

From: [James Hungelmann](#)
To: [Neil Bradshaw](#); [Amanda Breen](#); [Courtney Hamilton](#); [Tripp Hutchinson](#); [Spencer Cordovano](#); [Participate](#); [Suzanne Frick](#); [Shellie Gallagher](#); [Trent Donat](#)
Subject: public comment: TAXPAYER LAWSUIT TO SHUTDOWN AND DISMANTLE KURA
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Attachments: [KURA SHUTDOWN LAWSUIT june 5 2024.pdf](#)

Date June 5, 2024

To Ketchum City Council and Mayor
Ketchum Urban Renewal Agency Board

Re General Public Comment/ *for the record*
KCC meeting of June 17, 2024
KURA Meeting of June 17, 2024

Subject

TAXPAYER LAWSUIT TO SHUTDOWN AND DISMANTLE KURA

Introduction

This submission to the public record lays out the legal case of certain Ketchum Taxpayers against Ketchum City and the Ketchum Urban Renewal Agency (KURA) and various of its wrongful actors. It is intended to facilitate public understanding and discourse as well as determination of appropriate legal action under consideration. It is not legal advice to anyone.

Relief Requested

This litigation would seek the following relief from the Court:

1. A Judgment Declaring that the existence and operation of KURA is and has been illegal from the start of its existence, in flagrant violation of clear and unambiguous Idaho Constitutional and Statutory Law;
2. A Permanent Injunction prohibiting KURA from continuing in existence and forcing the shutdown and orderly dismantling of all its illegal projects, in full compliance with law; and,
3. An award of court costs and attorneys' fees required to bring a halt to defendants' ongoing violation of Constitution and law.

Statement of the Case

1. The Idaho Constitution prohibits a municipality from incurring an indebtedness or liability exceeding its income and revenue for a specific year unless there is two-thirds voter approval for it and provisions are made for collection of an annual tax sufficient to cover interest and principal when due. (Idaho Constitution Article VIII Section 3.)
2. The purpose of this Constitutional Mandate is to ensure fiscal responsibility and prevent Idaho municipalities from accumulating excessive debt. It requires any large borrowing to be directly approved by the voters with clear plans in place to repay the borrowed money responsibly over time. This requirement helps maintain the financial stability of municipalities and ensures that they operate within their means, preventing

budget deficits and potential financial crises. By adhering to this mandate, Idaho municipalities are forced to manage their finances prudently, prioritize spending, and maintain balanced budgets.

3. The Idaho Urban Renewal Law, Idaho Code Section 50-2001 et seq., provides a means by which Idaho municipalities may legally “end-run” this Constitutional prohibition, by setting up an urban renewal agency essentially to do what it cannot do with respect to incurring debt for capital projects without the need for voter approval.

4. However, this statutory “exception” to the Constitutional Mandate is available only if there exist conditions in the municipality that are “deteriorated” or “deteriorating” which the municipality seeks to remedy or alleviate by “urban renewal”. Specifically, a qualifying "urban renewal project" may include undertakings and activities of a municipality in an urban renewal area only *for the elimination of deteriorated or deteriorating areas and for the prevention of the development or spread of slums and blight* and may involve slum clearance and redevelopment in an urban renewal area, or rehabilitation or conservation in an urban renewal area, or any combination or part thereof in accordance with an urban renewal plan. [Idaho Code Sections 50-2002, 50-2005]. If such deteriorated or deteriorating, blight-ridden conditions are not in place, the mechanism of Urban Renewal is not available to the municipality and the Constitutional Mandate controls.

5. “Deteriorated” or “deteriorating” are terms that are thoroughly, precisely and unambiguously defined in Idaho Urban Renewal Law to describe conditions so broken-down and dangerous as to constitute a bona fide threaten to public health, safety and morals:

(8) *"Deteriorated area"* shall mean an area in which there is a predominance of buildings or improvements, whether residential or nonresidential, which by reason of dilapidation, deterioration, age or obsolescence, inadequate provision for ventilation, light, air, sanitation, or open spaces, high density of population and overcrowding, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors *is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, or crime, and is detrimental to the public health, safety, morals or welfare. . . .*

(9) *"Deteriorating area"* shall mean an area which by reason of the presence of a substantial number of deteriorated or deteriorating structures, predominance of defective or inadequate street layout, faulty lot layout in relation to size, adequacy, accessibility or usefulness, insanitary or unsafe conditions, deterioration of site or other improvements, diversity of ownership, tax or special assessment delinquency exceeding the fair value of the land, defective or unusual conditions of title, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, substantially impairs or arrests the sound growth of a municipality, retards the provision of housing accommodations or constitutes an economic or social liability *and is a menace to the public health, safety, morals or welfare in its present condition and use; . . .*

[*emphases added*, Idaho Code Section 50-2018]

6. Despite what is asserted in “boilerplate” Resolutions establishing KURA in 2006 and restating and expanding it in 2010, it is factually indisputable that from the inception of KURA in 2007 through the present date, there never has existed anywhere with the City of Ketchum any conditions even remotely constituting dire danger and a menace or threat to public health, safety, morals or welfare, as required for lawful creation of any urban renewal agency in Idaho.

7. Ketchum’s Urban Renewal Plan adopted in 2006 by Ketchum City Council Resolution 06-034 and reaffirmed in 2010 by City Council Resolution 10-026 is fatally flawed. Each Resolution cites as its *raison d’être* numerous factual assertions, most of which were and are false:

“*Substantial amount of deteriorated or deteriorating structures including*

- A lack of affordable workforce housing
- A lack of affordable downtown retail space
- Stalled population growth at 3000
- Weekday traffic congestion and parking difficulty
- A preponderance of defective and inadequate street layouts
- Leading to an unsafe pedestrian environment and difficulty way finding
- Unsafe conditions
- Substantial economic underdevelopment . . .”

Importantly, even if all these “asserted facts” were true, they are legally irrelevant, as they fall far short of meeting the criteria for *deteriorated or deteriorating conditions* as clearly and exhaustively defined by law, Idaho Code 50-2018 recited above.

8. The boilerplate assertion in these city council Resolutions, that the conditions described in paragraph 7 are "all impairing or arresting the sound growth of the city, retarding the provision of housing accommodations, and constituting an economic and social liability and a menace to the public safety, health, morals, and welfare in its present condition," is a serious falsehood. It reflects disregard for the rule of law on the part of certain officials seeking to bootstrap their way to gain "authority" to shape Ketchum's development future without adhering to the strict financial responsibility and voter approval requirements mandated by the Idaho Constitution.

9. As posited by the defendants, the law would allow them free reign to orchestrate the future of downtown Ketchum including via large capital projects requiring significant long-term debt.

According to its Mission and Vision statement, the Ketchum Urban Renewal Plan, and the KURA website, Ketchum city officials have ambitious plans to use KURA to create what they envision as a “better world” for Ketchum. They aim to address a wide range of issues they believe require urban renewal intervention, all without voter oversight or control, including the following:

- Affordable” workforce housing downtown
- Improvements to streets, sidewalks and other public infrastructure
- Parking lots/structures. public parking in anticipation of long-term downtown

growth and development.

- \$1.5 million “contribution” from KURA to help fund Ketchum City’s main street project
- 4th Street Heritage Corridor Project - a multi-phase streetscape renovation designed to increase street life through wider sidewalks, outdoor seating, landscaping, and public art. a unified streetscape from the Library southwest to the Ketchum Post Office
- The Walkable Ketchum Project: Making Ketchum More Pedestrian Friendly

In addition, KURA has a five-year capital budget calling for spending many millions of dollars to address a wide range of “perceived needs” for Ketchum:

- Underground power lines for Main Street
- Master plan for town square
- Reimburse Bluebird for infrastructure
- Town square improvements
- Infrastructure for housing
- Pump park relocation
- Wagon museum improvements
- Bike improvements
- Forest Service housing
- “Sustainability projects”
- Recreation facilities
- Parks and open space
- Underground power lines

10. However, as a matter of law, the Urban Renewal Agency vehicle is not available for perceived altruistic projects of any type including all the projects in KURA’s purview listed in paragraph 9 above, regardless of the intentions or professional competency of the defendants. Again, an urban renewal agency can become established and empowered to act only if there are conditions in the municipality that are *deteriorated or deteriorating* as those terms are thoroughly and precisely defined in the law, and, as indicated in paragraph 6 above, no such conditions have ever existed in Ketchum.

The improper establishment and continued operation of KURA has enabled a small group to act as the dominant drivers of Ketchum’s development, operating outside the transparency and accountability mandated by law. KURA represents an unlawful interference with free market development of Ketchum pursued in compliance with Constitutional and law. The development of the city according to the whims of a few appointed overseers with funding from burdensome debt is precisely what the Constitutional provision is designed to prevent.

11. Whether any of the many projects indicated in paragraph 9 should be pursued by Ketchum City is up to the city council and the voters. Development should take place in an orderly fashion under transparent public scrutiny and with voter approval of any projects involving significant indebtedness.

Most Ketchum residents treasure the casual mountain western culture and lifestyle and

oppose “robust development” as envisioned by KURA. They don’t want the ruination of quality-of-life, soaring property taxes, and other problems that abound in hyperdeveloped mountain resorts like Park City, Aspen and Vail.

12. To support its various projects, KURA has been provided with valuable city resources free of charge, enabling it to circumvent constitutional restrictions that prevent the city from undertaking these actions directly. This practice also undermines the transparency and accountability of city employees. Currently, individuals working "part-time" for KURA include the city treasurer, who also serves as KURA treasurer, and the city clerk and business manager, who also serves as KURA Secretary. Before transitioning to KURA employment in 2020, KURA's executive director similarly provided services to KURA while working full-time as the City Administrator for Ketchum.

13. Defendants would have taxpayers believe that the Urban Renewal Law should be liberally construed to allow them the right to develop Ketchum as they see fit. However, established rules of statutory construction strictly prohibit any expanded interpretation.

Idaho Code Section 73-113 mandates that “[t]he language of a statute should be given its *plain, usual and ordinary* meaning”. In the context of Idaho urban renewal law, the operative terms “deteriorated” and “deteriorating” are exhaustively and unambiguously defined. The statute is clear and precise that to constitute “deteriorated”, the conditions must be “. . . conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, or crime, and is detrimental to the public health, safety, morals or welfare..” Further, to constitute “deteriorating”, the conditions must constitute “a menace to the public health, safety, morals or welfare. . .” No such conditions have ever existed in Ketchum, Idaho, and none of the conditions asserted as justification for the establishment of KURA, listed in paragraph 7 above, even remotely meets these legal definitions.

Furthermore, it is well-established law that an interpretation of statutory language is not allowed if it results in a violation of fundamental constitutional protections, such as those contained in Article VIII, Section 3 of the Idaho Constitution that safeguard municipal fiscal responsibility and require public vote on significant debt-incurring projects.

14. With dismissive expressions like “The horse is out of the barn”, defendants would have the Ketchum public believe that because KURA has been in existence now going on 18 years, any objection from the public is too late to do anything about and must be disregarded. This position flies in the face of fact and law. In fact, public objection to the justification for the existence of KURA has been raised many times over the years, only to be ignored and dismissed out of hand by Ketchum’s mayor, city council, and KURA.

More significantly, as a matter of law, fundamental constitutional rights cannot be negated, waived, or estopped by inaction or acquiescence. This is because the protection of these rights is of paramount public importance. Acts that flagrantly violate Constitutional protections are considered void *ab initio* (from the beginning). They are inherently invalid, and no amount of inaction or acquiescence by the citizenry can make them valid. The Idaho Constitution says just that: “Any indebtedness or liability incurred contrary to this provision shall be void.” Article VIII Section 3.

Moreover, citizens retain the right to challenge unconstitutional actions regardless of how long those actions have been in place. Courts have the authority to declare null and void

laws and actions that violate constitutional provisions, and this power is not negated by the passage of time or acquiescence on the part of the public.

15. Because there is absolutely no legal basis for the existence of KURA, as a matter of law, Idaho Urban Renewal may not be used in Ketchum. Ketchum City may pursue capital projects involving serious indebtedness such as envisioned by KURA only if it first secures a vote of two-thirds of the qualified electors with an annual tax sufficient to pay principal and interest on such debt as it becomes due, in compliance with the Idaho Constitutional mandate.

16. Standing: Plaintiffs are tax paying residents of Ketchum who are at imminent risk of being harmed in exactly the way the Idaho Constitution was intended to prevent, specifically, loss of municipal fiscal responsibility and voter control over the city's future which adversely impacts all Ketchum residents.

17. Plaintiffs seek the following relief:

A. In accordance with Idaho Rule of Civil Procedure 57, a Judgment Declaring that the existence and operation of KURA is and has been illegal from the start of its existence, in flagrant violation of clear and unambiguous Idaho Constitutional and Statutory Law;

B. In accordance with IRCP 65, a Permanent Injunction against KURA and Ketchum City barring KURA from continuing in existence and forcing the immediate shutdown and unraveling of all its projects. There is no remedy at law adequate to address this ongoing serious constitutional violation that worsens daily as KURA expands its wrongful reach.

C. An award of court costs and attorneys' fees against defendants for wrongfully ignoring taxpayer demands for them to cease and desist from ongoing violation of Constitution and law thereby making this lawsuit necessary.

Respectfully,

TAXPAYER LAWSUIT TO SHUTDOWN AND DISMANTLE KURA

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Moreover, citizens retain the right to challenge unconstitutional actions regardless of how long those actions have been in place. Courts have the authority to declare null and void laws and actions that violate constitutional provisions, and this power is not negated by the passage of time or acquiescence on the part of the public.

15. Because there is absolutely no legal basis for the existence of KURA, as a matter of law, Idaho Urban Renewal may not be used in Ketchum. Ketchum City may pursue capital projects involving serious indebtedness such as envisioned by KURA only if it first secures a vote of two-thirds of the qualified electors with an annual tax sufficient to pay principal and interest on such debt as it becomes due, in compliance with the Idaho Constitutional mandate.
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17. Plaintiffs seek the following relief:
 - A. In accordance with Idaho Rule of Civil Procedure 57, a Judgment Declaring that the existence and operation of KURA is and has been illegal from the start of its existence, in flagrant violation of clear and unambiguous Idaho Constitutional and Statutory Law;
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Respectfully,