



City of Ketchum

STAFF REPORT KETCHUM PLANNING AND ZONING COMMISSION REGULAR MEETING OF JUNE 8, 2020

PROJECT: Nalen Appeal

FILE NUMBER: P20-028

OWNER: Craig A. Nalen

APPLICANT: Fritz X. Haemmerle, Haemmerle Law, P.L.L.C., on behalf of Craig Nalen

REQUEST: Appeal of an administrative decision

LOCATION: 201 Garnet Street (FR SE SW TL 8492 SEC 18 4N 18E)

ZONING: Limited Residential (LR)

OVERLAY: None

NOTICE: Notice was published in the Idaho Mountain Express on May 20, 2020. Notice was mailed to property owners within a 300-foot radius on May 22, 2020. Notice was posted at three (3) public locations and on the subject property on May 22, 2020.

ATTACHMENTS:

Attachment A – Administrator’s Certification of Procedural Requirements

Attachment B – Record of the case

- B.1** Administrator zoning determination letter, “Zoning Determination Pursuant to Ketchum Municipal Code Section 17.124.170 for the proposed Craig Nalen Residence at 201 Garnet Street, Ketchum, Idaho,” dated March 9, 2020
- B.2** Garnet Street Agreement (instrument #403847)
- B.3** Fritz Haemmerle letter dated January 21, 2020
- B.4** KMC §17.12.030.C: Dimensional Standards Matrix
- B.5** KMC §17.124.170: Minimum Standards for One-Family Dwellings
- B.5** KMC §17.04.040: Interpretation
- B.6** Development Review meeting agenda dated January 8th, 2020
- B.7** 201 Garnet Street Drainage & Snow Storage Calculations and supporting materials (13 pages), S&C Associates, March 6, 2020

Attachment C – Notice of Appeal dated March 23, 2020 and Brief, Haemmerle Law, P.L.L.C.

Recommendation and Summary

Staff recommends the Commission:

1. Accept the Administrator's certificate of procedural requirements by adopting proposed Motion #1
2. Accept the Commission's record of the case and set the matter for hearing for the June 8, 2020 meeting by adopting proposed Motion #2 and #3
3. Review the record, and hear oral arguments from the appellant and from staff, deliberate, and direct staff to draft Findings of Fact, Conclusions of Law, and Decision to be considered for adoption at a special meeting to occur prior to July 8, 2020 by adopting proposed Motion #4.

Staff recommends scheduling the appeal hearing to occur during the June 8, 2020 meeting because the appellant is present and has previously submitted a brief for the appeal. Should the Commission find additional time is needed to consider the record the Commission may schedule the appeal hearing to occur at or continue to a later date and time. (**NOTE:** This is not a public *hearing* and public comments were not required or solicited. The written comment included in Attachment D, and any additional written public comment received prior to the hearing, are included solely for informational purposes and so the staff and/or appellant can address them if so desired; the Commission's decision need not refer to or rely on any such unsolicited comment but is based on City Code.)

Staff recommends affirming the administrator's decision set forth in the zoning determination letter, "Zoning Determination Pursuant to Ketchum Municipal Code Section 17.124.170 for the proposed Craig Nalen Residence at 201 Garnet Street, Ketchum, Idaho," dated March 9, 2020 for the following reasons:

- The proposed drainage improvements do not comply with KMC Section 17.124.170.A. Rather, the proposed reconfigured borrow ditch: (a) is inadequate given the unique characteristics of the site as further calculated by the city engineer; and (b) does not comply with city standards.
- The proposed snow storage areas for all improved parking and pedestrian circulation areas, including the entirety of the existing paved roadway on the subject property, whether dedicated for public right of way purposes or not as noted in the existing Garnet Street Agreement (instrument #403847), is less than the required minimum of 30%.
- The uniform application of building setbacks, as argued by Mr. Haemmerle, is an equal protection issue; however, of equal note throughout the city is the need for land development projects (buildings, landscaping, fencing, etc.) to comply with any number of other equally applicable regulations, such as the city's minimum snow storage and drainage requirements for one-family dwellings as set forth in KMC Section 17.124.170.
- The setbacks as proposed by the applicant do not provide sufficient area to perform basic city services such as snow removal. Older existing structures on the Gem Streets that have pre-existing similar setbacks to those proposed by the applicant have been damaged by snow removal operations.

Recommended Motions

1. "I move to accept the administrator's certification of procedural requirements finding all procedural requirements have been satisfied and fees have been paid, included as Attachment A to the staff report dated June 8, 2020."

2. "I move to accept the record of the case consisting of the administrator's determination letter dated March 9, 2020 and the supporting documents referenced to reach the determination, included as attachment B to the staff report dated June 8, 2020."
3. "I move to set the appeal hearing to occur in Ketchum City Hall, Council Chambers, 480 East Ave. N., Ketchum, ID 83340 with the opportunity for the applicant to participate through the virtual meeting platform hosted at ketchumidaho.org on Monday, June 8, 2020 at 5:30 p.m. finding the appellant has been given proper notice of the proposed hearing time, date and location, has submitted a brief, and is present to give oral argument."
4. After hearing, move to **affirm** the March 9, 2020 zoning determination of the planning and zoning administrator and direct City Staff to prepare written findings of fact and conclusions of law ("Findings") and present subject Findings for final decision at a special meeting of the Commission to occur prior to July 8, 2020, which will be within thirty (30) days of today's date, June 8, 2020."

Background

On March 9, 2020 the Planning and Zoning Administrator made a zoning determination pursuant to Ketchum Municipal Code (KMC) Section 17.124.170 for the proposed Craig Nalen Residence at 201 Garnet Street, Ketchum, Idaho. See **Attachment B.1** for a copy of the Administrator's March 9, 2020 zoning determination.

Subject administrative determination has been appealed by Fritz Haemmerle, Haemmerle Law P.L.L.C., on behalf of Mr. Nalen consistent with the appeal requirements of KMC §17.144.010. See **Attachment C** for a copy of Mr. Haemmerle's appeal brief.

As required by KMC §17.144.010.A, please also find all the supporting documents and papers that complement Attachments A and B in completing the record in the case, including applicant drawings and City Engineer snow storage and drainage calculations. See **Attachments B.2-B.7** for a copy of supporting documents.

Consistent with KMC §17.144.010, the Administrator certifies that all procedural requirements have been satisfied, fees paid, and that **Attachments A, B and C constitute the full record of the matter**.

Commission Authority

As set forth in KMC §17.144.010.C the Commission has the following authority: "Upon hearing the appeal, the commission shall consider the record, the order, requirement, decision or determination of the administrator and the notice of appeal, together with oral presentation and written legal arguments by the appellant and the administrator. The commission shall not consider any new facts or evidence at this point. The commission may affirm, reverse or modify, in whole or in part, the order, requirement, decision or determination of the administrator."

Commission Decision

As set forth in KMC §17.144.010.D the Commission has the following authority: "The commission shall enter a decision within thirty (30) days after the hearing on appeal, which shall include its written findings of fact and conclusions of law separately stated. The commission shall transmit a copy of the decision to the appellant"

Attachments

Attachment A – Administrator's Certification of Procedural Requirements

Attachment B – Record of the case

B.1 Administrator zoning determination letter, "Zoning Determination Pursuant to Ketchum Municipal Code Section 17.124.170 for the proposed Craig Nalen Residence at 201 Garnet Street, Ketchum, Idaho," dated March 9, 2020

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- B.5** KMC §17.124.170: Minimum Standards for One-Family Dwellings
- B.5** KMC §17.04.040: Interpretation
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Attachment D – Written public comment received as of 4:00 p.m. Wednesday, June 3rd, 2020

Attachment A.

Administrator's Certification of Procedural Requirements



City of Ketchum
Planning & Building

June 1, 2020

RE: Administrator's Certification of Procedural Requirements for the Nalen Appeal P20-028

Consistent with KMC §17.144.010.A, the Administrator certifies that all procedural requirements have been satisfied and fees paid for the Nalen Appeal, file #P20-028.

A handwritten signature in blue ink that reads "Brittany Skelton".

Brittany Skelton
Senior Planner, Ketchum Planning and Building Department

Attachment B.
Record of the Case

B.1 Administrator zoning determination letter, "Zoning Determination Pursuant to Ketchum Municipal Code Section 17.124.170 for the proposed Craig Nalen Residence at 201 Garnet Street, Ketchum, Idaho," dated March 9, 2020



City of Ketchum

March 9, 2020

CERTIFIED MAIL

Janet Jarvis
511 Sun Valley Road
Box 626
Ketchum, Idaho 83340

SUBJECT: Zoning Determination Pursuant to Ketchum Municipal Code Section 17.124.170 for the proposed Craig Nalen Residence at 201 Garnet Street, Ketchum, Idaho

Dear Janet,

Associate Planner Abby Rivin enjoyed meeting with your associate Lucas Winter on January 8, 2020 and then with you on January 24, 2020. Subsequent to these meetings, Abby and I have had a chance to review your plans and want to compliment you, in general terms, on the overall quality of the design.

As noted at your previous meeting with Abby and representatives of city administration and streets, the city has a concern with the placement of the proposed new one-family dwelling. The concerns include: maintaining adequate "free clear and unobstructed" fire apparatus access, providing adequate snow storage, conforming with the existing Garnet Street Agreement (instrument #403847), and complying with city building setbacks requirements.

I am also in receipt of Fritz Haemmerle's letter of January 21, 2020, which states your position: "Every setback drafted on the site plan conforms to the City's existing [Limited Residential (LR) District] setbacks." Based on the dimensional standards listed in Ketchum Municipal Code (KMC) Section 17.12.030.C for the LR District, this position is plausible at face value, but additional analysis is required. In particular, I want to bring your attention to the Minimum Standards for One-Family Dwellings set forth in KMC Section 17.124.170 that affect the overall adequacy of the currently proposed site plan for the Craig Nalen Residence at 201 Garnet.

My analysis as to how the minimum standards for one-family dwellings affect the Nalen Residence site plan is organized in three parts as follows. Part one analyzes city drainage requirements. Part two reviews city snow storage requirements. Finally, in part three I summarize the extent to which, in my opinion as Administrator of the Ketchum Zoning Ordinance, your current site plan for Mr. Nalen requires additional attention to comply with the minimum standards for one-family dwellings as established by KMC.

Part one: drainage. I interpret KMC Section 17.124.170.A to:

- Require all stormwater be retained on site;
- Grant the city engineer discretionary authority to require addition drainage improvements depending on the unique characteristics of a site; and
- Require any proposed recontouring of borrow ditches, including the construction of drainage facilities affecting Garnet Street on Mr. Nalen's property, be constructed to city standards.

Part two: snow storage. I interpret KMC Section 17.124.170.C to:

- Require snow storage areas for all improved parking and pedestrian circulation areas, including the entirety of the existing paved roadway on Mr. Nalen's property as subject area is used for pedestrian circulation, among other uses;
- Allow the proposed recontoured borrow ditch and area needed for the retention of on site stormwater/drainage, as determined by the city engineer consistent with KMC Section 17.124.170.D, to also be used for snow storage;
- Require that any area designated for snow storage be usable and in an unobstructed location relative to the location from which the snow is removed; and
- Require that subject snow storage area be not less than 30%.

Part three: findings and administrative determination. Based on the foregoing and a review of the city engineer, street and fire department comments, I find:

1. The proposed snow storage area west of the driveway to be generally adequate for the storage of snow for the two driveway parking stalls and front door exterior entry area.
2. The proposed 111.17' (132.17' of frontage minus the 21'-0" for the new 12" culvert under the driveway) borrow ditch recontour area along Mr. Nalen's Garnet Street frontage to be too narrow as shown. As noted by the City Engineer, the proposed 2' to 3' wide drainage ditch is insufficient and needs to be improved to 15' in width (8' permeable material and 7' grasses) based on city standards and unique characteristics of the site.
3. A new snow storage area needs to be added to your proposed site plan. Subject designated snow storage area may be co-located with the revised 15' wide borrow ditch required for drainage and toward Mr. Nalen's proposed home along the entire length of his Garnet Street frontage, excepting the driveway and front entry.

Based upon evidence provided by the Ketchum Street Department, City Engineer drainage and snow storage calculations, the aforementioned ordinance provisions, the need to maintain 20' of free clear and unobstructed fire access along Garnet Street for safety reasons, and the minimum requirement provisions set forth in KMC §17.04.040.B, it is my finding that 15', as measured from edge of asphalt, is necessary for drainage and snow storage purposes.

4. Vertical improvements, such as trees and fences, are not allowed within subject 15' wide drainage swale and snow storage area adjacent the Garnet Street edge of asphalt on Mr. Nalen's property.

If you should have any questions about any of the provisions of this letter, please let me know. We look forward to continuing to work with you toward an approvable set of building permit drawings. Please note that this administrative decision may be subject to administrative appeal. See KMC §17.144 for details.

Please let me know if you have additional questions.

Sincerely,



John Gaeddert, PhD
Ketchum Planning & Building Department Director

Cc: Fritz Haemmerle
Matt Johnson

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Janet Jarvis
P O Box 626
Ketchum, ID
83340



9590 9402 4767 8344 1313 78

2. Article Number (Transfer from service label)

7018 0360 0001 3649 2264

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

Maggi Cummings

Agent

Addressee

B. Received by (Printed Name)

Maggi Cummings

C. Date of Delivery

3/12/20

D. Is delivery address different from item 1?

Yes

If YES, enter delivery address below:

No

3. Service Type

- Adult Signature
- Adult Signature Restricted Delivery
- Certified Mail®
- Certified Mail Restricted Delivery
- Collect on Delivery
- Collect on Delivery Restricted Delivery

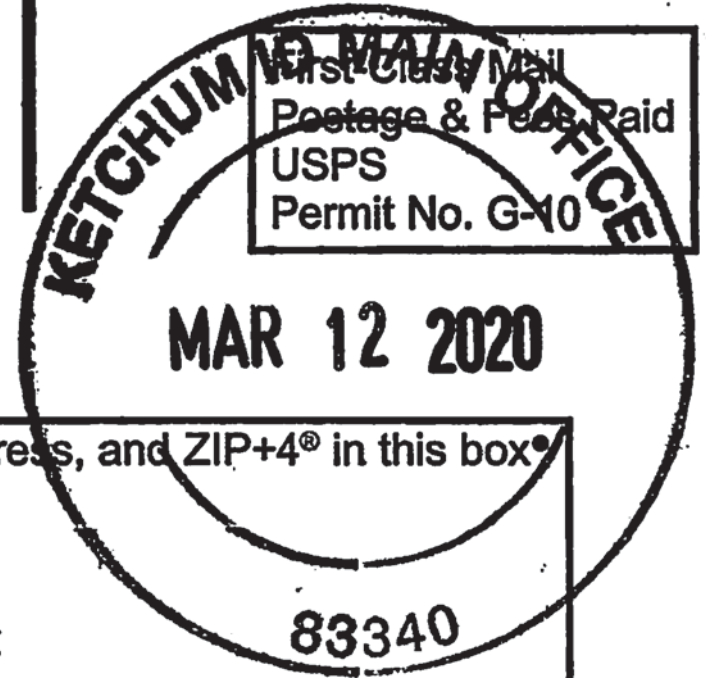
- Priority Mail Express®
- Registered Mail™
- Registered Mail Restricted Delivery
- Return Receipt for Merchandise
- Signature Confirmation™
- Signature Confirmation Restricted Delivery

Restricted Delivery

USPS TRACKING #



9590 9402 4767 8344 1313 78



**United States
Postal Service**

• Sender: Please print your name, address, and ZIP+4® in this box•

Planning and Building Dept
City of Ketchum
P O Box 2315
Ketchum, ID 83340

B.2 Garnet Street Agreement (instrument #403847)

403847

'97 JUN 15 AM 10 07

Agreement

FILED REQUEST

City of Ketchum

SETTLEMENT AGREEMENT

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THIS SETTLEMENT AGREEMENT ("Agreement") is made and entered into this ~~November~~ ^{FEBRUARY} 8TH day of ~~November~~ 1997, by and between CARL CURTIS ("Curtis"), JEANNE FRANKS, THE VINAGRE TRUST, by and through GARY E. and LINDA M. VINAGRE, TRUSTEES, ROBERT and MARJOLAINE RENFRO, WILLIAM G. and SUSAN POLLOCK, THOMAS H. "BUD" and RITA ANN HEANEY, JOHN T. and JERRY ANN HEANEY, WILLIAM H. and ANN S. VANDERBILT, RICHARD O. DAHLGREN and JULIE SLOCUM DAHLGREN, KATHY JEANNE HARRAH, RELI LOUISE HAEMMERLE, FRITZ XAVIER HAEMMERLE, WILMA PACE, PAMELA JEAN RAYBORN, JOHN D. PACE, STELLA A.M. KEANE, CARL E. and SUSAN LEY, JUDY L. DEMETRE and THE ESTATE OF GEORGE B. SAVIERS, deceased, by and through its personal representative, BOB STEVENS (collectively referred to as the "Garnet Street Neighbors") and the CITY OF KETCHUM ("Ketchum").

RECITALS

WHEREAS, Curtis has filed case number CV-93-897 ("Lawsuit") in the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Blaine, seeking to resolve the legal status of a parcel of property commonly known as Garnet Street, located within Ketchum, and more specifically depicted in the diagram attached hereto as Exhibit "A" and incorporated herein; and

WHEREAS, the Garnet Street Neighbors, Ketchum and other named individuals and/or entities ("Other Defendants") were named as defendants in the Lawsuit; and

WHEREAS, Curtis is the owner of real property located at the eastern end of Garnet Street, in Ketchum, commonly known as Lot 1 of the Esmeralda Subdivision Lot Line Shift Plat ("Curtis Property"), and more specifically described in Exhibit "B" and depicted in Exhibit "C"; and

WHEREAS, the Garnet Street Neighbors, Ketchum and certain of the Other Defendants are the owners of, or have some form of interest in, the real property located in Ketchum, which property is more specifically described in Exhibit "B" and depicted in Exhibit "A"; and

WHEREAS, except for the Garnet Street Neighbors and Ketchum, the Other Defendants have had a default judgment entered against them consistent with the relief sought in the Curtis complaint filed in the Lawsuit, or have been dismissed from the Lawsuit; and

WHEREAS, Curtis, the Garnet Street Neighbors and Ketchum desire to resolve the Lawsuit on the terms and conditions hereinafter set forth;

NOW, THEREFORE, for good and valuable consideration, including the mutual covenants herein contained, the parties hereto agree as follows:

TERMS AND CONDITIONS

1. **PAVED PORTION OF GARNET STREET.** The parties agree that the paved portion of Garnet Street, as specifically described in Exhibit "D", attached hereto and incorporated herein, from Highway 75, then eastward to the end of the paved portion of Garnet

Street shall be deemed for all purposes to be a public roadway by prescriptive easement. After the Garnet Street Neighbors have executed easements to Ketchum pursuant to Paragraph 5, the parties agree that the paved portion of Garnet Street described herein shall be deemed a public roadway by express easement. The parties agree that the property lying to the north and south of the paved portion of Garnet Street is private property.

2. *UNPAVED PORTION OF GARNET STREET.* The parties agree that the unpaved, or graveled, portion of Garnet Street, as specifically described and depicted in Exhibit "E", attached hereto and incorporated herein, from the east end of the paved portion of said Street, as described in Exhibit "D", then eastward, shall be deemed a private driveway. The Garnet Street Neighbors and Curtis agree that said private driveway shall provide access to a maximum number of three (3) single family residential lots in a subdivision on the Curtis Property, as well as providing access to the property owned by The Estate of George B. Saviers ("Saviers Property"). The Garnet Street neighbors and Curtis agree that no additional lots other than those identified herein shall be allowed access via said private driveway. The Garnet Street Neighbors and Curtis agree that the private driveway shall remain as is, without any modification in width, grade or surface.

3. *CURTIS SUBDIVISION APPLICATION.*

(a) *Garnet Street Access.* Curtis intends to submit an application to Ketchum to subdivide the entire Curtis Property ("Curtis Subdivision"). Curtis agrees that the Curtis Subdivision shall propose not more than three (3) single family residential subdivision lots which could be accessed via Garnet Street. Curtis agrees that the Curtis Subdivision shall also provide access via Garnet Street to the Saviers Property. In addition, Curtis agrees that there shall be no further subdivision of the three (3) Curtis Subdivision single family residential lots which could be accessed from Garnet Street.

(b) *Snowplow Easement.* Curtis, through the Curtis Subdivision Plat, agrees to dedicate to Ketchum a snowplow access and turnaround easement, to enable a Ketchum snowplow to turn around near the location on the Curtis Property adjacent to Garnet Street currently used by Ketchum for such purposes as depicted in Exhibit "E", attached hereto and incorporated herein.

(c) *Pedestrian Path Easement.* Curtis, through the Curtis Subdivision Plat, agrees to dedicate to the Garnet Street Neighbors a pedestrian path easement, which shall be located in the approximate location of the existing path on the Curtis Property leading to the back side of Dollar Mountain.

(d) *Building Envelopes.* Curtis agrees that the Curtis Subdivision Plat shall designate all building envelopes outside the existing trees on the Curtis Property.

(e) *Application Approval Condition Precedent.* At such time as Ketchum gives final approval to the Curtis Subdivision, the parties hereto agree to execute and submit to the Court a Stipulation For Dismissal of the Lawsuit in the form attached hereto as Exhibit "F" and incorporated herein. The parties agree that all claims, complaints, crossclaims and counterclaims in any way relating to the Lawsuit shall be dismissed with prejudice as to the Garnet Street Neighbors and Ketchum. The parties agree that the Court may enter an Order For Dismissal of the Lawsuit as to the Garnet Street Neighbors and Ketchum in the form attached hereto as Exhibit "G" and

incorporated herein. In the event Ketchum does not approve the Curtis Subdivision, the parties agree that all recitals, covenants, terms and conditions contained in this Agreement shall be null and void, and evidence of the same shall not be introduced in the Lawsuit or any litigation thereafter pertaining to the resolution of the status of Garnet Street.

(f) *Ketchum's Execution of Agreement.* The parties acknowledge that by Ketchum's execution of this Agreement, Ketchum does not agree, either expressly or implicitly, to approve the proposed Curtis Subdivision. Furthermore, the parties acknowledge that Ketchum only executes this Agreement on the basis that Ketchum will agree to the dismissal of the Lawsuit on the terms and conditions herein set forth, should Ketchum, in its sole and absolute discretion, approve the Curtis Subdivision. The parties agree that nothing herein shall be construed by any party as an obligation on the part of Ketchum to approve all or any portion of the Curtis Subdivision.

4. *PRESERVATION OF TREES.* The Garnet Street Neighbors and Curtis agree that the existing trees located adjacent to the unpaved and paved portions of Garnet Street, as said portions of Garnet Street are described in Paragraphs 1 and 2 herein and described and depicted in Exhibits "D" and "E", shall not be disturbed, except as necessary to prevent an obstruction to traffic or to protect the integrity of Garnet Street and the surrounding structures.

5. *ACCESS AND UTILITY EASEMENTS.* The parties agree to grant the following express easements:

(a) A public access and utility easement from Curtis and the Garnet Street Neighbors, as Grantors, to Ketchum, as Grantee, upon, over and under the paved portion of Garnet Street as said portion of Garnet Street is described in Paragraph 1 herein and described in Exhibit "D"

(b) A utility easement from Curtis, The Estate of George B. Saviers and Judy Demetre, as Grantors, to Ketchum, as Grantee, upon, over and under that portion of the Curtis Property, Saviers Property and Demetre Property located within the unpaved portion of Garnet Street as said portion of Garnet Street is described in Paragraph 2 herein and described and depicted in Exhibit "E".

(c) A private access and utility easement from Judy Demetre, as Grantor, to Curtis and The Estate of George B. Saviers, as Grantees, over and under that portion of the Demetre Property located within the unpaved portion of Garnet Street, as said portion of Garnet Street is described in Paragraph 2 herein and described and depicted in Exhibit "E"

(d) A reciprocal private access and utility easement between Curtis and The Estate of George B. Saviers upon, over and under that portion of the Curtis Property and the Saviers Property located within the unpaved portion of Garnet Street as said portion of Garnet Street is described in Paragraph 2 herein and described and depicted in Exhibit "E"; and a private parking and landscape easement from Curtis, as Grantor, to The Estate of George B. Saviers, as Grantee, upon, over and under a portion of the Curtis Property as depicted in Exhibit "E".

The parties agree that the express easements described above, attached hereto and incorporated herein as Exhibit "H", shall become effective only upon the approval by Ketchum

of the Curtis Subdivision proposed for development on the Curtis Property as described herein. The parties agree that if Ketchum denies the Curtis Subdivision application, none of the easements herein contained would be valid, and no additional documents as envisioned in this Agreement would be required to be executed.

6. **REMEDIES.** The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by any party shall not preclude or waive its rights to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

7. **AMENDMENTS.** This Agreement may only be changed, modified or amended in writing executed by all parties.

8. **HEADINGS.** The headings in this Agreement are inserted for convenience and identification only and are in no way intended to describe, interpret, define or limit the scope, extent or intent of this Agreement or any provision hereof.

9. **ATTORNEYS' FEES AND COSTS.** Should any action be brought to interpret or enforce any provision hereof or the easements contemplated herein, or for damages for breach hereof, the prevailing party shall be entitled to such reasonable attorneys' fees and costs, as may be determined by any court of competent jurisdiction wherein such action is brought, including attorneys' fees and costs on appeal.

10. **SUCCESSORS AND ASSIGNS.** All provisions of this Agreement, including the benefits and burdens of the easements attached hereto, shall run with the land covered hereby and are binding on and enure to the benefit of the respective heirs, assigns, successors, lessees, tenants and personal representatives of the parties hereto.

11. **RECORDING.** This Agreement and any easement granted herein may be recorded in the Office of the Blaine County Recorder only after the approval of the Curtis Subdivision by Ketchum.

12. **INTERPRETATION/EXECUTION OF DOCUMENTS.** This Agreement shall be liberally construed in accordance with the general purposes of this Agreement and the laws of the State of Idaho. In addition, the parties hereto agree that they will, at any time hereafter, upon reasonable request of the others, execute and deliver such documents as the other parties may reasonably require for the purpose of giving full effect to the provisions of this Agreement.

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

14. **AUTHORITY.** The parties executing this Agreement warrant, state, acknowledge and affirm that they have the authority to sign the same and to bind themselves and/or their respective clients to the terms contained herein.

15. **ENTIRE AGREEMENT.** This Agreement contains the entire Agreement between the parties respecting the matters herein set forth and supersedes all prior Agreements between the parties hereto respecting such matter.

16. EXECUTION. This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

17. ACCEPTANCE. 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.

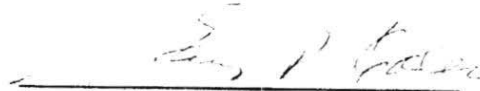
IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

CARL CURTIS:




Carl Curtis

CITY OF KETCHUM, IDAHO:




Guy P. Coles, Mayor

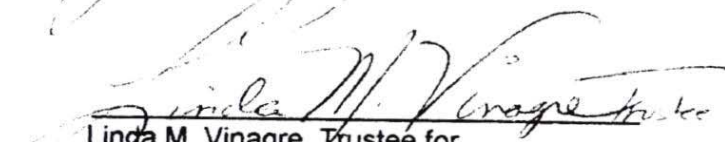
GARNET STREET NEIGHBORS:



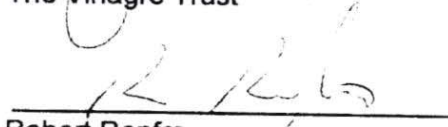
Jeanne Franks




Gary E. Vinagre, Trustee for
The Vinagre Trust



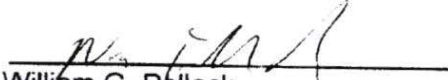
Linda M. Vinagre, Trustee for
The Vinagre Trust




Robert Renfro



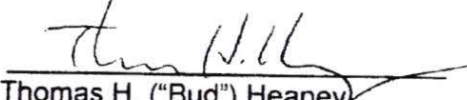
Marjolaine Renfro



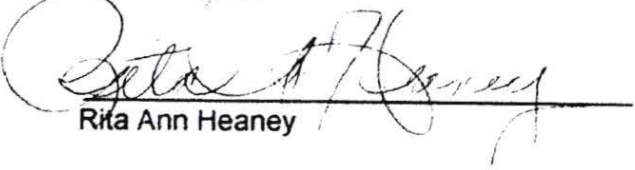
William G. Pollock



Susan Pollock



Thomas H. ("Bud") Heaney



Rita Ann Heaney

DISMISSED 1-29-96

John T. Heaney

DISMISSED 1-29-96

Jerry Ann Heaney



William H. Vanderbilt



Ann S. Vanderbilt



Richard O. Dahlgren

Julie Slocum Dahlgren
Julie Slocum Dahlgren

Reli Louise Haemmerle
Reli Louise Haemmerle

Wilma Pace
Wilma Pace

John D. Pace
John D. Pace

Carl E. Ley
Carl E. Ley

Judy L. Demetre, by Ned C. Williamson
her attorney in fact
Judy L. Demetre

Kathy Jeanne Harrah
Kathy Jeanne Harrah

Fritz Xavier Haemmerle
Fritz Xavier Haemmerle

Pamela Jean Rayborn
Pamela Jean Rayborn

Stella A.M. Keane
Stella A.M. Keane

Susan Ley
Susan Ley

Bob Stevens
Robert H. Stevens
Bob Stevens, Personal Representative
for The Estate of George B. Saviers

B.3 Fritz Haemmerle letter dated January 21, 2020

HAEMMERLE LAW, P.L.L.C

Attorney & Counselor at Law

Fritz X. Haemmerle
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400 South Main Street, Suite 102
Tel: (208) 578-0520
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January 31, 2020

City of Ketchum
Attn: Suzanne Frick, City Administrator
480 East Ave. N.
Ketchum, ID 83340
Via e-mail: sfrick@ketchumidaho.org

Re: *Craig Nalen Residence, 201 Garnet St. - Proposed Site Plan*

Dear Suzanne:

I represent Craig Nalen and Janet Jarvis regarding a site plan, 201 Garnet Street ("property"), submitted to the City of Ketchum for review. The City rejected the site plan as presented. I believe the City's rejection of the site plan was unlawful.

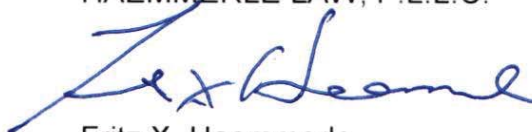
The property is located in the Limited Residential (LR) District, which has a 15 foot setback. On the site plan, the entire structure is located within the building envelope that is created by the setbacks. As to the easement created by the Garnet Street Agreement, attached hereto as Exhibit 1, the west end of the structure is 21 feet from the edge of the easement; the center is 7 feet from the easement; and the east end is 17 feet, 5 inches, from the edge of the easement. Every setback drafted on the site plan conforms to the City's existing setbacks.

To the extent that the City wants my client to conform to other and more restrictive setbacks than those which are currently codified, please identify the more restrictive setback and where those setbacks are identified in any City Code. Otherwise, I believe the City's more restrictive setbacks are completely arbitrary and capricious. Of course, if the City insists on enacting arbitrary and capricious setbacks, then my client will be compelled to explore all his legal options.

Thank you. I look forward to your timely response.

Sincerely,

HAEMMERLE LAW, P.L.L.C.



Fritz X. Haemmerle

City of Ketchum
Attn: Suzanne Frick, City Administrator
January 30, 2020
Page 2

FXH: fxh

Encl.

cc: client (nailcan@aol.com)

Matt Johnson, Attorney mjohnson@whitepeterson.com

John Gaeddert jgaeddert@ketchumidaho.org

Brian Christiansen bchristiansen@ketchumidaho.org

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Agreement

FILED REQUEST

City of Ketchum

SETTLEMENT AGREEMENT

Page 237

THIS SETTLEMENT AGREEMENT ("Agreement") is made and entered into this ~~November~~ ^{FEBRUARY} 8TH day of ~~November~~ 1997, by and between CARL CURTIS ("Curtis"), JEANNE FRANKS, THE VINAGRE TRUST, by and through GARY E. and LINDA M. VINAGRE, TRUSTEES, ROBERT and MARJOLAINE RENFRO, WILLIAM G. and SUSAN POLLOCK, THOMAS H. "BUD" and RITA ANN HEANEY, JOHN T. and JERRY ANN HEANEY, WILLIAM H. and ANN S. VANDERBILT, RICHARD O. DAHLGREN and JULIE SLOCUM DAHLGREN, KATHY JEANNE HARRAH, RELI LOUISE HAEMMERLE, FRITZ XAVIER HAEMMERLE, WILMA PACE, PAMELA JEAN RAYBORN, JOHN D. PACE, STELLA A.M. KEANE, CARL E. and SUSAN LEY, JUDY L. DEMETRE and THE ESTATE OF GEORGE B. SAVIERS, deceased, by and through its personal representative, BOB STEVENS (collectively referred to as the "Garnet Street Neighbors") and the CITY OF KETCHUM ("Ketchum").

RECITALS

WHEREAS, Curtis has filed case number CV-93-897 ("Lawsuit") in the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Blaine, seeking to resolve the legal status of a parcel of property commonly known as Garnet Street, located within Ketchum, and more specifically depicted in the diagram attached hereto as Exhibit "A" and incorporated herein; and

WHEREAS, the Garnet Street Neighbors, Ketchum and other named individuals and/or entities ("Other Defendants") were named as defendants in the Lawsuit; and

WHEREAS, Curtis is the owner of real property located at the eastern end of Garnet Street, in Ketchum, commonly known as Lot 1 of the Esmeralda Subdivision Lot Line Shift Plat ("Curtis Property"), and more specifically described in Exhibit "B" and depicted in Exhibit "C"; and

WHEREAS, the Garnet Street Neighbors, Ketchum and certain of the Other Defendants are the owners of, or have some form of interest in, the real property located in Ketchum, which property is more specifically described in Exhibit "B" and depicted in Exhibit "A"; and

WHEREAS, except for the Garnet Street Neighbors and Ketchum, the Other Defendants have had a default judgment entered against them consistent with the relief sought in the Curtis complaint filed in the Lawsuit, or have been dismissed from the Lawsuit; and

WHEREAS, Curtis, the Garnet Street Neighbors and Ketchum desire to resolve the Lawsuit on the terms and conditions hereinafter set forth;

NOW, THEREFORE, for good and valuable consideration, including the mutual covenants herein contained, the parties hereto agree as follows:

TERMS AND CONDITIONS

1. **PAVED PORTION OF GARNET STREET.** The parties agree that the paved portion of Garnet Street, as specifically described in Exhibit "D", attached hereto and incorporated herein, from Highway 75, then eastward to the end of the paved portion of Garnet

Street shall be deemed for all purposes to be a public roadway by prescriptive easement. After the Garnet Street Neighbors have executed easements to Ketchum pursuant to Paragraph 5, the parties agree that the paved portion of Garnet Street described herein shall be deemed a public roadway by express easement. The parties agree that the property lying to the north and south of the paved portion of Garnet Street is private property.

2. *UNPAVED PORTION OF GARNET STREET.* The parties agree that the unpaved, or graveled, portion of Garnet Street, as specifically described and depicted in Exhibit "E", attached hereto and incorporated herein, from the east end of the paved portion of said Street, as described in Exhibit "D", then eastward, shall be deemed a private driveway. The Garnet Street Neighbors and Curtis agree that said private driveway shall provide access to a maximum number of three (3) single family residential lots in a subdivision on the Curtis Property, as well as providing access to the property owned by The Estate of George B. Saviers ("Saviers Property"). The Garnet Street neighbors and Curtis agree that no additional lots other than those identified herein shall be allowed access via said private driveway. The Garnet Street Neighbors and Curtis agree that the private driveway shall remain as is, without any modification in width, grade or surface.

3. *CURTIS SUBDIVISION APPLICATION.*

(a) *Garnet Street Access.* Curtis intends to submit an application to Ketchum to subdivide the entire Curtis Property ("Curtis Subdivision"). Curtis agrees that the Curtis Subdivision shall propose not more than three (3) single family residential subdivision lots which could be accessed via Garnet Street. Curtis agrees that the Curtis Subdivision shall also provide access via Garnet Street to the Saviers Property. In addition, Curtis agrees that there shall be no further subdivision of the three (3) Curtis Subdivision single family residential lots which could be accessed from Garnet Street.

(b) *Snowplow Easement.* Curtis, through the Curtis Subdivision Plat, agrees to dedicate to Ketchum a snowplow access and turnaround easement, to enable a Ketchum snowplow to turn around near the location on the Curtis Property adjacent to Garnet Street currently used by Ketchum for such purposes as depicted in Exhibit "E", attached hereto and incorporated herein.

(c) *Pedestrian Path Easement.* Curtis, through the Curtis Subdivision Plat, agrees to dedicate to the Garnet Street Neighbors a pedestrian path easement, which shall be located in the approximate location of the existing path on the Curtis Property leading to the back side of Dollar Mountain.

(d) *Building Envelopes.* Curtis agrees that the Curtis Subdivision Plat shall designate all building envelopes outside the existing trees on the Curtis Property.

(e) *Application Approval Condition Precedent.* At such time as Ketchum gives final approval to the Curtis Subdivision, the parties hereto agree to execute and submit to the Court a Stipulation For Dismissal of the Lawsuit in the form attached hereto as Exhibit "F" and incorporated herein. The parties agree that all claims, complaints, crossclaims and counterclaims in any way relating to the Lawsuit shall be dismissed with prejudice as to the Garnet Street Neighbors and Ketchum. The parties agree that the Court may enter an Order For Dismissal of the Lawsuit as to the Garnet Street Neighbors and Ketchum in the form attached hereto as Exhibit "G" and

incorporated herein. In the event Ketchum does not approve the Curtis Subdivision, the parties agree that all recitals, covenants, terms and conditions contained in this Agreement shall be null and void, and evidence of the same shall not be introduced in the Lawsuit or any litigation thereafter pertaining to the resolution of the status of Garnet Street.

(f) *Ketchum's Execution of Agreement.* The parties acknowledge that by Ketchum's execution of this Agreement, Ketchum does not agree, either expressly or implicitly, to approve the proposed Curtis Subdivision. Furthermore, the parties acknowledge that Ketchum only executes this Agreement on the basis that Ketchum will agree to the dismissal of the Lawsuit on the terms and conditions herein set forth, should Ketchum, in its sole and absolute discretion, approve the Curtis Subdivision. The parties agree that nothing herein shall be construed by any party as an obligation on the part of Ketchum to approve all or any portion of the Curtis Subdivision.

4. *PRESERVATION OF TREES.* The Garnet Street Neighbors and Curtis agree that the existing trees located adjacent to the unpaved and paved portions of Garnet Street, as said portions of Garnet Street are described in Paragraphs 1 and 2 herein and described and depicted in Exhibits "D" and "E", shall not be disturbed, except as necessary to prevent an obstruction to traffic or to protect the integrity of Garnet Street and the surrounding structures.

5. *ACCESS AND UTILITY EASEMENTS.* The parties agree to grant the following express easements:

(a) A public access and utility easement from Curtis and the Garnet Street Neighbors, as Grantors, to Ketchum, as Grantee, upon, over and under the paved portion of Garnet Street as said portion of Garnet Street is described in Paragraph 1 herein and described in Exhibit "D"

(b) A utility easement from Curtis, The Estate of George B. Saviers and Judy Demetre, as Grantors, to Ketchum, as Grantee, upon, over and under that portion of the Curtis Property, Saviers Property and Demetre Property located within the unpaved portion of Garnet Street as said portion of Garnet Street is described in Paragraph 2 herein and described and depicted in Exhibit "E".

(c) A private access and utility easement from Judy Demetre, as Grantor, to Curtis and The Estate of George B. Saviers, as Grantees, over and under that portion of the Demetre Property located within the unpaved portion of Garnet Street, as said portion of Garnet Street is described in Paragraph 2 herein and described and depicted in Exhibit "E"

(d) A reciprocal private access and utility easement between Curtis and The Estate of George B. Saviers upon, over and under that portion of the Curtis Property and the Saviers Property located within the unpaved portion of Garnet Street as said portion of Garnet Street is described in Paragraph 2 herein and described and depicted in Exhibit "E"; and a private parking and landscape easement from Curtis, as Grantor, to The Estate of George B. Saviers, as Grantee, upon, over and under a portion of the Curtis Property as depicted in Exhibit "E".

The parties agree that the express easements described above, attached hereto and incorporated herein as Exhibit "H", shall become effective only upon the approval by Ketchum

of the Curtis Subdivision proposed for development on the Curtis Property as described herein. The parties agree that if Ketchum denies the Curtis Subdivision application, none of the easements herein contained would be valid, and no additional documents as envisioned in this Agreement would be required to be executed.

6. **REMEDIES.** The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by any party shall not preclude or waive its rights to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

7. **AMENDMENTS.** This Agreement may only be changed, modified or amended in writing executed by all parties.

8. **HEADINGS.** The headings in this Agreement are inserted for convenience and identification only and are in no way intended to describe, interpret, define or limit the scope, extent or intent of this Agreement or any provision hereof.

9. **ATTORNEYS' FEES AND COSTS.** Should any action be brought to interpret or enforce any provision hereof or the easements contemplated herein, or for damages for breach hereof, the prevailing party shall be entitled to such reasonable attorneys' fees and costs, as may be determined by any court of competent jurisdiction wherein such action is brought, including attorneys' fees and costs on appeal.

10. **SUCCESSORS AND ASSIGNS.** All provisions of this Agreement, including the benefits and burdens of the easements attached hereto, shall run with the land covered hereby and are binding on and enure to the benefit of the respective heirs, assigns, successors, lessees, tenants and personal representatives of the parties hereto.

11. **RECORDING.** This Agreement and any easement granted herein may be recorded in the Office of the Blaine County Recorder only after the approval of the Curtis Subdivision by Ketchum.

12. **INTERPRETATION/EXECUTION OF DOCUMENTS.** This Agreement shall be liberally construed in accordance with the general purposes of this Agreement and the laws of the State of Idaho. In addition, the parties hereto agree that they will, at any time hereafter, upon reasonable request of the others, execute and deliver such documents as the other parties may reasonably require for the purpose of giving full effect to the provisions of this Agreement.

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

14. **AUTHORITY.** The parties executing this Agreement warrant, state, acknowledge and affirm that they have the authority to sign the same and to bind themselves and/or their respective clients to the terms contained herein.

15. **ENTIRE AGREEMENT.** This Agreement contains the entire Agreement between the parties respecting the matters herein set forth and supersedes all prior Agreements between the parties hereto respecting such matter.

16. EXECUTION. This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

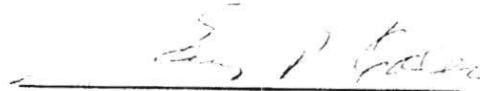
17. ACCEPTANCE. The parties fully understand all of the provisions of this Agreement, and believe them to be fair, just, adequate and reasonable, and accordingly accept the provisions of this Agreement freely and voluntarily.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.


CARL CURTIS:



Carl Curtis

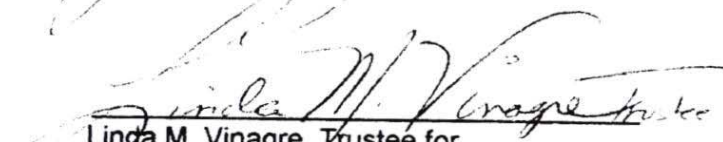
CITY OF KETCHUM, IDAHO:

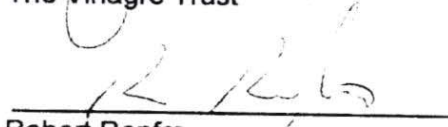

Guy P. Coles, Mayor


GARNET STREET NEIGHBORS:

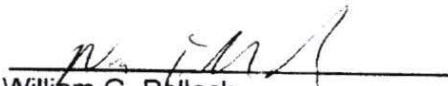

Jeanne Franks


Gary E. Vinagre, Trustee for
The Vinagre Trust

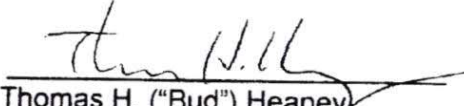

Linda M. Vinagre, Trustee for
The Vinagre Trust

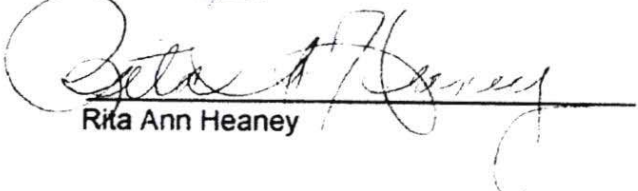

Robert Renfro

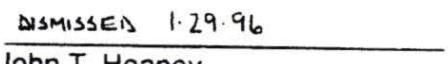

Marjolaine Renfro

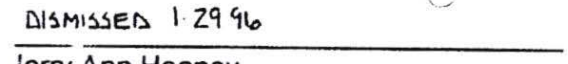

William G. Pollock



Susan Pollock


Thomas H. ("Bud") Heaney


Rita Ann Heaney

DISMISSED 1-29-96

John T. Heaney

DISMISSED 1-29-96

Jerry Ann Heaney


William H. Vanderbilt


Ann S. Vanderbilt


Richard O. Dahlgren

Julie Slocum Dahlgren
Julie Slocum Dahlgren

Reli Louise Haemmerle
Reli Louise Haemmerle

Wilma Pace
Wilma Pace

John D. Pace
John D. Pace

Carl E. Ley
Carl E. Ley

Judy L. Demetre, by Ned C. Williamson
her attorney in fact
Judy L. Demetre

Kathy Jeanne Harrah
Kathy Jeanne Harrah

Fritz Xavier Haemmerle
Fritz Xavier Haemmerle

Pamela Jean Rayborn
Pamela Jean Rayborn

Stella A.M. Keane
Stella A.M. Keane

Susan Ley
Susan Ley

Bob Stevens
Robert H. Stevens
Bob Stevens, Personal Representative
for The Estate of George B. Saviers

B.4 KMC §17.12.030.C: Dimensional Standards Matrix

KMC §17.12.030.C. In addition to the requirements of the dimensional standards, districts matrix, the regulations of [chapter 17.128](#), "Supplementary Location And Bulk Regulations", of this title apply.

DIMENSIONAL STANDARDS, DISTRICTS MATRIX

See section [17.12.040](#) of this chapter for Community Core dimensional standards.

See section [17.12.050](#) of this chapter for Light Industrial dimensional standards.

Distri cts	Minim um Lot Area	Minim um Lot Area With PUD*	Minimu m Lot Area, Townh ouse Sublot	Lot Width	Build ing Heig ht	Maximum Building Coverage/ FAR	Minim um Open Space	Front Setba ck	Side Setbac k	Rear Setbac k	Lot Lines Creat ed By Town - hous e Sublot s	Setba cks From Hwy 75	Any Set- back Along War m Springs Road	Setba cks Along 200' Form er Railro ad ROW
LR	9,000 sf	n/a	n/a	80' avera ge	35'	35%	n/a	15'	The greater of 1' for every 2' in buildin g height, or 10'	20'	n/a	25'/32' 7	30'	3'
LR-1	1 acre	n/a	n/a	100' avera ge	35'	25%	n/a	15'	The greater of 1' for every 2' in buildin g height, or 10'	20'	n/a	80'	30'	n/a

Distri cts	Minim um Lot Area	Minim um Lot Area With PUD*	Minimu m Lot Area, Townh ouse Sublot	Lot Width	Build ing Heig ht	Maximum Building Coverage/ FAR	Minim um Open Space	Front Setba ck	Side Setbac k	Rear Setbac k	Lot Lines Creat ed By Town - hous e Sublot s	Setba cks From Hwy 75	Any Set- back Along War m Springs Road	Setba cks Along 200' Form er Railro ad ROW
LR-2	2 acres	n/a	n/a	100' avera ge	35'	25%	n/a	15'	The greater of 1' for every 2' in buildin g height, or 10'	20'	n/a	400' ⁶	30'	n/a
GR-L	8,000 sf	8,000 sf plus 4,000 for every unit over 2	Equal to that of the perimet er of the townho use unit	80' avera ge	35'	35%	n/a	15'	The greater of 1' for every 3' in buildin g height, or 5' ¹	The greater of 1' for every 3' in building height, or 15' ¹	0'	25'/32' ⁷	30'	n/a
GR- H	8,000 sf	n/a	Equal to that of the perimet er of the townho use unit	80' avera ge	35' ²	See FAR requirements in section 17.12 4.040 of this title	35% ⁵	15'	The greater of 1' for every 3' in buildin g height, or 5'. One-	The greater of 1' for every 3' in building height, or 15' ¹	0'	25'/32' ⁷	30'	5', howev er 3' requir ed for one-/ two- family dwelli

Districts	Minimum Lot Area	Minimum Lot Area With PUD*	Minimum Lot Area, Townhouse Sublot	Lot Width	Building Height	Maximum Building Coverage/FAR	Minimum Open Space	Front Setback	Side Setback	Rear Setback	Lot Lines Created By Townhouse Sublots	Setbacks From Hwy 75	Any Setback Along Warm Springs Road	Setbacks Along 200' Former Railroad ROW
									family dwellings must maintain at least 10' ¹					ng units
STO-4	0.4 acres	n/a	n/a	80' average	35'	25%	n/a	15'	The greater of 1' for every 2' in building height, or 10'	The greater of 1' for every 2' in building height, or 20'	n/a	400'	30'	n/a
STO-1	1 acre	n/a	n/a	100' average	35'	25%	n/a	15'	The greater of 1' for every 2' in building height, or 10'	The greater of 1' for every 2' in building height, or 20'	n/a	400'	30'	n/a

Distri cts	Minim um Lot Area	Minim um Lot Area With PUD*	Minimu m Lot Area, Townh ouse Sublot	Lot Width	Build ing Heig ht	Maximum Building Coverage/ FAR	Minim um Open Space	Front Setba ck	Side Setbac k	Rear Setbac k	Lot Lines Creat ed By Town - hous e Sublot s	Setba cks From Hwy 75	Any Set- back Along War m Springs Road	Setba cks Along 200' Form er Railro ad ROW
STO- H	9,000 sf (mini mum of 3,000 sf per unit)	n/a	Equal to that of the perimet er of the townho use unit	100' avera ge	35'	35% building coverage, and 75% covered by buildings, parking areas and accessory buildings	n/a	15'	The greater of 1' for every 3' in buildin g height, or 5' ¹	The greater of 1' for every 3' in building height, or 15' ¹	0'	400'	30'	n/a
T	8,000 sf	n/a	Equal to that of the perimet er of the townho use unit	80' avera ge	35' ²	See FAR requirements in section 17.12 4.040 of this title	35% ⁵	15'	The greater of 1' for every 3' in buildin g height, or 5'. At least 10' for one- family dwellin gs ¹	The greater of 1' for every 3' in building height, or 10'. At least 15' for one- family dwellin gs ^{1,2}	0'	25'/32' ⁷	30'	5', howe ver 3' requir ed for one-/ two- family dwelli ng units
T- 3000	8,000 sf	n/a	Equal to that of the perimet	80' avera ge	35' ²	See FAR requirements in section 17.12	35% ⁵	15'	The greater of 1' for every	The greater of 1' for every 3'	0'	n/a	30'	n/a

Distri cts	Minim um Lot Area	Minim um Lot Area With PUD*	Minimu m Lot Area, Townh ouse Sublot	Lot Width	Build ing Heig ht	Maximum Building Coverage/ FAR	Minim um Open Space	Front Setba ck	Side Setbac k	Rear Setbac k	Lot Lines Creat ed By Town - hous e Sublot s	Setba cks From Hwy 75	Any Set- back Along War m Springs Road	Setba cks Along 200' Form er Railro ad ROW
			er of the townho use unit			4.040 of this title			3' in buildin g height, or 5'. At least 10' for one- family dwellin gs ¹	in building height, or 10'. At least 15' for one- family dwellin gs ^{1,2}				
T- 4000	8,000 sf	n/a	Equal to that of the perimet er of the townho use unit	80' avera ge	35' ²	See FAR requirements in section 17.12 4.040 of this title	35% ⁵	15'	The greater of 1' for every 3' in buildin g height, or 5'. At least 10' for one- family dwellin gs ¹	The greater of 1' for every 3' in building height, or 10'. At least 15' for one- family dwellin gs ^{1,2}	0'	n/a	30'	n/a

Distri cts	Minim um Lot Area	Minim um Lot Area With PUD*	Minimu m Lot Area, Townh ouse Sublot	Lot Width	Build ing Heig ht	Maximum Building Coverage/ FAR	Minim um Open Space	Front Setba ck	Side Setbac k	Rear Setbac k	Lot Lines Creat ed By Town - hous e Sublot s	Setba cks From Hwy 75	Any Set- back Along War m Spr ings Road	Setba cks Along 200' Form er Railro ad ROW
RU	9,000 sf	n/a	Equal to that of the perimet er of the townho use unit	n/a	35'	25%	n/a	30' ⁴	15' ⁴	15' ⁴	0'	n/a	n/a	n/a
AF	10 acres	n/a	n/a	n/a	35'	10% (includes pools)	n/a	25'	25'	25'	n/a	n/a	n/a	n/a

* See [title 16](#) of this Code.

Notes:

1. If the lot adjoins a more restrictive district on the side or rear, the more restrictive setbacks of that district shall apply.
2. For building with a roof pitch greater than 5:12 the maximum height to the mean point of the ridge or ridges measured from eaves line to the ridge top shall be 35 feet. Roof ridges above the mean point may extend up to a height of 44 feet.
3. Reserved.
4. The placement of all structures for conditional uses shall be subject to approval of the Planning and Zoning Commission.
5. A maximum of 5 percent open site area may be used for private decks or patios and walkways subject to design review approval.
6. 100 foot setback from Highway 75 is required for lots platted prior to 1979.
7. Minimum setbacks along Highway 75: Where the street width is 80 feet, all buildings shall be set back a minimum of 25 feet, and where the street width is 66 feet, all buildings shall be set back a minimum of 32 feet.

B.5 KMC §17.124.170: Minimum Standards for One-Family Dwellings

17.124.170: MINIMUM STANDARDS FOR ONE-FAMILY DWELLINGS:

The following minimum standards apply to one-family dwellings in all zoning districts:

A. Drainage:

1. All stormwater shall be retained on site.
2. Drainage improvements constructed shall be equal to the length of the subject property lines adjacent to any public street or private street.
3. The City Engineer may require additional drainage improvements as necessary, depending on the unique characteristics of a site.
4. Drainage facilities shall be constructed per City standards.

B. Utilities:

1. All utilities necessary for the development shall be improved and installed at the sole expense of the applicant.
2. Utilities shall be located underground and utility, power, and communication lines within the development site shall be concealed from public view.

C. Snow Storage:

1. Snow storage areas shall not be less than thirty percent (30%) of the improved parking and pedestrian circulation areas.
2. Snow storage areas shall be provided on site.
3. A designated snow storage area shall not have any dimension less than five feet (5') and shall be a minimum of twenty five (25) square feet.
4. In lieu of providing snow storage areas, snowmelt and hauling of snow may be allowed.

D. Landscaping:

1. Landscaping is required for all projects.
2. Landscape materials and vegetation types specified shall be readily adaptable to a site's microclimate, soil conditions, orientation and aspect, and shall serve to enhance and complement the neighborhood and townscape.
3. All trees, shrubs, grasses and perennials shall be drought tolerant. Native species are recommended but not required. (Ord. 1190, 2018)

B.5 KMC §17.04.040: Interpretation

17.04.040: INTERPRETATION:

In the interpretation and application of the provisions of this title, the following regulations shall govern:

A. Provisions Are Minimum Requirements: In their interpretation and application, the provisions of this title shall be regarded as the minimum requirements for the protection of the public health, safety, comfort, morals, convenience, prosperity and welfare. All provisions shall be liberally construed to further its underlying purposes.

B. Application Of Overlapping Regulations: Whenever the provisions of this title, or a provision in this title and any provision in any other ordinance, resolution, rule or regulation of any kind, contain any restrictions covering the same subject matter, the more restrictive or higher standards or requirements shall govern. All uses and all locations and bulk permitted under the terms of this title shall be in conformity with all other provisions of law.

C. Existing Permits And Private Agreements: This title is not intended to abrogate or annul:

1. Any permits issued before the effective date hereof; or
2. Any easement, covenant or any other private agreement. (Ord. 1135, 2015)

B.6 Development Review meeting agenda dated January 8th, 2020

Development Review Meeting
January 8th, 2020

4 Review at Meeting

- 201 Garnet Street new single-family residence



- 1307 Warm Springs Road single-family residence addition



P&Z Commission Meeting 1/13/2020

- Ketchum Townsite: Block 5: Lots 1 & 2 (Hot Dog Hill) Mixed-Use Building Pre-Application Design Review
- Fire Station Pre-Application Design Review

Development Review Team Meeting
City of Ketchum
January 8th, 2020

- My Sun Valley Home Mixed-Use Building (120 Northwood Way) Design Review & Conditional Use Permit for 3 Employee Housing Unit
- 471 E 10th St Unit B2 (Dean) Work/Live Unit Conditional Use Permit
- 491 E 10th Street Unit A17 (Duval) Work/Live Conditional Use Permit
- Swan Streambank Alteration (401 Northwood Way)

City Council Meeting 1/21/2020

- Ketchum Tribute Hotel (Plat Amendment & PUD CUP & Draft Development Agreement)

P&Z Commission Meeting 2/10/2020

- Parker Townhomes (Bavarian Village Subdivision: Lots 5A, 6A, 7A, & 8A Townhome Development) Readjustment of Lot Lines, Design Review, and Townhouse Subdivision Preliminary Plat

Pending Building Permit Submittal

- 255 Hillside Detached (Deep Powder) Townhome

Pending Development Application Submittal

B.7 201 Garnet Street Drainage & Snow Storage Calculations and supporting materials
(13 pages), S&C Associates, March 6, 2020



Calculation Cover Sheet

Project Name: 201 Garnet St.
Project Number: 20-1015

Calculation Title: Drainage & Snow Storage Calculations

Calculation Version: 1

Discipline: Civil - Drainage

Total Number of Pages (including cover sheet): 13

Calculations Prepared By: Sherri Newland, PE

Date: March 6, 2020

Description and Purpose of Calculations:

Calculate minimum swale/snow storage width needed along 201 Garnet St. in Ketchum, Idaho.

Design Basis/References/Assumptions:

Runoff calculated using Rational Equation due to size of swale/basin
Frozen Ground assumed with no infiltration (spring) for drainage/storage
Snow Water Equivalent – 11”

City Standard ROW

13' Drive Lane 17' Wide Swale

ITD IDF Data

Swale		
Check Dam Width for Swales		0
Number of Check Dams		0
Storm Event		25
Drainage Area (acres):	Area in ft ²	3,960
	Area in Acres	0.09
Runoff Coefficient (c)		0.50
Infiltration Rate	Inches/Hr	0
Predevelopment Rate (if any)		0

Runoff Coefficient (c) for Combined Areas		
Imp.	Perv.	Total Area
1716	2244	3960
c 1	c 2	
0.95	0.15	

Weighted (c) Value: 0.50

Compute Peak Volume

Storm Duration		I	Q	Runoff Vol	Infiltration Vol	PreDev. Vol	Required Vol
Min	Hr	in/hr	cfs	ft ³	ft ³	ft ³	ft ³
10	0.17	2.1	0.09	57	0	0	57
30	0.50	1.4	0.06	114	0	0	114
60	1.00	0.79	0.04	128	0	0	128
120	2.00	0.5	0.02	163	0	0	163
180	3.00	0.4	0.02	195	0	0	195
360	6.00	0.27	0.01	263	0	0	263
720	12.00	0.18	0.01	351	0	0	351
1440	24.00	0.11	0.00	429	0	0	429

Total Design Vol. (cf)	429
------------------------	-----

Swale Dimensions	Vol. Available (cf)	477
------------------	---------------------	-----

Length	132 ft
Left Slope	20:1
Right Slope	20:1
Depth	0.425 ft
Infiltration Width	0 ft
Longitudinal Slope	0 ft/ft

*assume frozen ground

* assume no slope/flat

Applicant Proposal

10' Drive Lane 3' Wide Swale

ITD IDF Data

Swale		
Check Dam Width for Swales		0
Number of Check Dams		0
Storm Event		25
Drainage Area (acres):	Area in ft ²	1,584
	Area in Acres	0.04
Runoff Coefficient (c)		0.82
Infiltration Rate	Inches/Hr	0
Predevelopment Rate (if any)		0

Runoff Coefficient (c) for Combined Areas		
Imp.	Perv.	Total Area
1320	264	1584 sf
c 1	c 2	
0.95	0.15	

Weighted (c) Value: 0.82

Compute Peak Volume

Storm Duration		I	Q	Runoff Vol	Infiltration Vol	PreDev. Vol	Required Vol
Min	Hr	in/hr	cfs	ft ³	ft ³	ft ³	ft ³
10	0.17	2.1	0.06	37	0	0	37
30	0.50	1.4	0.04	75	0	0	75
60	1.00	0.79	0.02	84	0	0	84
120	2.00	0.5	0.01	107	0	0	107
180	3.00	0.4	0.01	128	0	0	128
360	6.00	0.27	0.01	173	0	0	173
720	12.00	0.18	0.01	231	0	0	231
1440	24.00	0.11	0.00	282	0	0	282

Total Design Vol. (cf)	282
------------------------	-----

Swale Dimensions	Vol. Available (cf)	99
------------------	---------------------	----

Length	132 ft
Left Slope	3:1
Right Slope	3:1
Depth	0.5 ft
Infiltration Width	0 ft
Longitudinal Slope	0 ft/ft

*assume frozen ground

* assume no slope/flat

Minimum City ROW 10' Drive Lane 15' Wide Swale

ITD IDF Data

Swale	
Check Dam Width for Swales	0
Number of Check Dams	0
Storm Event	25
Drainage Area (acres):	Area in ft ²
	Area in Acres
Runoff Coefficient (c)	0.48
Infiltration Rate	Inches/Hr
Predevelopment Rate (if any)	0

Runoff Coefficient (c) for Combined Areas		
Imp.	Perv.	Total Area
1320	1848	3168
c 1	c 2	
0.95	0.15	

Weighted (c) Value: 0.48

Compute Peak Volume

Storm Duration		I	Q	Runoff Vol	Infiltration Vol	PreDev. Vol	Required Vol
Min	Hr	in/hr	cfs	ft ³	ft ³	ft ³	ft ³
10	0.17	2.1	0.07	44	0	0	44
30	0.50	1.4	0.05	89	0	0	89
60	1.00	0.79	0.03	100	0	0	100
120	2.00	0.5	0.02	127	0	0	127
180	3.00	0.4	0.01	152	0	0	152
360	6.00	0.27	0.01	205	0	0	205
720	12.00	0.18	0.01	273	0	0	273
1440	24.00	0.11	0.00	334	0	0	334

Total Design Vol. (cf)	334
Swale Dimensions	Vol. Available (cf)
	371

Length	132	ft
Left Slope	20:1	
Right Slope	20:1	
Depth	0.375	ft
Infiltration Width	0	ft
Longitudinal Slope	0	ft/ft

*assume frozen ground
* assume no slope/flat

Snow Storage Calculation

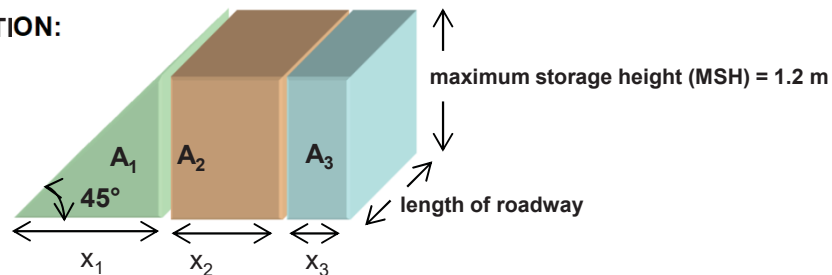
201 Garnet

Use an normal snow water equivalent (mm) for the entire season				
				units/mm
Average Normal snow water equivalent (mm)				279.4
Convert normal snow water equivalent (mm) to a total amount of snow (cm) (assume 1 mm water is equal to 1 cm snow)				
		water equivalent (mm)	snow (cm)	snow (m)
Average Normal snow water equivalent (mm)		279.4	279.4	2.794
Reduce the volume of snow from a new snow fall density to an average compacted snow density (assuming that new snow is 100 kg/m ³ and compacted snow is 500 kg/m ³)				
Assumptions	Density	Ratio		
New Snow	100 kg/m ³			
Compacted Snow	200 kg/m ³	2 to 1		
	cm	ratio density	average total compacted snow (cm)	average total compacted snow converted to metres (m)
	279.4	2	139.7	1.397
Calculate volume of snow per lineal metre of road				
		lane width (m)	average total compacted snow (m)	volume of snow per lineal metre (m ³ /m)
Volume of snow per lineal metre of road in easement		3.96	1.397	5.53212
Calculate width of storage area assuming a maximum storage height of 1.2 metres				
		maximum storage height (m)	maximum slope angle (ratio)	width of snow storage area (m)
Total available storage area assuming that the maximum slope on snow pile can not exceed a 1 to 1 ratio		1.2192	1	3.61364784

Calculate minimum right-of-way width based on lane and snow storage area width				
(Lane width x number of lanes) + (snow storage area width x 2)				15.14729568
Calculate additional snow to displace for parking access(es)				
	number of driveways <i>(must be looked at for each direction)</i>	driveway width (m)	volume of snow per lineal metre (m ³ /m)	volume of snow to displace (m ³)
Volume of additional snow to displace due to driveway access(es)	1	6.4008	5.53212	35.4099937
Example for calculating additional storage width for parking access(es)				
width of snow storage area calculated in Step 5 (m)	length of roadway over which to distribute snow from accesses (m)	additional volume of snow to displace as calculated in Step 7 (m ³)	additional width required to accommodate accesses based on length stipulated in cell C38 (m)	total width required over length stipulated in cell C38 (m)
3.61364784	40.2	35.40999	0.722	4.336

ASSUMED CROSS SECTION:

$A_1 = (x_1 * MSH)/2$
 $A_2 = x_2 * MSH$
 $A_3 = x_3 * MSH$



Cell in Above Calc.

width to maximum storage height at 45° (1:1) slope
 additional width required beyond top of 1:1 slope
 additional width required to accommodate accesses
(only required in situations where driveways/accesses exist)
 $x_1 + x_2 + x_3$ (total storage width)

F27 (both)
E38
F38

Operational adjustment (5%)	0.2
Total Width Required (m)	4.6
Total Width Required (ft)	14.9

Figure B-7

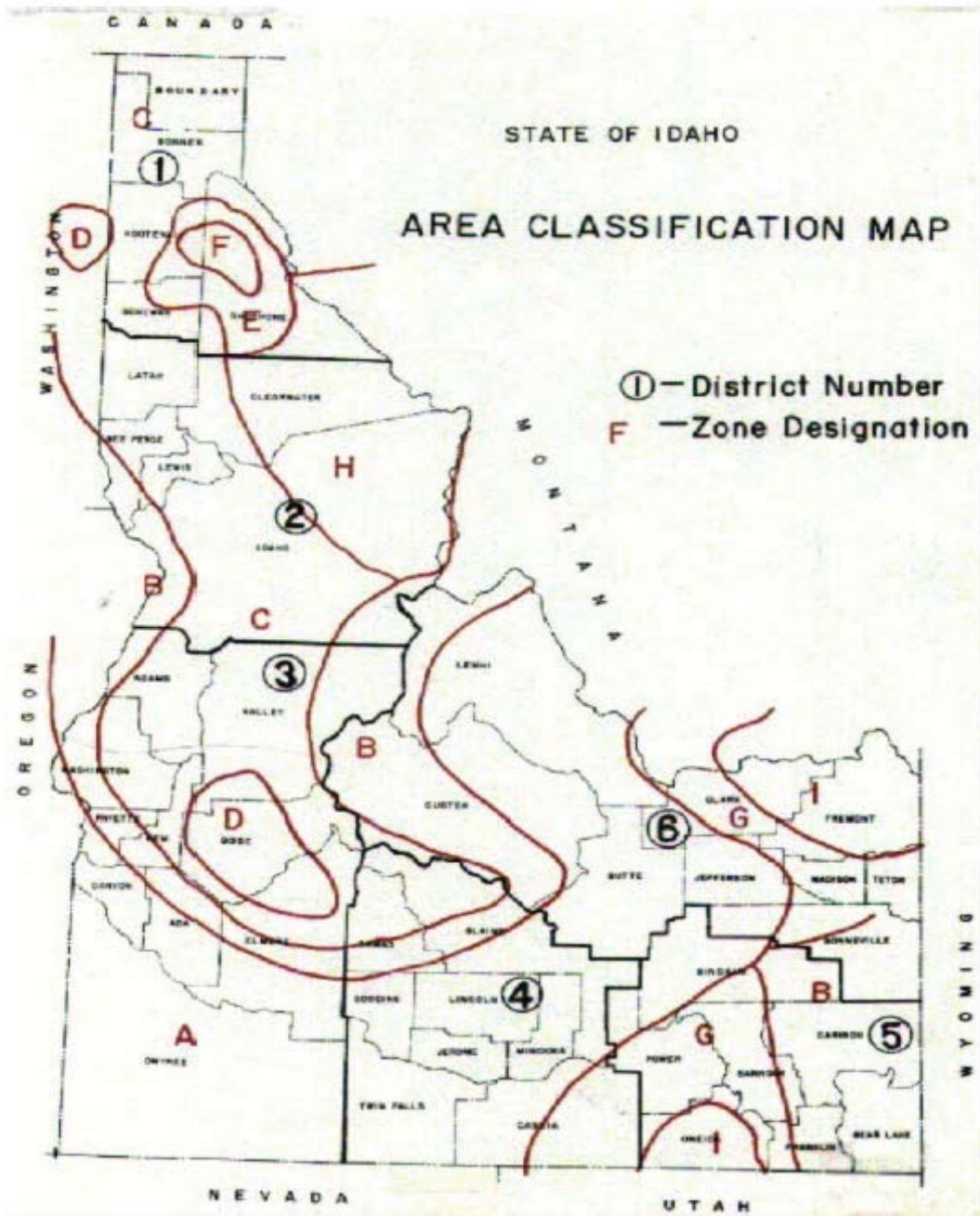
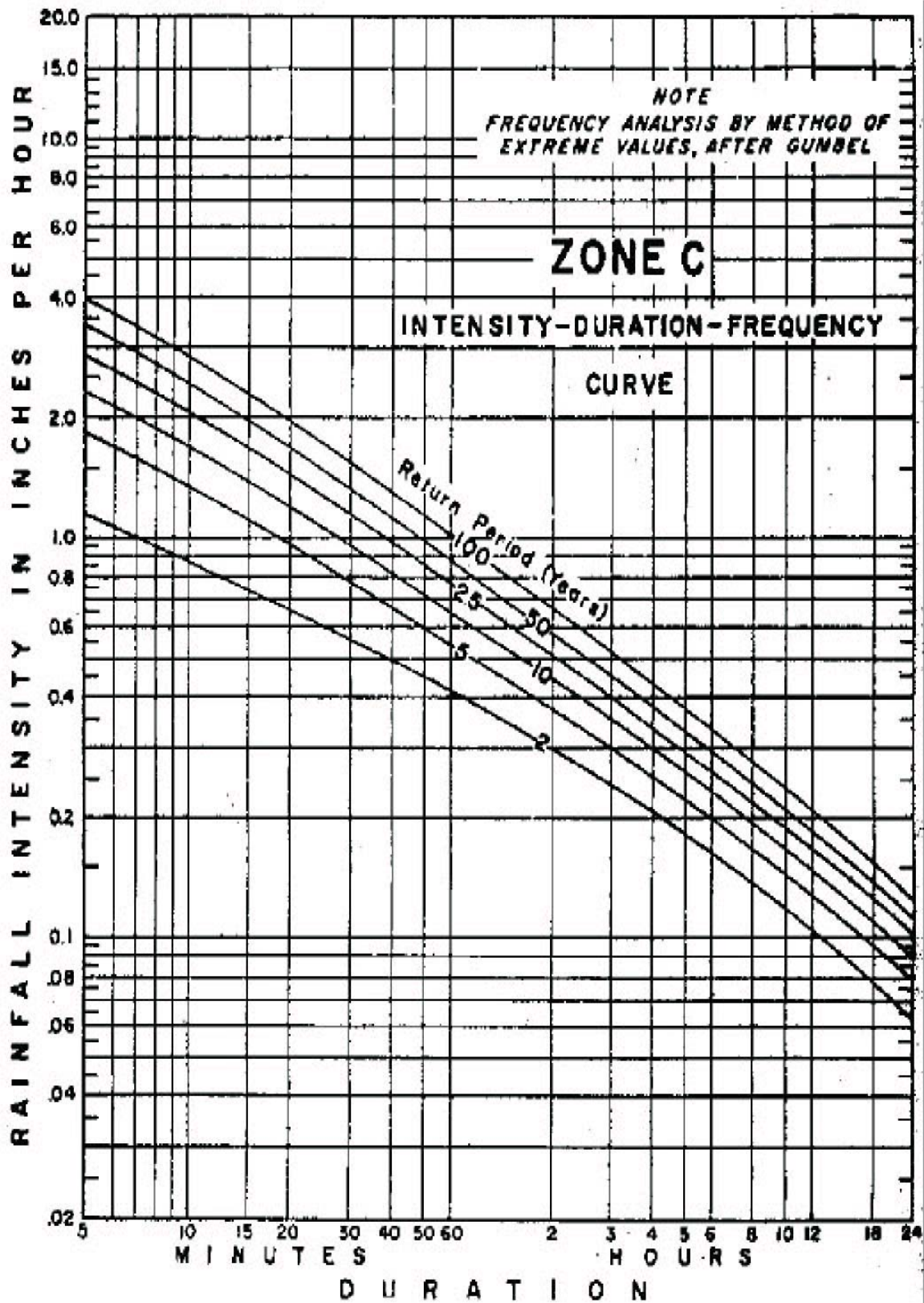


Figure B-8
Sheet 3 of 9



Prairie	4800	5.3	4.9	108	10.4	12.6	83
Trinity Mtn.	7770	22.1	31.0	71	22.5	33.0	68
Vienna Mine	8960	20.6	25.2	82	18.7	25.0	75
Basin Index (%)				85			76
BIG WOOD BASIN							
Camas Creek Divide	5710	10.0	11.5 _C	87	10.6	14.5 _C	73
Chocolate Gulch	6310	6.5	11.0 _C	59	7.2	13.5 _C	53
Dollarhide Summit	8420	14.9	N/A	*	-M	21.7	*
Galena	7470	9.2	13.7	67	9.8	15.8	62
Galena Summit	8780	12.2	15.5	79	12.0	16.7	72
Hyndman	7620	5.7	10.1	56	6.7	13.3	50
Lost-Wood Divide	7900	8.4	16.1	52	8.3	17.7	47
Soldier R.S.	5740	6.6	10.4	63	8.5	14.4	59
Vienna Mine	8960	20.6	25.2	82	18.7	25.0	75
Basin Index (%)				70			62
LITTLE WOOD BASIN							
Bear Canyon	7900	7.4	12.0	62	7.2	13.7	53
Garfield R.S.	6560	4.8	9.2	52	4.8	10.7	45
Hyndman	7620	5.7	10.1	56	6.7	13.3	50
Smiley Mountain	9520	9.2	14.2 _R	65	8.9	14.7 _R	61
Swede Peak	7640	5.8	12.7	46	6.7	14.3	47
Basin Index (%)				57			51
BIG LOST BASIN							
Bear Canyon	7900	7.4	12.0	62	7.2	13.7	53
Hilts Creek	8000	8.0	10.3	78	6.8	10.9	62
Lost-Wood Divide	7900	8.4	16.1	52	8.3	17.7	47
Smiley Mountain	9520	9.2	14.2 _R	65	8.9	14.7 _R	61
Stickney Mill	7430	4.2	6.9	61	5.3	8.7	61
Basin Index (%)				63			56
LITTLE LOST, BIRCH BASINS							
Beagle Springs	8850	8.1	6.4	127	7.6	7.9	96
Hilts Creek	8000	8.0	10.3	78	6.8	10.9	62
Meadow Lake	9150	11.0	11.5	96	11.3	13.6	83
Moonshine	7440	6.8	7.9	86	7.3	10.4	70

Jack Creek Upper	7377	14.6	14.8	99	15.0	15.8	95
Laurel Draw	6682	12.6	10.1	125	14.1	14.8	95
Mud Flat	5730	4.9	7.3	67	7.4	9.5	78
Reynolds Creek	5600	3.2	2.0 _R	160	8.4	10.7 _R	79
South Mtn.	6500	13.3	15.6	85	16.1	19.6	82
Taylor Canyon	6325	5.6	5.3	106	5.4	7.1	76
Basin Index (%)				102			87
BEAR RIVER BASIN							
Bug Lake	7987	16.4	15.2	108	15.0	15.8	95
Dry Bread Pond	8302	16.9	15.6	108	15.3	15.9	96
Emigrant Summit	7390	17.8	19.4	92	17.4	21.9	79
Franklin Basin	8140	22.9	21.8	105	22.7	25.1	90
Giveout	6930	9.9	8.6	115	11.6	10.5	110
Hayden Fork	9130	13.9	12.4	112	16.9	16.7	101
Kelley R.S.	8180	13.1	12.2	107	13.9	14.8	94
Lily Lake	9133	9.9	10.6	93	10.0	13.5	74
Monte Cristo	8932	23.0	21.7	106	20.3	20.9	97
Oxford Spring	6740	7.8	9.3	84	11.3	14.2	80
Salt River Summit	7640	12.7	10.7	119	12.9	13.7	94
Sedgwick Peak	7850	13.8	16.4	84	13.7	17.4	79
Slug Creek Divide	7225	16.1	12.4	130	16.3	17.1	95
Spring Creek Divide	9000	21.8	19.0	115	20.8	19.6	106
Trial Lake	9992	19.3	18.2	106	17.5	19.3	91
Basin Index (%)				105			92

-M = Missing data.

* = Analysis may not provide a valid measure of conditions.

N/A = Not available.

C = Conditional only 10-19 years of data available.

R = Rough less than 10 years of data available.

If the Basin Index (%) percent value is flagged as potentially invalid care should be taken to evaluate if the value is representative of conditions in the basin.

The SNOW WATER EQUIVALENT represents the depth of water in the snowpack if the snowpack were melted expressed in inches.

The WATER YEAR-TO-DATE-PRECIPIATION represents total precipitation since October 1st expressed in inches.

Contact your state water supply staff for assistance.

Medians and averages are calculated for the period 1981-2010.

Provisional data subject to revision.

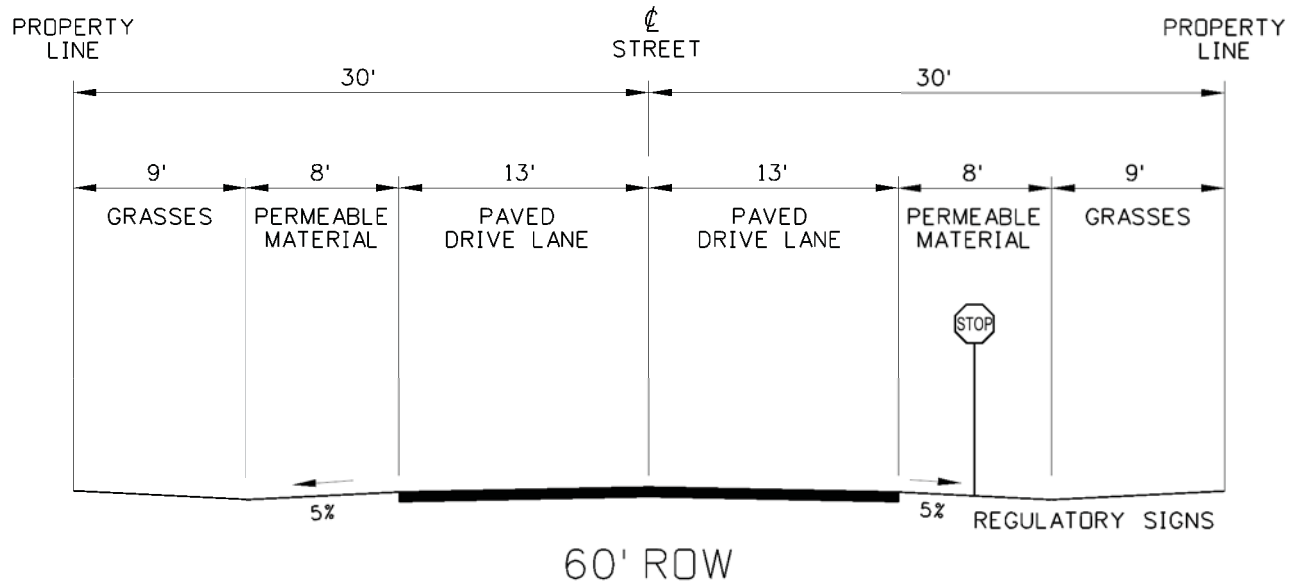
* Site -- Either: (a) the current value is missing; (b) the median or average for the day is not available or is zero; or (c) for snow water equivalent the median for the day is less than 10% of the maximum median value for the year.

* Basin - More than half of the sites within the basin are flagged with * preventing the calculation of a meaningful basin index.

The basin index is calculated as the sum of the valid current values divided by the sum of the corresponding medians (for snow water equivalent) or averages (for precipitation) and the resulting fraction multiplied by 100.

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NOTES:

- ① THE SCHEMATIC ABOVE SHOWS A CROSS SECTION OF AN 60-FOOT WIDE RIGHT-OF-WAY (ROW) FOR STREETS LOCATED IN RESIDENTIAL DISTRICTS.
- ② SHOULDERS ARE REQUIRED TO ACCOMMODATE DRAINAGE, PARKING, SNOW STORAGE, AND ACCESS FOR EMERGENCY VEHICLES WITHIN LOCAL-RESIDENTIAL STREET ROWS AND PROVIDE MATERIALS THAT CAN REASONABLY BE MAINTAINED BY THE CITY.
- ③ EXAMPLES OF 60-FOOT ROW ROADS LOCATED IN RESIDENTIAL DISTRICTS ARE DOLLAR DRIVE, IRENE ST, BELMONT AND WANDERS WAY.
- ④ STOP AND STREET SIGNS ARE TO BE INSTALLED 2 FT FROM EDGE OF PAVEMENT
- ⑤ 8 FT PERMEABLE SHOULDER AT A 5% SLOPE FOR PARALLEL PARKING

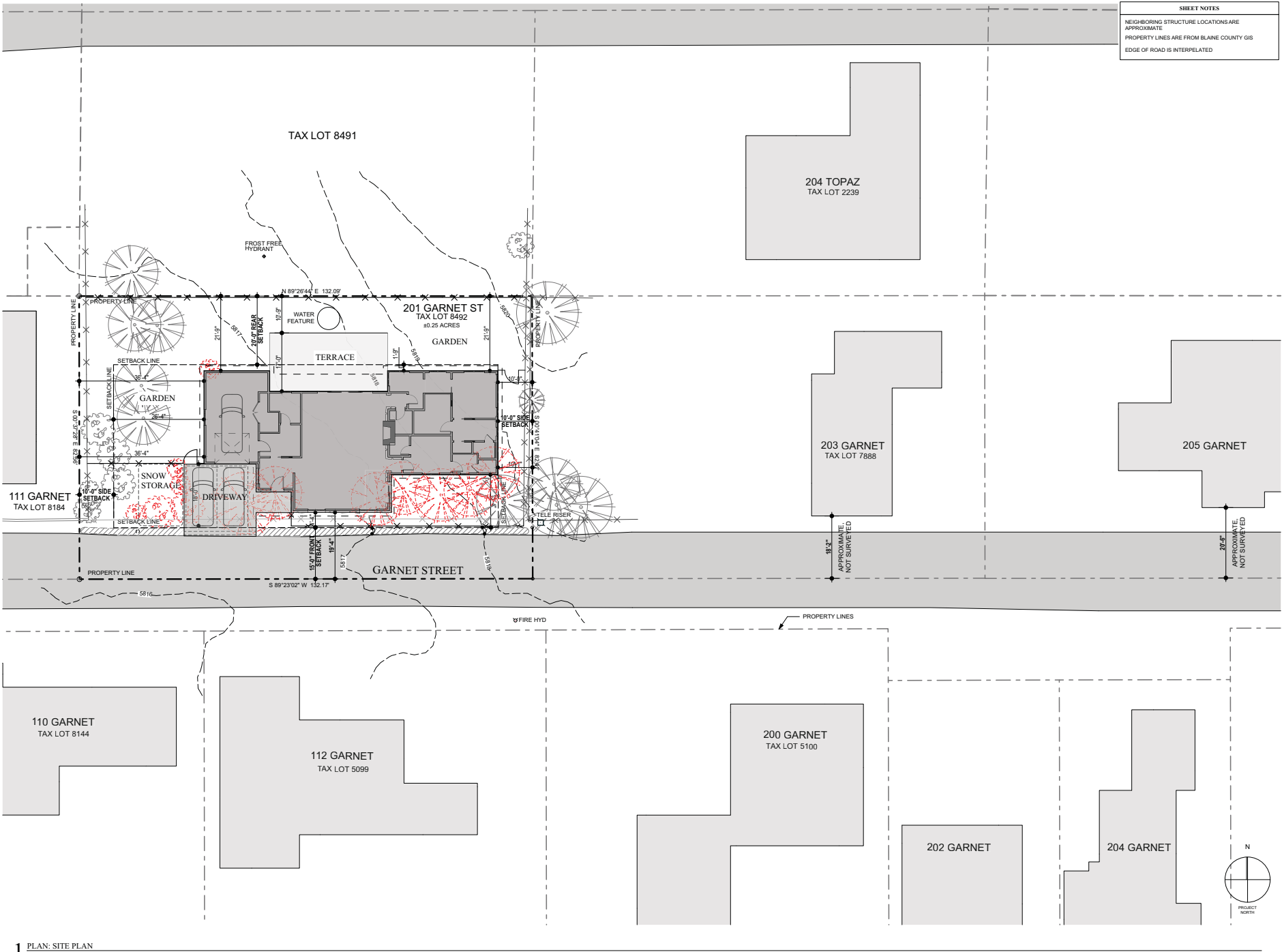
REVISIONS			
NO.	DATE	BY	DESCRIPTION
1	09/01/2019	SN	ROW DRAWINGS

CITY OF KETCHUM
 60' ROW
 RESIDENTIAL

STANDARD DRAWING
 NO.
 ROW-60-RS

DRAWN		
DATE		
FILE		
REVISIONS		
NO.	DATE	DESCRIPTION

SHEET NOTES
NEIGHBORING STRUCTURE LOCATIONS ARE APPROXIMATE
PROPERTY LINES ARE FROM BLAINE COUNTY GIS
EDGE OF ROAD IS INTERPOLATED



1 PLAN: SITE PLAN
SCALE: 1" = 10'

SITE PLAN 1:10

Attachment C.

Notice of Appeal dated March 23, 2020 and Brief, Haemmerle Law, P.L.L.C.

HAEMMERLE LAW, P.L.L.C
Attorney & Counselor at Law

Received
3/23/20

Fritz X. Haemmerle
fxh@haemlaw.com

P.O. Box 1800
Hailey, ID 83333

400 South Main Street, Suite 102
Tel: (208) 578-0520
Fax: (208) 578-0564

March 23, 2020

City of Ketchum
c/o Suzanne Frick, City Administrator
480 East Ave. N.
Ketchum, ID 83340
Hand Delivery and Via e-mail: sfrick@ketchumidaho.org

Re: Notice of Appeal

Dear Suzanne:

As you know, I represent Craig Nalen and Janet Jarvis regarding a site plan, 201 Garnet Street ("property") submitted to the City. Regarding the setbacks, John Gaeddert issued a March 9, 2020, Determination Letter. In relation to that determination, attached is a Notice of Appeal along with a supporting Brief and attachments.

Please advise as to what fees may be applicable. Thank you.

Sincerely,

HAEMMERLE LAW, P.L.L.C.



Fritz X. Haemmerle

FXH: fxh
Encl.
cc: client (nailcan@aol.com)
Matt Johnson, Attorney mjohnson@whitepeterson.com
John Gaeddert jgaeddert@ketchumidaho.org



**City of Ketchum
Planning & Building**

OFFICIAL USE ONLY
File Number:
Date Received:
By:
Fee Paid:
Approved Date:
Denied Date:
By:

Notice of Appeal

Note: The Appellant shall submit an amount to cover the cost of giving notice, as applicable in the Fee Schedule, and provide a transcript within two (2) days after the Planning and Building Department provides the Appellant with an estimate for the expense of the same. In the event the fee is not paid as required, the appeal shall not be considered filed.

OFFICIAL USE ONLY	
Date Appeal Received:	Date Notice Published:
Appeal Fee:	Transcript Fee:
Date Paid:	Date Paid:
Date Appellant Notified of Estimated Transcript Costs and Notice:	Mailing Fee:
Date of Appeal Hearing:	Date Paid:
Action(s) Taken/Findings:	
APPELLANT	
Name of Appellant: Craig Nalen	Phone Number: c/o Fritz Haemmerle
Address: c/o Fritz Haemmerle	Fax Number or Email: c/o Fritz X. Haemmerle
REPRESENTATIVE	
Name of Representative: Fritz X. Haemmerle, Haemmerle Law, P.L.L.C.	Phone Number: (208) 578-0520
Address: P.O. Box 1800, Hailey, Idaho 83333	Fax Number or Email: fxh@haemlaw.com
APPLICATION	
Application Being Appealed: March 9, 2020, Determination Letter, John Gaeddert, regarding 201 Garnet St.	
Explain How You Are an Affected Party:	
Mr. Nalen was denied his authorized and lawful setbacks.	
Date of Decision or Date Findings of Fact Were Adopted: March 9, 2020	
SUBMITTAL INFORMATION	
This Appeal is Based on The Following Factors (set forth all basis for appeal including the particulars regarding any claimed error or abuse of discretion):	
See attached Brief	

If you have attached additional pages, please indicate the number of pages attached _____

Signature of Appellant or Representative

Date

FRITZ X. HAEMMERLE (ISB# 3862)
HAEMMERLE LAW, P.L.L.C.
400 South Main St., Suite 102
P.O. Box 1800
Hailey, ID 83333
Tel: (208) 578-0520
haemmerlefilings@gmail.com

Attorneys for Craig Nalen

BEFORE THE CITY OF KETCHUM

RE: Appeal from Planning and Building Department Director Determination Letter dated March 9, 2020.

APPELLANT'S BRIEF ON APPEAL

COMES NOW Appellant, Craig Nalen (Nalen), by and through Fritz X. Haemmerle of Haemmerle Law, P.L.L.C. submits this Brief in Support of his appeal of Planning and Building Department Director's ("Director") Determination Letter dated March 9, 2020.

I. FACTS

1. The Appellant, Craig Nalen ("Nalen") is seeking to build a residence at 201 Garnett Street, Ketchum, Idaho (the "Lot"). The zoning in the area is Limited Residential ("LR").

2. The Lot is located on the Gem Streets. Historically, and per the lawful, recorded plat thereof, the lot lines for the Gem Streets are in the center of the respective

streets. On or about February 8, 1996, the City of Ketchum, along with each of the owners of properties along Garnet Street, entered into a Settlement Agreement (“Agreement”) regarding the status of Garnett Street. The purpose of the Agreement was to allow Carl Curtis to develop his Esmeralda Subdivision at the end of Garnet Street. Paragraph 1 of the Agreement, in pertinent part, reads:

1. PAVED PORTION OF GARNET STREET. The parties agree that **the paved portion of Garnet Street**, as specifically described in Exhibit D, attached hereto and incorporated herein, from Highway 75, then eastward to the end of the paved portion of Garnet Street shall be deemed for all purposes to be a public roadway by prescriptive easement. After the Garnet Street neighbors have executed easements to Ketchum pursuant to paragraph 5, **the parties agree that the paved portion of Garnet Street described herein shall be deemed a public roadway by express easement. The parties agree that the property lying to the north and south of the paved portion of Garnet Street is private property.**

See, Agreement, attached as Exhibit 1. (Emphasis added).

3. The Agreement did not alter property lines or address any issues relating to snow storage.

4. On or about 2020, Janet Jarvis, on behalf of Nalen, submitted a site plan for the residence located at 201 Garnet Street. Suzanne Frick, Ketchum City Administrator, denied the site plan on the bases that the building was not located 15’ from the edge of the pavement. Nalen appealed that Decision. To date, no hearing has been set on that appeal.¹

5. Thereafter, Janet Jarvis submitted a slightly modified site plan for the residence. A copy of the site plan is attached hereto as Exhibit 2. Two-thirds or more the residence is 15’ or more from the edge of the pavement on Garnet Street. The west side of the residence is 35’4” from the lot line and 22’10” from the edge of the pavement; the

¹ Counsel for Nalen was advised that Frick’s Decision was not final.

middle portion of the residence is 24'8" from the property line and 12'3" from the edge of the pavement; and the eastern side is 32'0" from the property line and 17'1" from the edge of the pavement. Again, as measured from the property line, the entire building is located at least 24'8" from the property line.

6. Based on the revised plan submitted by Janet Jarvis, the Director submitted his determination letter dated March 9, 2020. He stated that the entire residence must be 15" from the edge of the pavement on Garnet Street. It is from this letter that this Appeal is taken.

II. ARGUMENT

A. THE CITY'S POSITION VIOLATES THE UNIFORMITY REQUIREMENTS OF THE LOCAL LAND USE PLANNING ACT ("LLUPA").

The setback for the Nalen residence, located in the LR District, is fifteen feet (15'). KCO 17.12.030. The setbacks are measured from the property line. *See*, definition of "Setback" under Ketchum City Code ("KCO") 17.08.020. The residence, as designed, is more than 15' feet from the property line.

Instead of applying the setbacks as stated in the KCO, the City attempts to use other portions of the Code to create different setback for this residence. This type of zoning is in direct violation of the uniformity provisions Local Land Use Planning Act ("LUPA"). Under the LLUPA:

- (a) Within a zoning district, the governing board shall where appropriate establish standards to regulate and restrict the height, number of stories, size, construction, reconstruction, alteration, repair or use of buildings and structures; percentage of lot occupancy, size of courts, yards, and open spaces; density of population; and the location and use of buildings and structures. **All standards shall be uniform for each class or kind of buildings throughout each district, but the standards in one (1) district may differ from those in another district.**

Idaho Code Section 67-6511(a). (Emphasis added).

The Idaho Supreme Court in *Moerder v. City of Moscow*, 78 Idaho 246, 300 P.2d 808 (1956), discussed non-uniform zoning in relation to setbacks.² In that case, the City of Moscow adopted an Ordinance which allowed the City to create setbacks that were not uniform. Instead, the Moscow Ordinance created setbacks that were “the average distance between the street line and nearest adjacent outer portions of each and every dwelling house or structure erected on the same side of the street in the same lineal block.” *Id.* at Idaho 249. The Supreme Court reversed the decision of the trial court, findings that the Ordinance was invalid because of a lack of uniformity.

Based on this zoning scheme, the Idaho Supreme Court stated:

The ordinance in question does not establish a uniform regulation for each class of buildings within the district. Indeed, it would be difficult to conceive of a scheme less uniform. Under the ordinance, setback lines could vary from one block to the next on the same street. The building line could be farther back on one side of the street than on the other, as in fact it was in the present case. The line could even vary from year to year in the same block as additional houses were constructed, if the ordinance were upheld.

Id. at Idaho 250; *see also, KGF Development, LLC v. City of Ketchum*, 236 P.3d 1284. 149 Idaho 524 (2010).

In this case, the City of Ketchum is violating the uniformity provisions of the LLUPA. Instead of applying the unambiguous uniform setbacks as contained in KCO 17.12.030, the City applied a different set of rules addressing snow storage and drainage. The result of applying these other rules was to create a setback that is 15’ feet from the edge of the pavement on Garnet Street, instead of 15’ feet from Nalen’s property line.

² The court interpreted the uniformity requirements under Idaho Code Section 50-401. This Section is nearly identical to the LLUPA, which is now codified under Idaho Code Section 67-6501 et seq.

Specifically, the City applied KCO 17.124.170 to arrive at its decision. There are several problems with applying that Section.

First, as stated, the application of a non-uniform setback of 15' from the property line violates the uniformity requirements of the LLUPA.

Second, the Director's reliance on Section 17.124.170 to vary from the uniformity requirements is misplaced based on a clear reading of the KCO. The Director relies on Section 17.124.170 to vary from the dimensional standards, under KCO 17.12.040.B. Section 17.12.040.B addresses the dimensional standards for the Community Core ("CC") District. The Gem Streets are not in the CC District.

Third, KCO 17.12.030 states that the dimensional standards cited therein are also subject to "the regulations of chapter [KCO] 17.128." The Director does not cite any of the provisions of Section 17.128. Again, he relies on KCO 17.124.170 to vary the setback from the property line. This provision is expressly not addressed or mentioned under KCO 17.12.030 for varying the defined and authorized 15' setback.

Fourth, KCO 17.12.170 addresses drainage, utilities, snow storage and landscaping. It does not address setbacks. Accordingly, it should be clear that it cannot be used to vary the uniform 15' setbacks in the LR District established under KCO 12.12.030.³

For all these reasons, the City's attempt to ignore the setback requirements of its Code violates the uniformity provisions of the LLUPA.

³ Even if KCO 17.12.170 did address setbacks, any interpretation that would allow the City to vary setbacks from one lot to another would also violate the uniformity requirements of the LLUPA.

B. THE FAILURE OF THE CITY TO APPLY UNIFORM LAWS TO IDENTICAL PROPERTIES DENIES NALEN OF HIS EQUAL PROTECTION RIGHTS.

Both the Idaho Supreme Court and United States Supreme Court have been required to create equal protection rights for parties and against governmental jurisdictions which fail to provide equal treatment. It is an equal protection violation to treat parties differently under zoning laws.

The Equal Protection Clause of the Fourteenth Amendment, § 1, commands that no State shall "deny to any person within its jurisdiction the equal protection of the laws." Of course, most laws differentiate in some fashion between classes of persons. The Equal Protection Clause does not forbid classifications. It simply keeps governmental decisionmakers from treating differently persons who are in all relevant respects alike. *F.S. Royster Guano Co. v. Virginia*, 253 U.S. 412, 415, 40 S.Ct. 560, 561, 64 L.Ed. 989, 990 (1920).

* * *

Even though a statute or regulation is valid under this analysis, selective or discriminatory enforcement of that statute or regulation may amount to a violation under either the Idaho or United States Constitutions, but only if the challenger shows a deliberate plan of discrimination based upon some improper motive like race, sex, religion, or some other arbitrary classification. *Whren v. United States*, 517 U.S. 806, 813, 116 S.Ct. 1769, 1774, 135 L.Ed.2d 89, 97 (1996); *Young Elec. Sign Co. v. State*, 135 Idaho 804, 809, 25 P.3d 117, 122 (2001); *Henson v. Dept. of Law Enforcement*, 107 Idaho 19, 23-24, 684 P.2d 996, 1000-01 (1984). A "class of one" may successfully state an equal protection claim, even where the challenged treatment does not follow suspect classifications or punish the exercise of fundamental rights, if he or she was singled out based upon a distinction that fails the rational basis test. *Village of Willowbrook v. Olech*, 528 U.S. 562, 564-65, 120 S.Ct. 1073, 1075, 145 L.Ed.2d 1060, 1063-64 (2000).

Anderson v. Spalding, 137 Idaho 509, 50 P.3d 1004 (2002).

In this case, the City has a long history of treating the Gem Street neighbor's differently. It also has a history of punishing Gem Street neighbors for exercising their rights.

This intentional and systemic discrimination warrants a claim that Nalen's equal protection rights have been violated.

C. NALEN IS ENTITLED TO HIS ATTORNEY'S FEES AND COSTS.

Nalen requests all his attorney's fees and costs as allowed under Idaho Code Section 12-117, as the City has acted without a reasonable basis in fact or law in denying Nalen his lawful setbacks as measured from his property line.

III. CONCLUSION

For all these reasons, the City must conclude that Nalen has a right to develop his property as set forth in the attached site plan, Exhibit 2.

HAEMMERLE LAW, P.L.L.C.



FRITZ X. HAEMMERLE

CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of March, 2020 I served a true and correct copy of the within and foregoing document upon the attorney(s) named below in the manner noted.

Suzanne Frick, City Administrator

Hand Delivered to City Drop Box
(City not allowing personal delivery
because of COVID-19)

Mathew Johnson, City Attorney

mjohnson@whitepeterson.com



FRITZ X. HAEMMERLE

EXHIBIT 1

403847

'97 JUN 15 AM 10 07

Agreement

BLANK REQUEST

City of Ketchum

SETTLEMENT AGREEMENT

FILE # 237

THIS SETTLEMENT AGREEMENT ("Agreement") is made and entered into this ~~November~~ ^{FEBRUARY} 8TH day of ~~November~~, 1997, by and between CARL CURTIS ("Curtis"), JEANNE FRANKS, THE VINAGRE TRUST, by and through GARY E. and LINDA M. VINAGRE, TRUSTEES, ROBERT and MARJOLAINE RENFRO, WILLIAM G. and SUSAN POLLOCK, THOMAS H. "BUD" and RITA ANN HEANEY, JOHN T. and JERRY ANN HEANEY, WILLIAM H. and ANN S. VANDERBILT, RICHARD O. DAHLGREN and JULIE SLOCUM DAHLGREN, KATHY JEANNE HARRAH, RELI LOUISE HAEMMERLE, FRITZ XAVIER HAEMMERLE, WILMA PACE, PAMELA JEAN RAYBORN, JOHN D. PACE, STELLA A.M. KEANE, CARL E. and SUSAN LEY, JUDY L. DEMETRE and THE ESTATE OF GEORGE B. SAVIERS, deceased, by and through its personal representative, BOB STEVENS (collectively referred to as the "Garnet Street Neighbors") and the CITY OF KETCHUM ("Ketchum").

RECITALS

WHEREAS, Curtis has filed case number CV-93-897 ("Lawsuit") in the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Blaine, seeking to resolve the legal status of a parcel of property commonly known as Garnet Street, located within Ketchum, and more specifically depicted in the diagram attached hereto as Exhibit "A" and incorporated herein; and

WHEREAS, the Garnet Street Neighbors, Ketchum and other named individuals and/or entities ("Other Defendants") were named as defendants in the Lawsuit; and

WHEREAS, Curtis is the owner of real property located at the eastern end of Garnet Street, in Ketchum, commonly known as Lot 1 of the Esmeralda Subdivision Lot Line Shift Plat ("Curtis Property"), and more specifically described in Exhibit "B" and depicted in Exhibit "C"; and

WHEREAS, the Garnet Street Neighbors, Ketchum and certain of the Other Defendants are the owners of, or have some form of interest in, the real property located in Ketchum, which property is more specifically described in Exhibit "B" and depicted in Exhibit "A"; and

WHEREAS, except for the Garnet Street Neighbors and Ketchum, the Other Defendants have had a default judgment entered against them consistent with the relief sought in the Curtis complaint filed in the Lawsuit, or have been dismissed from the Lawsuit; and

WHEREAS, Curtis, the Garnet Street Neighbors and Ketchum desire to resolve the Lawsuit on the terms and conditions hereinafter set forth;

NOW, THEREFORE, for good and valuable consideration, including the mutual covenants herein contained, the parties hereto agree as follows:

TERMS AND CONDITIONS

1. **PAVED PORTION OF GARNET STREET.** The parties agree that the paved portion of Garnet Street, as specifically described in Exhibit "D", attached hereto and incorporated herein, from Highway 75, then eastward to the end of the paved portion of Garnet

Street shall be deemed for all purposes to be a public roadway by prescriptive easement. After the Garnet Street Neighbors have executed easements to Ketchum pursuant to Paragraph 5, the parties agree that the paved portion of Garnet Street described herein shall be deemed a public roadway by express easement. The parties agree that the property lying to the north and south of the paved portion of Garnet Street is private property.

2. *UNPAVED PORTION OF GARNET STREET.* The parties agree that the unpaved, or graveled, portion of Garnet Street, as specifically described and depicted in Exhibit "E", attached hereto and incorporated herein, from the east end of the paved portion of said Street, as described in Exhibit "D", then eastward, shall be deemed a private driveway. The Garnet Street Neighbors and Curtis agree that said private driveway shall provide access to a maximum number of three (3) single family residential lots in a subdivision on the Curtis Property, as well as providing access to the property owned by The Estate of George B. Saviers ("Saviers Property"). The Garnet Street neighbors and Curtis agree that no additional lots other than those identified herein shall be allowed access via said private driveway. The Garnet Street Neighbors and Curtis agree that the private driveway shall remain as is, without any modification in width, grade or surface.

3. *CURTIS SUBDIVISION APPLICATION.*

(a) *Garnet Street Access.* Curtis intends to submit an application to Ketchum to subdivide the entire Curtis Property ("Curtis Subdivision"). Curtis agrees that the Curtis Subdivision shall propose not more than three (3) single family residential subdivision lots which could be accessed via Garnet Street. Curtis agrees that the Curtis Subdivision shall also provide access via Garnet Street to the Saviers Property. In addition, Curtis agrees that there shall be no further subdivision of the three (3) Curtis Subdivision single family residential lots which could be accessed from Garnet Street.

(b) *Snowplow Easement.* Curtis, through the Curtis Subdivision Plat, agrees to dedicate to Ketchum a snowplow access and turnaround easement, to enable a Ketchum snowplow to turn around near the location on the Curtis Property adjacent to Garnet Street currently used by Ketchum for such purposes as depicted in Exhibit "E", attached hereto and incorporated herein.

(c) *Pedestrian Path Easement.* Curtis, through the Curtis Subdivision Plat, agrees to dedicate to the Garnet Street Neighbors a pedestrian path easement, which shall be located in the approximate location of the existing path on the Curtis Property leading to the back side of Dollar Mountain.

(d) *Building Envelopes.* Curtis agrees that the Curtis Subdivision Plat shall designate all building envelopes outside the existing trees on the Curtis Property.

(e) *Application Approval Condition Precedent.* At such time as Ketchum gives final approval to the Curtis Subdivision, the parties hereto agree to execute and submit to the Court a Stipulation For Dismissal of the Lawsuit in the form attached hereto as Exhibit "F" and incorporated herein. The parties agree that all claims, complaints, crossclaims and counterclaims in any way relating to the Lawsuit shall be dismissed with prejudice as to the Garnet Street Neighbors and Ketchum. The parties agree that the Court may enter an Order For Dismissal of the Lawsuit as to the Garnet Street Neighbors and Ketchum in the form attached hereto as Exhibit "G" and

incorporated herein. In the event Ketchum does not approve the Curtis Subdivision, the parties agree that all recitals, covenants, terms and conditions contained in this Agreement shall be null and void, and evidence of the same shall not be introduced in the Lawsuit or any litigation thereafter pertaining to the resolution of the status of Garnet Street.

(f) *Ketchum's Execution of Agreement.* The parties acknowledge that by Ketchum's execution of this Agreement, Ketchum does not agree, either expressly or implicitly, to approve the proposed Curtis Subdivision. Furthermore, the parties acknowledge that Ketchum only executes this Agreement on the basis that Ketchum will agree to the dismissal of the Lawsuit on the terms and conditions herein set forth, should Ketchum, in its sole and absolute discretion, approve the Curtis Subdivision. The parties agree that nothing herein shall be construed by any party as an obligation on the part of Ketchum to approve all or any portion of the Curtis Subdivision.

4. **PRESERVATION OF TREES.** The Garnet Street Neighbors and Curtis agree that the existing trees located adjacent to the unpaved and paved portions of Garnet Street, as said portions of Garnet Street are described in Paragraphs 1 and 2 herein and described and depicted in Exhibits "D" and "E", shall not be disturbed, except as necessary to prevent an obstruction to traffic or to protect the integrity of Garnet Street and the surrounding structures.

5. **ACCESS AND UTILITY EASEMENTS.** The parties agree to grant the following express easements:

(a) A public access and utility easement from Curtis and the Garnet Street Neighbors, as Grantors, to Ketchum, as Grantee, upon, over and under the paved portion of Garnet Street as said portion of Garnet Street is described in Paragraph 1 herein and described in Exhibit "D"

(b) A utility easement from Curtis, The Estate of George B. Saviers and Judy Demetre, as Grantors, to Ketchum, as Grantee, upon, over and under that portion of the Curtis Property, Saviers Property and Demetre Property located within the unpaved portion of Garnet Street as said portion of Garnet Street is described in Paragraph 2 herein and described and depicted in Exhibit "E".

(c) A private access and utility easement from Judy Demetre, as Grantor, to Curtis and The Estate of George B. Saviers, as Grantees, over and under that portion of the Demetre Property located within the unpaved portion of Garnet Street, as said portion of Garnet Street is described in Paragraph 2 herein and described and depicted in Exhibit "E"

(d) A reciprocal private access and utility easement between Curtis and The Estate of George B. Saviers upon, over and under that portion of the Curtis Property and the Saviers Property located within the unpaved portion of Garnet Street as said portion of Garnet Street is described in Paragraph 2 herein and described and depicted in Exhibit "E"; and a private parking and landscape easement from Curtis, as Grantor, to The Estate of George B. Saviers, as Grantee, upon, over and under a portion of the Curtis Property as depicted in Exhibit "E".

The parties agree that the express easements described above, attached hereto and incorporated herein as Exhibit "H", shall become effective only upon the approval by Ketchum

of the Curtis Subdivision proposed for development on the Curtis Property as described herein. The parties agree that if Ketchum denies the Curtis Subdivision application, none of the easements herein contained would be valid, and no additional documents as envisioned in this Agreement would be required to be executed.

6. **REMEDIES.** The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by any party shall not preclude or waive its rights to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

7. **AMENDMENTS.** This Agreement may only be changed, modified or amended in writing executed by all parties.

8. **HEADINGS.** The headings in this Agreement are inserted for convenience and identification only and are in no way intended to describe, interpret, define or limit the scope, extent or intent of this Agreement or any provision hereof.

9. **ATTORNEYS' FEES AND COSTS.** Should any action be brought to interpret or enforce any provision hereof or the easements contemplated herein, or for damages for breach hereof, the prevailing party shall be entitled to such reasonable attorneys' fees and costs, as may be determined by any court of competent jurisdiction wherein such action is brought, including attorneys' fees and costs on appeal.

10. **SUCCESSORS AND ASSIGNS.** All provisions of this Agreement, including the benefits and burdens of the easements attached hereto, shall run with the land covered hereby and are binding on and enure to the benefit of the respective heirs, assigns, successors, lessees, tenants and personal representatives of the parties hereto.

11. **RECORDING.** This Agreement and any easement granted herein may be recorded in the Office of the Blaine County Recorder only after the approval of the Curtis Subdivision by Ketchum.

12. **INTERPRETATION/EXECUTION OF DOCUMENTS.** This Agreement shall be liberally construed in accordance with the general purposes of this Agreement and the laws of the State of Idaho. In addition, the parties hereto agree that they will, at any time hereafter, upon reasonable request of the others, execute and deliver such documents as the other parties may reasonably require for the purpose of giving full effect to the provisions of this Agreement.

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

14. **AUTHORITY.** The parties executing this Agreement warrant, state, acknowledge and affirm that they have the authority to sign the same and to bind themselves and/or their respective clients to the terms contained herein.

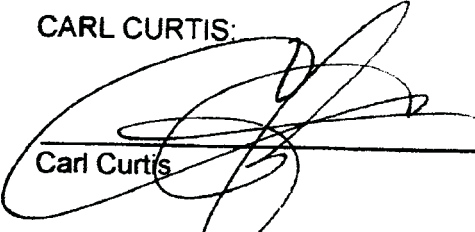
15. **ENTIRE AGREEMENT.** This Agreement contains the entire Agreement between the parties respecting the matters herein set forth and supersedes all prior Agreements between the parties hereto respecting such matter.

16. EXECUTION. This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

17. ACCEPTANCE. 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.


IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

CARL CURTIS:



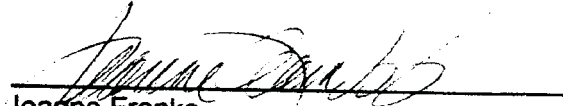
Carl Curtis

CITY OF KETCHUM, IDAHO:

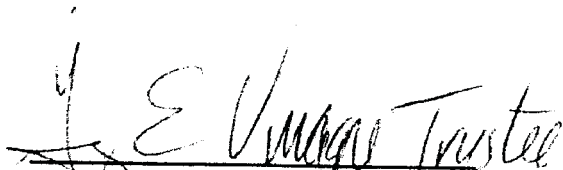


Guy P. Coles, Mayor

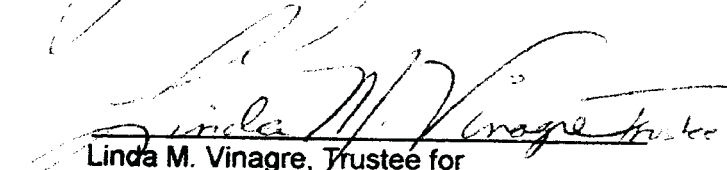
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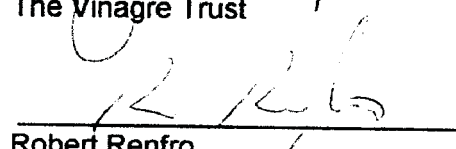
Jeanne Franks



Gary E. Vinagre, Trustee for
The Vinagre Trust



Linda M. Vinagre, Trustee for
The Vinagre Trust




Robert Renfro



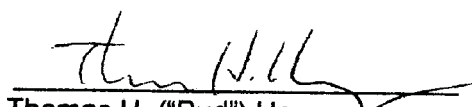
Marjolaine Renfro



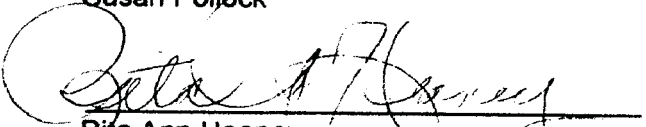
William G. Pollock



Susan Pollock



Thomas H. ("Bud") Heaney



Rita Ann Heaney

DISMISSED 1-29-96


John T. Heaney

DISMISSED 1-29-96


Jerry Ann Heaney



William H. Vanderbilt



Ann S. Vanderbilt



Richard O. Dahlgren

Julie Slocum Dahlgren
Julie Slocum Dahlgren

Kathy Jeanne Harrah
Kathy Jeanne Harrah

Reli Louise Haemmerle
Reli Louise Haemmerle

Fritz Xavier Haemmerle
Fritz Xavier Haemmerle

Wilma Pace
Wilma Pace

Pamela Jean Rayborn
Pamela Jean Rayborn

John D. Pace
John D. Pace

Stella A.M. Keane
Stella A.M. Keane

Carl E. Ley
Carl E. Ley

Susan Ley
Susan Ley

Judy L. Demetre, by Ned C. Williamson
her attorney in fact
Judy L. Demetre

Bob Stevens
Robert H. Stevens
Bob Stevens, Personal Representative
for The Estate of George B. Saviers

EXHIBIT 2

Attachment D.

Written public comment received as of 4:00 p.m. Wednesday, June 3rd, 2020

From: [Marjolaine](#)
To: [Participate](#)
Subject: Nalen Appeal
Date: Tuesday, June 02, 2020 9:53:29 AM

Planning and Zoning Commission -

I am writing concerning the Nalen Appeal for a front yard setback at 201 Garnet Street, Ketchum.

A property owner can do whatever he/she wants within the confines of the planning and zoning rules and regulations attached to their property.

Changing the rules and regulations after purchase does not show for-thought. It shows greed.
If Mr. Nalen had wanted more property available to him for his building site, he could have purchased a larger piece of property.

Garnet Street is a quiet street with appropriate sized buildings on each property.

We would welcome Mr. Nalen and his family.

We do not welcome someone who is trying to get more than what he is legally allowed to do.

I also am troubled that the property was sold to Mr. Nalen by Mr. Haemmerle, who is now his legal counsel. Were promises made before purchase? We will never know.

I am asking that the Planning and Zoning Commission do the right thing.
In these troubled times, doing the right thing over the easy thing is the correct choice.
It is up to you. Do the right thing.

Sincerely,

Marjolaine Renfro
30 year resident of Garnet Street.
49 year resident of Ketchum