



## **AGENDA**

### **PUBLIC PARTICIPATION INFORMATION**

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You will find this option on our website at [www.ketchumidaho.org/meetings](https://www.ketchumidaho.org/meetings).

**If you would like to comment on a public hearing agenda item, please select the best option for your participation:**

1. Join us via Zoom (*please mute your device until called upon*).  
**Join the Webinar:** <https://ketchumidaho-org.zoom.us/j/87682291339>  
Webinar ID: 876 8229 1339
2. Address the Commission in person at City Hall.
3. Submit your comments in writing at (*by noon the day of the meeting*)

*This agenda is subject to revisions. All revisions will be underlined.*

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### **CALL TO ORDER:**

### **ROLL CALL:**

### **COMMUNICATIONS FROM COMMISSIONERS:**

### **CONSENT AGENDA:**

*ALL ACTION ITEMS - The Commission is asked to approve the following listed items by a single vote, except for any items that a commissioner asks to be removed from the Consent Agenda and considered separately.*

1. ACTION ITEM: Approval of the December 12, 2023 minutes

### **PUBLIC HEARING:**

### **NEW BUSINESS:**

2. ACTION ITEM: Recommend the Commission review and approve the 121 Badger Lane Floodplain Development Administrative Appeal written Decision as presented by the City Attorney, and authorize the Chair to sign.

### **ADJOURNMENT:**



**CITY OF KETCHUM**  
**MEETING MINUTES OF THE**  
**PLANNING & ZONING COMMISSION**  
Tuesday, December 12, 2023

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**CALL TO ORDER:** *(00:01:30 in video)* 4:32

Neil Morrow called the meeting of the Ketchum Planning and Zoning Commission to order at 4:30 p.m.

**ROLL CALL:**

Neil Morrow  
Susan Passovoy  
Brenda Moczygemba  
Tim Carter  
Spencer Cordovano

**ALSO PRESENT:**

Morgan Landers—Director of Planning and Building  
Matt Johnson – City Attorney  
Abby Rivin – Senior Planner  
Adam Crutcher – Associate Planner  
Paige Nied – Associate Planner  
Heather Nicolai—Planning Technician & Office Administrator

**COMMUNICATIONS FROM COMMISSIONERS:** *(00:02:16 in video)*

None

**CONSENT AGENDA:** *(00:02:25 in video)*

1. ACTION ITEM: Approval of the November 28, 2023 minutes
2. ACTION ITEM: Recommendation to review and approve the Findings of Fact, Conclusions of Law and Decision for the 490 Wood River Dr Residence Floodplain Development Permit Application File No. P23-029

**Motion to approve entire consent agenda.** Motion made by Tim Carter seconded by Brenda Moczygemba *(00:02:38 in video)*

**MOVER:** Tim Carter

**SECONDER:** Brenda Moczygemba

**AYES:** Brenda Moczygemba, Tim Carter, Spencer Cordovano, Susan Passovoy & Neil

Morrow

**NAYS:**

**RESULT: UNANIMOUSLY ADOPTED**

**PUBLIC HEARING:** (00:02:51 in video)

3. ACTION ITEM: Recommendation to hold a public hearing to review and take action on the 200 North Main Design Review and Conditional Use Permit applications.

- Staff Presentation – Abby Rivin, Senior Planner (00:03:07 in video)
- Applicant Presentation – Michael Doty, Michael Doty Associates, Architect & – Ashley Board, ASH Board, Landscape Architect (00:20:50 in video)
- Commission comments and questions for applicant/staff and applicant/staff responses. (01:06:45 in video)

**Public Comment Opened:** (01:25:28 in video)

- Gerri Pesch (01:25:41 in video)
- Lucas Winter (01:27:07 in video)
- Derek Ryan (01:29:10 in video)
- Melinda Murtaugh (01:29:45 in video)
- Liz Talley (01:32:27 in video)
- Nani Stoick (01:34:47 in video)
- Donna Shahbaz (01:36:04 in video)
- Gretchen Gorham (01:37:25 in video)
- Dillon Witmer (01:38:10 in video)
- Lolly Greeninger (01:39:13 in video)
- Perry Boyle (01:41:58 in video)
- Rich Puddicombe (01:43:22 in video)
- Chris Helgeson (01:44:47 in video)
- Patti Romano \*via zoom (01:45:50 in video)
- Gerri Pesch (01:47:10 in video)

**Public Comment Closed:** (01:48:23 in video)

- Applicant & staff response to public comment (01:48:35 in video)
- Applicant rebuttal (01:58:02 in video)
- Public Comment reopened - Viginia Johnson – and then closed (02:04:50 in video)
- Commission question for applicant and applicant response (02:05:15 in video)
- Commission deliberations (02:06:40 in video)

**Motion to continue the public hearing of the 200 North Main Design Review and Conditional Use Permit applications to a date not certain. Motion made by Spencer Cordovano; seconded by Tim Carter (02:48:17 in video)**

**MOVER:** Spencer Cordovano

**SECONDER:** Tim Carter

**YES:** Brenda Moczygemba, Spencer Cordovano, Susan Passovoy, Tim Carter & Neil Morrow

**NAYS:**

**RESULT: UNANIMOUSLY ADOPTED**

\*\*\*Brief break at 7.19 pm, meeting resumed at 730 pm.\*\*\*

**NEW BUSINESS:** (02:48:50 in video)

4. ACTION ITEM: Recommendation to review and make a determination of Administrative Appeal P23-014A for the floodplain development permit issued at 121 Badger Ln.  
(02:49:00 in video)

- Staff Comments, Morgan Landers, Director of Planning & Building (02:15:16 in video)
- Matt Johnson, City Attorney (02:49:54 in video)
- Appellant – Nicholas Osbourne (02:52:32 in video)
- Attorney for Appellant – Gary Slette, Robertson & Slette Law Office (02:59:07 in video)
- Commission questions for attorney for appellant (03:18:43 in video)
- Attorney for Applicant- Danielle Strollo (03:27:40 in video)
- Commission questions for attorney for appellant, City attorney and City staff (03:35:13 in video)
- Rebuttal Attorney for Appellant – Gary Slette, Robertson & Slette Law Office (03:49:57 in video)
- Commission Deliberations (03:55:10 in video)

**Motion to remand this application to the planning department having found that there is insufficient review of criteria 5 & 6 under chapter 17.88.050 of the zoning ordinance and ask them to do some further analysis with respect to the proposed driveway and the mitigation of its impact on properties downstream and upstream.** Motion made by Susan Passovoy; seconded by Tim Carter (04:13:03 in video)

**MOVER:** Susan Passovoy

**SECONDER:** Tim Carter

**AYES:** Brenda Moczygemba, Spencer Cordovano, Susan Passovoy, Tim Carter & Neil Morrow

**NAYS:**

**RESULT: UNANIMOUSLY ADOPTED**

5. Spencer thanked everyone (04:15:47 in video)

**ADJOURNMENT:**

**Motion to adjourn at 8:58 pm** *(04:17:01 in video)*

**MOVER:** Neil Morrow

**SECONDER:** Brenda Moczygemba

**AYES:** Brenda Moczygemba, Susan Passovoy, Tim Carter & Neil Morrow

**NAYS:** Spencer Cordovano

**RESULT: 4-AYES, 1-NAY - MOTION ADOPTED**

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Neil Morrow – P & Z Commissioner

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Morgan Landers – Director of Planning & Building

# WHITE PETERSON

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## ATTORNEYS AT LAW

KELSY R. BRIGGS  
MARC J. BYBEE  
WM. F. GIGRAY, III  
DANIEL W. GOODMAN  
MATTHEW A. JOHNSON  
JACOB M. JONES  
WILLIAM F. NICHOLS \*

WHITE, PETERSON, GIGRAY & NICHOLS, P.A.  
CANYON PARK AT THE IDAHO CENTER  
5700 E. FRANKLIN RD., SUITE 200  
NAMPA, IDAHO 83687-7901  
TEL (208) 466-9272  
FAX (208) 466-4405  
EMAIL: mjohnson@whitepeterson.com

BRIAN T. O'BANNON \*  
PHILIP A. PETERSON  
WILLIAM L. PUNKONEY

TERRENCE R. WHITE  
OF COUNSEL  
WILLIAM F. "BUD" YOST  
OF COUNSEL

\* Also admitted in OR

January 4, 2024

To: Planning & Zoning Commissioners  
City of Ketchum

From: Matthew Johnson, City Attorney

Re: 121 Badger Lane FDP Administrative Appeal – Decision

Background:

This written Decision was drafted by the City Attorney from the discussion and determination at the Commission's 12/12/23 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:	)	
	)	<b>FINDINGS OF FACT,</b>
Nicholas & Stephanie Osborn	)	<b>CONCLUSIONS OF LAW, AND</b>
(Appellant) related to 121 Badger Lane	)	<b>DECISION</b>
(Applicant)	)	
	)	
Of a Planning Director Determination	)	
on a Floodplain Development Permit,	)	
P23-014	)	

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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 December 12, 2023. The matter was heard for adoption of this written Decision on January 9, 2024. 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 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.

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

December 12, 2023 hearing. That Record, including briefs and memos filed by the parties, is hereby referenced and incorporated in full into the Record and this Decision.

An appeal hearing on this matter was held on December 12, 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 the administrator determination below along with written and oral legal arguments by the Parties. New facts or evidence are not considered in the appeal. The Commission may affirm, reverse or modify, in whole or in part, the order, requirement, decision or determination of the administrator.

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

**1. The Administrator's Determination was not in error, but due to the special circumstances of floodplain development the Determination is remanded for additional analysis.**

Upon review of the Record and the argument of the Parties, the Commission finds that the Applicant appropriately submitted required information and the Planning Department reviewed the application appropriately. There is no clear error by the Planning Department that would be cause for a reversal of the Determination.



However, due to the special circumstances of this Application and the level of technical detail involved in floodplain development, this administrative appeal did raise questions and information such that the Commission would like the Department to conduct supplementary review and analysis of the Application/Permit in order to assure the analysis. In particular, the Commission would like further analysis on the modeling difficulties and the evaluation of the involved driveway area. Specifically, under City Code, the Commission remands this matter back to the Department for further work with the Applicant on evaluation and review of the Application in relation to Ketchum Municipal Code §17.88.050 (5) and (6).

This matter is remanded back to the Department for such further analysis and a follow-up administrative determination. The Application, upon further analysis, is not required to come back up to the Commission. The administrative appeal process will remain available to the parties upon the follow-up determination if necessary.

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

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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 other affected person who has requested a copy in writing. All parties and affected persons are hereby notified of this decision and their option to consider further action, including further appeal, pursuant to the proceedings set forth in KMC 17.144.020 and Idaho Code § 67-6521.

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

By: \_\_\_\_\_  
                    , Deputy City Clerk

Voicemail Transcript – left 1/9/24 @ 11:03am

My name is Karen Davies. I live at 901 Rocking Horse Road. I know that tonight at the planning and zoning meeting, that there will be a review of the building plans for, I guess, 121 Badger Lane. Actually, my maiden name is Shillington, and my mom and dad were the first ones to build a house on that particular property at the end of Badger Lane. I've talked before with Neil Bradshaw about this. My concern is that the man who wants to change things or wants to build on that land, he's already built a lot of, well, something super huge here on Bear Lane, which was also one of our subdivisions that we did a long time ago. When we built that house on Badger Lane, we owned the property right at the end of bus L, where now Fred and Randy Uboys live. We took all of our building materials across that property to build mom and dad's small, two bedroom house on stilts, literally stilts. They did have, they were up here just mostly in the summertime. I grew up in Rupert, Idaho on that's where their permanent home was at that time. And when a number of times the swimming pool, which was heated, we'd covered up at night, but there would be all kinds, not just rain, but flood water that ran underneath the house onto the top of that swimming pool, and it broke the canvas on the top plastic canvas a number of times. Yes, that area truly is in the floodplain and changing some of those wetlands, oh, shifting around is going to really mess up the people, the Osborne who lived to upstream. They also bought land from us in Build a House in that subdivision Wood River Drive North. So anyway, I can't come to the 430 meeting today, but I just thought I'd leave a message and say, I really just approve of changing any of the zoning ordinances or wetland stuff on that one piece of property. It's just, it truly, truly, I saw lots of flooding there. I even saw flooding along Rocking Horse Road when I was younger and I'm going to be 82 next week. So it is, there can be flood water around. Bye now.