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December 16, 2024

To: City Council,
City of Ketchum

From: Matthew Johnson, City Attorney

Re: 121 Badger Lane FDP Administrative Appeal (2024) – Decision

Background:

The attached written Decision was drafted by the City Attorney from the deliberation and direction at the Council's December 2 and December 11 administrative appeal hearings on this matter. This Decision will formalize and final the decision, as is required within 30 days of the administrative appeal hearing.

The attached draft remains open to modifications as deemed appropriate by the Council to reflect the Council'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 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 2024)
Administrative Appeal of:)
Nicholas & Stephanie Osborn) **FINDINGS OF FACT,**
(Appellant) related to 121 Badger Lane) **CONCLUSIONS OF LAW, AND**
(Applicant)) **DECISION**
Of a Planning and Zoning Commission)
Appeal Decision of a Planning)
Director Determination on a)
Floodplain Development Permit,)

This matter comes before the City Council pursuant to Ketchum City Code 17.144.020, as an appeal by an affected party of a Planning and Zoning Commission administrative appeal decision of a Planning Director determination on a flood plain development permit. An appeal hearing on the matter was held before the Council on December 2, 2024 and continued to December 11, 2024. The matter was further heard for adoption of this written Decision on December 16, 2024. The Council does hereby make and set forth the following Record of Proceedings and the Council’s Decision to remand as follows:

I. RECORD OF PROCEEDINGS

The Appellants in this matter are Nicholas and Stephanie Osborne (“Appellant”), neighboring property owners and an affected party, related to development and a floodplain development permit at 121 Badger Lane (“Project”), owned by 121 Badger Lane, LLC (“Applicant”). The Applicant served as primary Respondent in replying to the issues raised on

administrative appeal. Both parties were represented by legal counsel. Both parties provided briefing in support of their arguments and positions.

A Record of Documents before the Ketchum Planning Department, Planning and Zoning Commission, and upon administrative appeal ("Record") was prepared and submitted to the Council. That Record, including briefs and memos filed by the parties as well as the transcript of the Planning and Zoning Commission proceedings, is hereby referenced and incorporated in full into the Record and this Decision.

Substantially the same underlying matter was previously heard on an administrative appeal to the Planning and Zoning Commission on similar issues on December 12, 2023. The P&Z Decision at that time, finalized on January 9, 2024, provided for a remand to the Planning Department for further review and analysis on certain information. The result of that remand was further submission of information in the form of a new application, additional technical and engineering review, and the issuance of a new Planning Director Determination, which is now the subject of this 2024 administrative appeal.

An appeal hearing on this matter was held before the Planning and Zoning Commission on August 13, 2024. The written decision of the Planning and Zoning Commission (P&Z Decision) was approved on August 27, 2024. Such hearing was recorded and that recording is made a part of the Record in this matter.

An appeal hearing before the Council was held on this matter on December 2, 2024 and continued to December 11, 2024. Such hearings were recorded and the recordings are made a part of the Record in this matter. At the conclusion of the December 11, 2024 hearing and deliberation, the City Attorney was directed to prepare a draft written decision for the final review and approval in writing by the Council.

II. JUDICIAL NOTICE AND REVIEW STANDARD

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

Pursuant to KMC § 17.144.020 (C), the Council makes its determination considering the Planning and Zoning Commission decision below along with written and oral legal arguments by the Parties. New facts or evidence are not considered in the appeal. The Council may affirm, reverse, remand, or modify, in whole or in part, the order, requirement, determination, or decision of the Commission. The Council reviews the decision for clear error or abuse of discretion.

III. FINDINGS, CONCLUSIONS, AND DECISION

1. The Planning and Zoning Commission Decision and Planning Director Determination provide inadequate record of weighing the first priority language of KMC 17.88.050(E)(21), therefore requiring remand.

Upon review of the Record and the argument of the Parties, the Council finds that the Record contains insufficient information showing an adequate weighing of the first priority criterion and alternatives analysis pursuant to KMC 17.88.050(E)(21). This is an error by the Planning Department, and error or abuse of discretion during the Commission review, that is cause for remand of this matter for supplementary analysis and documentation of such criterion.

KMC 17.188.050(E)(21) provides that one of the criteria for a floodplain development permit shall be:

21. (Wetlands) Where development is proposed that impacts any wetland the first priority shall be to move development from the wetland area. Mitigation strategies

shall be proposed at time of application that replace the impacted wetland area with an equal amount and quality of new wetland area or riparian habitat improvement.

Council hereby clarifies interpretation of KMC 17.188.050(E)(21) that a floodplain development permit, under this criterion, must have an analysis on the record of potential alternative development locations or proposals that evidence the first priority to “move development from the wetland area.” In this matter, while staff has provided explanation of how a LOMA (Letter of Map Amendment) guided the applicant’s location of the proposed development and of appropriate mitigation strategies in association with such, there is insufficient record showing analysis of potential alternatives and whether such alternatives may or may not have first been able to more sufficiently move development from the wetland area. While mitigation strategies for impacted wetland areas are important, mitigation is a second priority only after the first priority to review for potential alternatives to move development from the wetland area has first been satisfied.

Council finds that the Planning and Zoning Commission review was thorough with respect to the engineering analysis and other issues associated with this appeal, but that such overshadowed and caused insufficient review of staff’s review of alternatives analysis under KMC 17.188.050(E)(21). While the criterion of first priority on wetlands was referenced by the Commission in its decision relying upon verbal responses from staff; this first priority criterion was not given a sufficient level of review and deliberation for how such first priority and alternatives analysis were established and documented on record previously to such appeal. It is not currently clear from the record whether there may or may not be allowed feasible alternative

development proposals that better move the development from the wetland area. The first priority alternatives analysis needs to be more fully hashed out.

For the above reasons, the Council finds it must remand this matter for supplementation and/or development of such alternatives analysis to be clearly documented in this matter. The Council is reluctant to allow for approvals of sensitive floodplain development without a full documented record showing that development alternatives were fully analyzed to satisfy the first priority of moving development from wetlands, before moving to secondary mitigation strategies.

2. The Planning and Zoning Commission Decision and Planning Director Determination have provided sufficient review, analysis, and evaluation of the engineering concerns and other issues raised on appeal.

With respect to the Appellant's alleged engineering concerns, the Council concurs with the findings of the Planning and Zoning Commission that significant and sufficient engineering review and analysis has been conducted on the particular development proposal.

Council concurs with the following determination of the Commission: "However, Applicant and the Planning Department have shown substantial technical review and modelling of the culvert system sufficient to satisfy the requirements of City Code. Additionally, the Planning Department provided appropriate clarifying information on enforcement mechanisms to address Appellants' argument about blockages and enforcement."

Council further finds and clarifies that this current administrative appeal was timely brought. Any alleged issues on timeliness of appeal related to the previous application and were addressed on the record during that previous appeal. That previous application was remanded

back to the Planning Department and subsequently replaced by a new application which is the subject of this current appeal. The current appeal was timely brought.

Council finds the sole issue remaining with this application upon remand to be the first priority alternatives analysis discussed in Sub-section 1 above.

Based upon the foregoing review and analysis, and good cause appearing from the record in these proceedings, the Council REMANDS this matter to the Planning and Zoning Commission, with direction for remand back to the Planning Department, to provide for the supplementary documentation and/or further analysis of the first priority criteria and alternative analysis as discussed above. The Council authorizes the Mayor to sign this Decision.

Neil Bradshaw, Mayor

ATTEST:

By: _____
Trent Donat, City Clerk