

# WHITE PETERSON

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April 11, 2024

To: Mayor and Council  
City of Ketchum

From: Matthew Johnson, City Attorney

H23-084: 180 Leadville HPC Administrative Appeal – Draft Decision

### Background:

This written Decision was drafted by the City Attorney from the discussion and determination at the Council's April 1, 2024 administrative appeal hearing on this matter. This Decision will formalize and final that determination, as is required within 30 days of the administrative appeal hearing.

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

### Recommended Motion:

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

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

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

In the Matter of the Appeal of:	)	
	)	
180 Leadville, LLC	)	<b>FINDINGS OF FACT,</b>
(Appellant/Applicant)	)	<b>CONCLUSIONS OF LAW, AND</b>
	)	<b>DECISION</b>
	)	
Of Historic Preservation Commission	)	
Decision, H23-084	)	

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This matter comes before the City Council of the City of Ketchum ("Council"), pursuant to Ketchum City Code §17.20.030(F) and §17.144.020, as an appeal of a Historic Preservation Commission ("HPC") decision. An appeal hearing on the matter was held before the Council on April 1, 2024. The matter was heard for adoption of this written Decision on April 15, 2024. The Council does hereby make and set forth the following Record of Proceedings and the Council's Decision as follows:

**I. RECORD OF PROCEEDINGS**

The Applicant and Appellant in this matter is 180 Leadville, LLC.

A Record of Proceedings before the HPC and upon administrative appeal ("Record") was prepared and submitted to the Council for the April 1, 2024 hearing. That Record is hereby referenced and incorporated in full into the Record and this Decision. The Record includes the following:

- A. Application to Alter or Demolish a Historic Structure. September 13, 2023
- B. Notice of Public Hearing Before the HPC. September 27, 2023
- C. Transcript of HPC Meeting of October 17, 2023.

- D. Minutes of HPC Meeting of October 17, 2023
- E. HPC Findings of Fact, Conclusions of Law, and Decision. November 7, 2023.
- F. Council Scheduling Order and Notice. March 4, 2024.
- G. Appellant Memorandum in Support of Appeal, March 11, 2024.
- H. Staff Response Memorandum, March 20, 2024.
- I. Appellant Reply Memorandum, March 26, 2024.

On March 4, 2024, the Council made procedural determinations and set deadlines as to submission of written argument by the Parties. All submitted Memoranda are referenced above and made a part of the Record in this matter.

An appeal hearing on this matter was held on April 1, 2024, at which hearing the Council heard oral arguments by the Parties, deliberated, and made a verbal determination. Such hearing was recorded and that recording is made a part of the Record in this matter.

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

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

Pursuant to KMC §17.20.030(F), the decision of the HPC on a demolition or alteration application is appealable to the City Council in the same manner under KMC §17.144 as a Planning and Zoning Commission decisions.

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

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

#### **1. Incorporation of HPC Findings.**

The HPC Findings, Conclusions, and Decision is hereby affirmed and incorporated herein by reference, unless specifically excepted below.

#### **2. The HPC was correct in not considering the potential value of a replacement project, as such factor is not part of the current Historic Preservation criteria.**

Appellant argues that the housing public purposes promoted by Applicant's proposed replacement project on the Subject Property should be a weighing factor in support of the Demolition/Relocation Permit. The HPC found and conducted its deliberations without substantial consideration of the nature or purpose of the proposed replacement project.

The Council is sympathetic to Appellant's urging for a weighing of different public purposes. In this case, such would be weighing how historic preservation may be counterbalanced by development of workforce housing. However, a criteria or factor providing for such weighing is not currently adopted or incorporated into the historic preservation criteria under KMC §17.20. Allowing for such weighing of different public purposes has not been delegated to the authority of the HPC.

Appellant argues that the reference to "conflict with the Comprehensive Plan" in KMC §17.20.030(C)(2) opens an opportunity to consider other portions of the Comprehensive Plan, such as the Comprehensive Plan's housing provisions. The Council interprets KMC §17.20.030(C)(2) more narrowly and does not find that it was intended to be read so broadly as to allow other public purposes within the Comprehensive Plan to trump or counterbalance the historic preservation criteria. To allow such would require a policy change in the City Code.

The HPC was correct in its discretion to evaluate the Application solely on the merits of the proposed demolition/relocation in relation to the historic preservation criteria, and without reference to any potential proposed replacement project – however admirable such proposed replacement may be.

**3. The HPC was appropriately within its discretion to find historical value in relation to the notable people associated with the structure.**

KMC§ 17.20.020(C)(3) provides for historic preservation criteria related to architectural criteria (a), social/historic criteria (b), and/or geographic/natural features (c). Any one or more of these criteria can be reason for a historic designation.

In this case, the HPC determined that the association of the Subject Property with notable people in Ketchum’s history had provided for the building’s previous designation on the historic building/site list, under the social/historic criteria, and should continue to be protected.

The Council finds that the HPC appropriately acted within its discretion under the criteria, and defers to the expertise and judgment of the HPC in finding that the structure retains historical significance.

**4. The HPC acted within its authority and discretion to determine the proposed relocation could adversely impact the historical integrity and context.**

The historic preservation criteria of KMC §17.20.030(C) provide for the HPC to consider not only historical and architectural significance, but also the integrity of the structure and how an alteration may impact historical significance in relation to the community core.

In this case, the HPC found and noted that the proposed relocation outside of Ketchum city limits specifically implicates the historical context in relation to the community core, as well as creating threats to the long-term integrity and preservation of the structure. Appellant has

suggested to the Council that further circumstances may have developed which might mitigate such concern. However, the question of the long-term integrity and preservation has not been resolved. Moreover, any further specificity on the proposed relocation site would be new information not properly before the Council. Appellant has full ability to bring a new application that better addresses the HPC's previous concerns on these issues in order to argue for a different outcome on a new application.

The Council again is deferential to the expertise and reasoned findings of the HPC on the Application that was before them. The Council finds no errors in the interpretation or application of the historic preservation criteria by the HPC. The Council finds no arbitrary or capricious actions by the HPC. The HPC appropriately acted within its discretion, expertise, and authority.

Based upon the foregoing review and analysis, and good cause appearing from the record in these proceedings, the Council AFFIRMS the Decision of the HPC as presented in this matter, with no changes, and authorizes the Mayor to sign this Decision on behalf of the City Council.

\_\_\_\_\_  
Neil Bradshaw, Mayor

ATTEST:

By: \_\_\_\_\_  
Trent Donat, City Clerk

**NOTICE OF APPEAL RIGHTS:**

This Decision constitutes the written decision of the Council pursuant to KMC 17.144.020(D). The City Clerk is directed to transmit this Decision to the Appellant and any

other affected person who has requested a copy in writing. All parties and affected persons are hereby notified of this final decision and their option to consider further action, including appeal, pursuant to the proceedings set forth in Idaho Code § 67-6521.

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

By: \_\_\_\_\_  
Trent Donat, City Clerk