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November 22, 2023

To: Planning & Zoning Commissioners
City of Ketchum

From: Matthew Johnson, City Attorney

Re: Sawtooth Serenade DR Administrative Appeal – Decision

Background:

This written Decision was drafted by the City Attorney from the discussion and determination at the Commission's 11/14/23 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 as deemed appropriate by the Commission to reflect the Commission's determination 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 Chair 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 Chair to sign.*

**BEFORE THE PLANNING & ZONING COMMISSION
OF THE
CITY OF KETCHUM**

)	
In the Matter of the Administrative)	
Appeal of:)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW, AND
Scott and Julie Lynch, Yah Bernier)	DECISION
and Elizabeth McCaw, and Distrustful)	
Ernest Revocable Trust, for the)	
Sawtooth Serenade Project)	
(Applicant/Appellant))	
Of a Planning Director Determination		
on a Design Review Application		

This matter comes before the Planning and Zoning Commission of the City of Ketchum ("Commission"), pursuant to Ketchum City Code 17.144.010, as an appeal by an applicant/affected party of a Planning Director determination. An appeal hearing on the matter was held before the Commission on November 14, 2023. The matter was heard for adoption of this written Decision on November 28, 2023. The Commission does hereby make and set forth the following Record of Proceedings and the Commission's Decision as follows:

I. RECORD OF PROCEEDINGS

The Appellants in this matter are Scott and Julie Lynch, Yah Bernier and Elizabeth McCaw, and Distrustful Ernest Revocable Trust, (“Applicant” or “Appellant”), an affected party, for the Sawtooth Serenade Project (“Project”). The Planning Director served as Respondent in replying to the issues raised on administrative appeal.

A Record of Documents before the Ketchum Planning Department and upon administrative appeal ("Record") was prepared and submitted to the Commission before the

November 14, 2023 hearing. That Record is hereby referenced and incorporated in full into the Record and this Decision. The Record includes the following Attachments:

- A. Administrative Determination, August 24, 2023
- B. Notice of Appeal and Appellant Brief with exhibits, September 7, 2023
- C. Administrator Response Brief, November 3, 2023
- D. Appellant Reply Brief, November 9, 2023
- E. City Ordinance 1234
- F. Legal Cover Report, November 9, 2023

On November 14, 2023, the Commission made procedural determinations and approved the stipulated and satisfied 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 November 14, 2023, at which hearing the Commission 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 Commission takes judicial notice of the Ketchum Municipal Code (KMC).

Pursuant to KMC § 17.144.010 (C), the Commission makes its determination considering only the administrator determination below along with written and oral legal arguments by the Parties. No new facts or evidence are considered in the appeal.

III. FINDINGS, CONCLUSIONS, AND DECISION

1. The Administrator’s Determination was made on Applicant’s application for Design Review (DR), which is distinct from Preapplication Design Review.

Applicant’s application for preapplication design review was timely filed and complete prior to the City’s adoption of Interim Ordinance 1234. For purposes of consideration on preapplication design review, the Commission therefore evaluated the application and provided feedback in relation to the standards set prior to Interim Ordinance 1234. The Applicant and Commission completed the preapplication design review process on January 24, 2023.

A preapplication design review is provided for under KMC 17.196.010(C). It is required in certain circumstances, and may be requested in other circumstances, as a separate and distinct step. KMC 17.196.010(C)(1). The purpose of preapplication design review is to provide direction and exchange ideas on design concept, prior to full design review. KMC 17.196.010(C)(2). Preapplication design review was required in this matter.

Design review is a subsequent and separate application and process, as provided for under KMC 17.196.040. The Applicant was required to submit a subsequent application to initiate the design review process after the preapplication design review process concluded on January 24, 2023.

2. The 180-day requirement of Ordinance 1234 was appropriately interpreted and applied by the Administrator to the DR Application.

Interim Ordinance 1234 specifically considered and provided for situations where a preapplication design review had already been conducted and with an allowance of an additional 180-day timeframe for the next process: application for design review. See Ordinance 1234, Section 3. The Commission hereby confirms the intent of Section 3 was to provide a reasonable timeframe for an applicant that had conducted preapplication design review to proceed to final

design review under the pre-Ordinance 1234 standards, while not allowing an applicant to delay and sit on the preapplication design review completion and pre-Ordinance 1234 standards without further timely action.

The purpose of Section 3 was to provide for orderly and timely transition of development projects from the pre-Ordinance 1234 standards and criteria to the Ordinance 1234 standards and criteria. The timeframe for such transition was specifically discussed in the deliberations on Ordinance 1234, with 180 days being added to Ordinance 1234 and adopted as an appropriate time period to balance the interests.¹

Therefore, when the Administrator received the Applicant's design review application, the Administrator appropriately checked to see if this new application fell within the 180-day window provided allowing projects to remain under pre-Ordinance 1234 standards. In this situation, the Administrator appropriately found that the Final Design Review Application was submitted on August 7, 2023, which was beyond the 180-day window to preserve the previously completed preapplication design review.

The Administrator appropriately interpreted and applied the 180-day window of Section 3 of Ordinance 1234 in this context. The Applicant failed to timely file a Final Design Review application in order to preserve the previous completion of the preapplication design review.

3. The 180-day requirement of Ordinance 1234 was equitably applied, and there is no evidence of improper delay by City staff.

The Commission finds that two other projects, as presented in the hearing on this matter, similarly fell into this transition period and took steps to timely preserve their preapplication

¹ It is noted that Applicant/Appellant was present for those hearings and the discussion on the addition to Ordinance 1234 for the inclusion of the 180-day window to preserve a preapplication design review completion.

design review as provided for by Section 3 of Ordinance 1234. Appellant in this matter had the same time requirements and opportunity for transition as any other project.

The Commission also finds that no evidence was presented of any substantive delay or abuse of process by City staff. Any delays in scheduling with staff were early enough in the time period to provide ample time for follow-up, and there is no evidence that those delays were undue or unreasonable as beyond what reasonably might be expected in scheduling for a busy department. Alleged delays by third-parties, such as Michael Decker and/or Clear Creek Disposal, would be outside the control or purview of the City. Furthermore, it was admitted that no attempts were made by Applicant to address any such outside third-party delays by submitting a nearly complete or contingent application, and/or seek other accommodation due an outside party delay.

Based upon the foregoing review and analysis, and good cause appearing from the record in these proceedings, the Commission AFFIRMS the Administrator Determination as presented in this matter and authorizes the Chair to sign this Decision on behalf of the Commission.

Neil Morrow, Chair

ATTEST:

By: _____
, Deputy City Clerk

NOTICE OF APPEAL RIGHTS:

This Decision constitutes the written decision of the Commission pursuant to KMC 17.144.010(D). The City Clerk is directed to transmit this Decision to the Appellant and any

