



City of Ketchum

CITY COUNCIL MEETING AGENDA MEMO

Meeting Date: 07/17/23 Staff Member/Dept: Adam Crutcher, Associate Planner
Planning and Building Department

Agenda Item: Recommendation to review and approve Right-of-Way Encroachment Agreement #22870 for the maintenance of existing landscaping features in the public right-of-way at 130 E River St.

Recommended Motion:

I move to approve Right-of-Way Encroachment Agreement #22870 for the maintenance of existing landscaping features in the public right-of-way at 130 E River St.

Reasons for Recommendation:

- The existing landscaping and curb and gutter have been in place since the original construction of the residence on the subject property back in 1995. No ROW Encroachment Agreement was submitted for the improvements.
- The existing paver rings around both trees will be removed and replaced with pavers which don't encroach into sidewalk.
- All city departments have reviewed the proposal and have no issue with the proposed subdivision, security agreement, or right-of-way encroachment agreement.

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

Sustainability Impact:

None OR state impact here: None

Financial Impact:

None OR Adequate funds exist in account: None

Attachments:

- | |
|---|
| 1. Application and Supporting Materials |
| 2. Right-of-Way Encroachment Agreement |



City of Ketchum

E23-013

OFFICIAL USE ONLY
Date Received: 6.30.23
By: JMcCain
Permit Fee: \$150.-
Date Paid: 6.30.23

RIGHT-OF-WAY ENCROACHMENT PERMIT APPLICATION

Property Owner: Elizabeth W. Shoemaker
 Owner Mailing Address: 151 4th St W, Ketchum 83340 PO. 2716
 Project Contact: Elizabeth Shoemaker
 Contact Email: elizshoe@aol.com
 Contact Phone Number: (310-962-1008
 Property Street Address: 130 River St E, Ketchum ID

Encroachment(s) in Right-of-Way (be specific as possible):
River Street for the right of way affected

Name or Description of Right-of-Way Affected: River St. E.

Width of Right-of-Way: 80 feet

Dimensions of Right-of-Way Encroachment(s): existing trees & curb & gutter

Attach diagram identifying streets and/or alleys, total width of right-of-way, dimensions of right-of-way encroachment, types(s) of encroachment and visual aids sufficient to show the impacts of the encroachment.

Owner's Signature: Elizabeth Shoemaker Date: 6/30/2023

Once your application has been received, we will review it and contact you with next steps.
 No further action is required at this time.

Administrative Use Only

Date Received: _____ Date of Council Meeting: _____
 Meeting: _____ Council Meeting Date: _____
 Action Taken by Council: _____
 Date approved: _____ Date Denied: _____

191 5th St. West | P.O. Box 2315 | Ketchum, ID 83340 | main 208.726.7801 | fax 208.726.7812

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**RECORDING REQUESTED BY AND WHEN
RECORDED RETURN TO:**

City Clerk, City of Ketchum
PO Box 2315
Ketchum Idaho, 83340

(Space Above Line For Recorder's Use)

RIGHT-OF-WAY ENCROACHMENT AGREEMENT 22870

THIS AGREEMENT, made and entered into this ____ day of ____, 2023, by and between the CITY OF KETCHUM, IDAHO, a municipal corporation ("Ketchum"), whose address is Post Office Box 2315, Ketchum, Idaho 83340 and ELIZABETH SHOEMAKER, ("Owner"), whose mailing address is Post Office Box 2716 Ketchum, Idaho 83340 and who owns real property located at 130 E River Street, Ketchum, ID 83340 ("subject property").

RECITALS

WHEREAS, curb and gutter and landscaping in the right of way adjacent to the subject property were installed in 1995 when the subject property was developed. These improvements were installed without a Right-of-Way Encroachment Agreement;

WHEREAS, Owner wishes to maintain existing landscaping adjacent to the subject property from the property line to the curb and gutter on River Street. These improvements are shown in Exhibit "A" attached hereto and incorporated herein (collectively referred to as the "Improvements") and;

WHEREAS, Owner will ensure landscaping features, including paver ring, do not encroach on adjacent sidewalk;

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

WHEREAS, following construction of the Improvements, the Owner will restore the right-of-way, as shown in Exhibit "A", acceptable to the Streets and Facilities Director;

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

TERMS AND CONDITIONS

1. Ketchum shall permit Owner to maintain the Improvements identified in Exhibit "A" within the public right-of-way adjacent to 130 E River Street until notified by Ketchum to remove the infrastructure at which time Owner shall remove infrastructure at Owner's expense.
2. Owner shall be responsible for the maintenance of said Improvements and shall repair said improvements within 48 hours upon notice from Ketchum that repairs are needed. Any

modification to the improvements identified in Exhibit "A" shall be approved by the City prior to any modifications taking place.

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

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

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

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

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

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

9. This Agreement sets forth the entire understanding of the parties hereto and shall not be changed or terminated orally. It is understood and agreed by the parties hereto that there are no verbal promises or implied promises, agreements, stipulations or other representations of any kind or character pertaining to the Improvements maintained in the public right-of-way other than as set forth in this Agreement.

EXHIBIT A



