



# Planning and Zoning

## Special Meeting

~ Minutes ~

480 East Avenue North  
Ketchum, ID 83340  
<http://ketchumidaho.org/>

Keshia Owens  
208-726-7801

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Thursday, June 8, 2017

2:00 PM

Ketchum City Hall

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Commissioners Present: Erin Smith, Vice-Chairperson  
Matthew Mead, Commissioner  
Jeff Lamoureux, Chairperson

Commissioners Absent: Betsey Mizell, Commissioner  
Neil Morrow, Commissioner

Staff Present: Carl Anderson, Associate Planner  
Micah Austin, Director of Planning & Building  
Brittany Skelton, Senior Planner  
Keshia Owens, Planning Technician

Also Present: Members of the Public

**1. 2:00 PM - CALL TO ORDER: City Hall, 480 East Avenue North, Ketchum, Idaho**

Commissioner Lamoureux called the meeting to order at 2:02 PM.

**2. PUBLIC COMMENT - Communications from the public for items not on the agenda.**

Commissioner Lamoureux stated that this is an appeal hearing and not a public hearing, therefore no public comment is allowed.

**3. COMMUNICATIONS FROM STAFF**

- a. **Bracken Station: 911 North Main Street, Ketchum, Idaho (AM Lot 5A, Block 30, Ketchum Townsite. Appeal by RRJ LLC / Penguin LLC of an administrative decision: 911 N. Main Street (Ketchum AM Lot 5A Block 30) The purpose of the special meeting is to allow the Planning and Zoning Commission to hear an appeal from applicant RRJ LLC / Penguin LLC regarding a decision made by the Administrator in accordance with Section 17.116.070 of the Ketchum Municipal Code to deny the applicant's request.**

**COMMENTS:**

Commissioner Lamoureux gave background on the project and said the original application was denied on February 13, 2017. He then explained the appeal process and said that the Commission has received several exhibits, site plans, and a notice of appeal.

Neither the applicant nor staff had any objections to the submitted exhibits.

**Applicants' Comments:**

Steve Cook, architect, said the applicant is here to address the decision for denial. He commented that he is happy for the "checks and balances" system that is available to the applicant and explained that

the applicant is seeking correction to the application. He then noted key points that have changed like the bulb-out entrance, complete demolition of the 'L' shaped structure, a smaller retail space, site circulation, form change, and pedestrian circulation. He spoke about staff's reasons for denial and asked that the Commission overturn their previous decision. He explained that this is an allowed use and said administration has made a miscall.

Ned Williamson, applicant's attorney, said there has been some misconception on the ability to resubmit the application, as well as misconception that this was denied because it does not meet standards. He explained that these misconceptions are not correct because code standards state that you can resubmit an application for a conditional use permit that was denied if it is not in the same or substantially the same form. He explained that "substantially the same" deals with the configuration of the use and its form. He commented that he'd like to focus on the proposed form, a thirty percent increase in site circulation, and the site plan. He noted previous concerns and explained that the resubmittal has addressed those concerns. He asked that the Commission reverse the decision of the administrator and consider what is important. He later said that he was a little surprised by Austin's comments and commented that staff is looking to justify the decision any way possible, but the applicants have addressed the Commission's concerns.

#### **Staff comments**

Micah Austin, Director, said that the conditional use permit (CUP) was denied on February 13, 2017. He explained that no re-application for a CUP shall be allowed if there have been no substantial changes. He commented that design review was not dealt with heavily because the commission was more interested in traffic, health, and safety. He explained the findings for denial and stated that resubmitted application was returned to the applicant because there had been no substantial changes. He detailed the proposed use and explained that the project is the same in terms of circulation, traffic issues, and fuel tank locations.

Matthew Johnson, City Attorney, said that what it really boils down to is whether the application is the same or substantially the same. He commented that he cannot give a clear definition on the meaning of substantially the same or the same, so the Commission's interpretation is important. He explained that Idaho Law does not deal with substantially the same, but we are dealing with something called the successive application doctrine, but no bright-lined rule is clarified. He then noted that if resubmittal of the application were to be denied, the applicant can appeal to city council and to the courts.

#### **The Commission took an advisory vote**

Commissioner Mead agreed with staff's analysis and saw no substantial change, as initial issues were not addressed.

Commissioner Smith agreed with the applicant that there were significant changes.

Commissioner Lamoureux agreed with the applicant that there has been a substantial change.

#### **Commissioner Smith moved to ask is the April 10, 2017 conditional use permit application submitted by appellant in the same or substantially the same form as appellant conditional use permit previously submitted on February 13, 2017?**

Commissioner Mead voted yes, the application is the same or substantially the same form as the conditional use permit previously submitted and denied on February 13, 2017.

Commissioner Lamoureux voted no, the application is not the same or substantially the same.

Commissioner Smith voted no, the Commission should air on the side of the caution.

<b>RESULT:</b>	<b>ADOPTED</b>
<b>MOVER:</b>	Erin Smith, Co-Chair
<b>AYES:</b>	Jeff Lamoureux, Erin Smith
<b>NAYES:</b>	Matthew Mead
<b>ABSENT:</b>	Neil Morrow, Betsy Mizell

**4. CONSENT CALENDAR**

**a. Minutes: May 23, 2017**

Commissioner Smith requested that changes be sent to staff.

**5. FUTURE PROJECTS AND NOTICING REQUIREMENTS**

- Franz Dental continuation
- Pre-App Design Review Fire Training Center
- Light Industrial Gas Station & Electric Vehicle Charging Stations Text Amendment

**6. STAFF REPORTS & CITY COUNCIL MEETING UPDATE**

**7. Commission reports and ex parte discussion disclosure**

**8. ADJOURNMENT**

Commissioner Smith motioned adjourn and Commissioner Mead seconded.

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Jeff Lamoureux  
Planning and Zoning Commission Chair