soils shall be removed to expose free-draining sand & gravel subgrade.
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 - The engineer shall observe exposed subgrade prior to constructing sub-base.
 - All imported structural fill or on-site sand and gravel structural fill shall be approved by the engineer prior to placing material.

GRADING & DRAINAGE PLAN
for the
CASTELLANO RESIDENCE
located at
591 9TH STREET, LOT 1, BLOCK 1, HEDGEHOG SUBDIVISION
Prepared for Andy & Kim Castellano

BUTLER ASSOCIATES, INC.
Geotechnical & Civil Engineering & Land Planning Consulting
208 Spruce Ave. N.
P.O. Box 1054, Ketchum, ID 83340
Office: (208) 726-4432
Email: eng@butlerassoc.com

REGISTERED PROFESSIONAL ENGINEER
STATE OF IDAHO
No. 18202
DATE: 03/07/22

NO.	DATE	BY
1		

Sheet 1 of 1
PROJECT INFO AND PRINT DATE
Castellano-Grading & Drainage Plan-1/16/22

EXHIBIT "B"



City of Ketchum
Planning & Building

EXHIBIT "B"
RESIDENTIAL SNOWMELT INSTALLATION CERTIFICATE

PROPERTY OWNER'S NAME: Andy and Kim Castellano

PROPERTY ADDRESS: 501 East 9th Street, Ketchum ID

LEGAL DESCRIPTION: Hedgehog Sub, Lot 1 Block 1

PARCEL NUMBER: RPK06180010010

INSTALLATION CONTRACTOR INFORMATION

COMPANY NAME: Thornton Heating + Sheetmetal, Inc

CONTRACTOR ADDRESS: PO Box 242

CONTRACTOR PHONE: 208 726 5520

CONTRACTOR EMAIL: matt@thornton-heating.com

Pursuant to the requirements of Right-of-Way Encroachment Agreement # _____, the installation contractor certifies the following:

I certify that the system proposed meets all requirements of the International Energy Conservation Code (2018 IECC, 403.12.2).

I certify that the boiler/heatpump/other (circle one) operates at a 95 percent efficiency.

Boiler/Heatpump Model Number: Lochinor WHP285

Other: _____

I certify that geofabric will be installed under the pavers to ensure positive drainage off the driveway or sidewalk.

I certify that the system will be operated by an electronic main control board that optimizes the way the system functions and minimizes inefficiencies to the greatest degree possible.

I certify that the system will be installed with in-ground control sensors, linked to the main control board, that detect snow and ice on the surface, monitor the sidewalk or driveway temperature, and automatically activates the system to be turned on or off based on the snow condition and air temperature.

By, Installation Contractor:

Print Name: Matt Thornton

Signature: [Signature]

Date: 4-18-23

By, Owner:

Print Name: Andrew Castellano

Signature: [Signature]

Date: 4/29/23

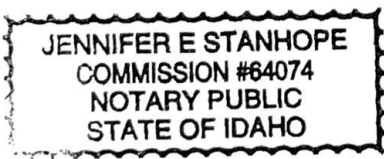
STATE OF Idaho)

) ss.

County of Blaine)

On this 18th day of April, 2023, before me, the undersigned Notary Public in and for said State, personally appeared Matt Thornton (Installation Contractor), known to me to be the person who executed the foregoing instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.



[Signature]

Notary Public for Idaho

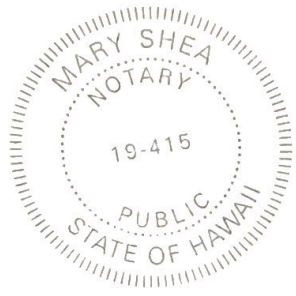
Residing at Blaine County

Commission expires 8-11-26

STATE OF Hawaii)
) ss.
County of Hawaii)

On this 27th day of April, 2022³, before me, the undersigned Notary Public in and for said State, personally appeared Andrew Castellano (Owner), known to me to be the person who executed the foregoing instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.



Mary Shea
Notary Public for Hawaii
Residing at Kamuela, Hi
Commission expires 10/13/2023

Doc. Date: <u>4/27/2023</u>	# Pages: <u>3</u>
Notary Name: Mary Shea	Third Circuit
Doc. Description: <u>Residential</u>	Stamp or Seal
<u>Snowmelt</u>	
<u>Mary Shea</u>	
Notary Signature	Date
	<u>4/27/2023</u>

