



**Lewiston Planning & Zoning Commission
REGULAR MEETING AGENDA
October 11, 2023 - 5:30 PM
Bell Building – Second Floor Conference Room – 215 D Street
Lewiston, Idaho 83501**

Seating will be available on a first-come, first-served basis. All others who wish to observe this meeting may watch and listen to the livestream on their own device(s) by visiting the City of Lewiston's website at cityoflewiston.org.

I. CALL TO ORDER

II. CITIZENS COMMENTS

An opportunity for citizens to address the Commission with comments and/or questions about Planning and Zoning Commission-related matters that are not a public hearing action item on this agenda. Citizens are asked to limit their time to three minutes each. Citizen comments and testimony for public hearings may be made: in-person, by emailing Dawn Ortiz at dortiz@cityoflewiston.org, or by calling (208)798-2570 and leaving a message. Citizen comments and testimony for public hearings submitted by email or phone will be forwarded to the Planning & Zoning Commission. If you would like your citizen comment to be read out loud during the meeting, please so indicate in your message. Testimony for public hearings that was submitted by email or phone and unable to be forwarded to the Planning & Zoning Commission prior to the meeting will be read out loud during the public hearing. Members of the public who wish to provide in person comment or testimony, but who are unable to secure a seat in the designated meeting space and/or overflow room(s) due to occupancy or gathering limits, will be rotated in and out of the designated meeting space in order to provide comment. While not in the designated meeting space, such persons may watch and listen to the livestream of the meeting on their own devices by visiting the City of Lewiston's website at cityoflewiston.org

III. ACTIVE AGENDA

A. APPROVAL OF SEPTEMBER 27, 2023 MEETING MINUTES (ACTION ITEM)

B. APPROVAL OF REASONED STATEMENT OF RELEVANT CRITERIA AND STANDARDS (WRITTEN DECISION) FOR APPLICATION ZNC23-6 TO REZONE APPROXIMATELY 47 ACRES ON THE WEST SIDE OF 18TH STREET NORTH OF AIRWAY AVENUE FROM F1 AND R1 TO R2 (ACTION ITEM)

C. PUBLIC HEARING ON ZONING CODE AMENDMENT, ZA-01-23 (ACTION ITEM): : A proposal to amend Lewiston City Code section 37-183 related to the duties of the Planning and Zoning Commission; to amend section 37-184 regarding the conduct of public hearings; repealing and replacing section 37-185 regarding actions after final decisions of the Planning and Zoning Commission and/or the City Council; and to amend section 37-192 regarding the deadline to file an appeal. The Planning and Zoning Commission will make a recommendation about this to the City Council. - Action Item

IV. STAFF-COMMISSION COMMUNICATIONS

A. QUERY OF COMMISSIONERS FOR THE OCTOBER 25, 2023 MEETING.

V. ADJOURNMENT - Action Item

The City of Lewiston is committed to providing access and reasonable accommodation in its services, programs, and activities and encourages qualified persons with disabilities to participate. If you anticipate needing any type of accommodation or have questions about the physical access provided at this meeting, please contact the Community Development Specialist at least forty-eight (48) hours in advance of the meeting at 208-746-1318, ext. 7265.

September 27, 2023

The LEWISTON PLANNING AND ZONING COMMISSION met in the Community Development Department Second Floor Conference Room at 215 “D” Street. Chair Busch called the meeting to order at 5:30 p.m.

I. CALL TO ORDER

COMMISSIONERS PRESENT: Michael Busch, Chair; Gabriel Iacoboni, Vice Chair; Kevin Kelly; Maureen Anderson; Cynthia Ball

COMMISSIONERS EXCUSED: Kathy Branson

COMMISSIONERS ABSENT: Justin Merwin

STAFF MEMBERS PRESENT: Joel Plaskon, City Planner; Dawn Ortiz, Community Development Specialist; Aaron Butler, IT; Jennifer Tengono, Assistant City Attorney; Pat Severance, Engineering Development Supervisor

II. CITIZEN COMMENTS

None

III. APPROVAL OF SEPTEMBER 27, 2023 MEETING MINUTES (ACTION ITEM)

Commissioners Anderson and Ball moved and seconded, respectively, approval of the September 27, 2023 meeting minutes. The motion carried 4-0-1 with Commissioner Kelly abstaining.

IV. PUBLIC HEARING AND SUBSEQUENT DELIBERATION AND DIRECTION TO STAFF REGARDING THE REASONED STATEMENT FOR APPLICATIONS ANX23-3, CPA23-4, ZNC23-6 BY DK HOLDING LLC (ACTION ITEM):

Chair Busch explained the public hearing process, opened the public hearing and asked for a staff presentation.

Staff Plaskon provided a verbal summary of the staff report with maps and photos so the commission could get geographically familiar with the area.

Commissioner Ball asked questions about the existing zoning and land use for the surrounding area. Staff Plaskon provided clarification on the surrounding zones and land uses.

Commissioner Anderson asked staff to clarify the concern for animal rights, as related to what's in the Comprehensive Plan section of the staff report.

Staff Plaskon stated there could be complaints from incoming residents of the subject property after it is developed against current residents having livestock, but most of the surrounding residents don't have livestock, so it is a wash.

There being no further questions of staff, Chair Busch asked the applicant for testimony.

Applicant Dan Yonge of 247 Thain Rd Lewiston, Id stated that he is ready to develop this lot and the R2 Zone seems the most appropriate. Staff have done a great job with their report and did not have anything to add besides that what's proposed will coincide with the surrounding area.

Commissioner Ball asked if there was a possibility of a small house village.

Applicant Yonge stated that a small house village is not in his plan.

Commissioner Ball asked how many homes could be put on the property. Staff Plaskon stated his estimated potential is that there could be 220 to 226 single family homes on the subject property.

Applicant Yonge stated he estimated 3.5 to 4 lots per acre. He is looking at about 180 single-family residential homes.

There being no further questions for the applicant, Chair Busch asked for public testimony.

Doug Haves of Lewiston ID stated he is not an engineer and thinks the annexation and of the R2 Zone is the best use for the property. The sewer line to be tied into running down 18th Street is the main collector for Canyon Crest and now the East Orchards Sewer district. He has concerns about the size of this line. There is a road to the north that ties into Lindsey Creek Road and it is only an emergency access road at this time. Mr. Havens stated there was an agreement with the PUD of Canyon Crest and this road should be developed by them and the Planning and Zoning Commissioners should look into this. Mr. Havens stated that this development will have a large effect on the existing infrastructure in this area.

Staff Severance stated that no one has been able to substantiate Mr. Havens' claims. The existing line has the capacity to serve 24,000 lines. City Staff reached out to the original engineer of this line and there are still no capacity concerns. In regards to traffic access into this section, they are looking at 17th Street as a second access.

Staff Plaskon asked the Commission to focus on what the annexation and zoning request is at this time and the details of the development will come out in the subdivision process.

Staff Plaskon stated that staff does send public hearing notices to all service providers and there have not been any comments submitted stating they wouldn't be able to provide service.

There being no further public testimony, Chair Busch asked the applicant for rebuttal. Applicant Yonge pointed out where all of the existing sewer main lines are located on the provided map. He stated the City did upgrade these sewer lines.

Commissioner Ball asked if Mr. Yonge was stating he had the ability to tie into two different sewer lines. Mr. Yonge stated yes he can, but he is choosing to tie into the one line that runs through this lot.

Chair Busch closed the public hearing.

After deliberation Commissioners Kelly and Ball moved and seconded, respectively, to recommend approval of ANX23-3 to City Council. Motioned passed 5-0.

Commissioners Kelly and Anderson moved and seconded, respectively, to recommend approval of CPA23-4 to City Council. Motioned passed 5-0.

After discussion of relevant criteria, Vice Chairperson Iacoboni and Commissioners Kelly moved and seconded, respectively, to direct staff to draft a Reasoned Statement recommending approval of ZNC23-6 to City Council. Motion passed 5-0.

Commissioner Kelly and Vice Chairperson Iacoboni moved and seconded, respectively, to recommend approval of the associated Area of City Impact map amendment to City Council. Motioned passed 5-0.

V. PUBLIC HEARING ON ZONING CODE AMENDMENT, ZA-02-23

Chair Busch explained the public hearing process, opened the public hearing and asked for a staff presentation.

Staff Plaskon provided a verbal summary of the Zoning Code changes proposed in ZA-02-23.

Commissioner Anderson asked staff to clarify what the standard requirements are for setbacks relative to overhead electric transmission lines. Staff Plaskon stated they have to meet Avista requirements, Fire Code standards and can't build within the easement itself and meet setback from the right of way line set in that the particular zone of the property in question.

Staff Tengono stated that in her experience the easement is based on the location of where the lines exist. In many instances is 5 feet on each side of the line because the exact line is not always known.

There being no public testimony Chair Busch closed the public hearing.

After deliberation Vice Chairperson Iacoboni and Commissioner Ball moved and seconded, respectively, to recommend approval of ZA-02-23, as set forth in Ordinance No. 4896, to the City Council.

VI. STAFF-COMMISSION COMMUNICATIONS:

A. Query of Commissioners for October 11, 2023 meeting.

All current commissioners plan to be in attendance at the next meeting on October 11, 2023.

Staff Plaskon stated an Existing Conditions Report for the new Comprehensive Plan was provided by the consultant recently and that it is very comprehensive and was a lot of work. He also stated that next Monday is the next Comprehensive Plan Steering Committee meeting.

VII. ADJOURN

There being no further business, Chair Busch and Commissioner Anderson moved and seconded, respectively, to adjourn. The motion carried 5-0 and the Planning and Zoning Commission adjourned at approximately 6:40 p.m.

RESPECTFULLY SUBMITTED,

Dawn Ortiz,
Recording Secretary

Chairperson or Acting Chairperson
Planning and Zoning Commission

Approved this _____ day of _____, 2023.

**CITY OF LEWISTON PLANNING AND ZONING COMMISSION
REASONED STATEMENT OF RELEVANT CRITERIA AND
STANDARDS FOR GRANTING OR DENIAL OF
ZONING DISTRICT BOUNDARY CHANGE/REZONE**

This document shall serve as memorialization of the rationale for the granting or denial of a zoning district boundary change/rezone, which shall be based upon relevant criteria and standards, including the Lewiston Comprehensive Plan, Lewiston City Code, and Idaho Code. *See* I.C. § 67-6535.

I. APPLICATION NUMBER:
ZNC23-6

II. APPLICANT'S NAME AND ADDRESS:
DK Holdings, LLC
247 Thain Road #107
Lewiston, ID 83501

III. IDENTIFICATION AND/OR LOCATION OF SUBJECT PROPERTY:
Approximately 39.62 acres known as tax parcel RP000940010000 or Lots 1, 2, 3, 4, 5, 6, and 7 of Block 94, Lewiston Orchards Tract No. 12, and generally located west of 18th Street, north of unimproved Bryden Ave and south of Canyon Crest Estates and the adjacent 14.12 acre tax parcel, to the south, known as tax parcel RPL00950010000, or Lots 1, 2, and 3 of Block 95, Lewiston Orchards Tract No. 12, and generally located south of unimproved Bryden Ave, west of 18th Street and north of unimproved Airway Ave.

IV. DATE OF PUBLIC HEARING:
September 27, 2023

V. NAME OF HEARING BODY:
Lewiston Planning and Zoning Commission

VI. NATURE OF APPLICATION:
Rezone subject property from Area of City Impact (Nez Perce County) Farm, F-1, Zone to Low Density Residential, R-2, Zone.

VII. DECISION:
The Lewiston Planning and Zoning Commission recommends **APPROVAL** of ZNC23-6 to the Lewiston City Council.

VIII. RELEVANT CONTESTED FACTS RELIED UPON:

The relevant contested facts relied upon are:

The Commission received public comment that the sewer line located at 18th Street needed to serve the subject property and its proposed development is not of sufficient size since it is anticipated that the sewer line will also service the Canyon Crest Estates Planned Unit Development (PUD), which is located to the east of the subject property. The City's Development Supervisor, Pat Severance, provided testimony that the sewer line was engineered to accommodate up to 2800 connections, which when compared with the number of connections anticipated for the Canyon Crest Estates PUD and the proposed development of the subject property, would be more than sufficient to service the development needs of the subject property and the surrounding neighborhood. He stated that this matter has been previously raised and the claim is unsubstantiated. The City Planner, Joel Plaskon, testified that the question about the intensity of the proposed development will be addressed during the subdivision and platting process, and the applicant will have additional requirements under state and city code regarding the development of the subject property, including the requirement to get "will serve" letters from utility providers. Further, notice was provided to the Central Orchards Sewer District and it ultimately did not respond or indicate that it could not service the proposed annexation of the property or rezone. The applicant, Dan Yonge, provided testimony that he does not intend to connect to the sewer line on 18th Street, and will connect to a different line located at 17th Street that runs through the two northern parcels that make up the subject property. The Commission determined that based upon the testimony from the Development Supervisor, City Planner, and applicant, the sewer line size available to serve development of the subject property, if rezoned and developed accordingly, is more than adequate in capacity. Further, the Commission acknowledged that the details of any future development will require additional coordination between the developer and the corresponding utility providers.

Other public comment noted that the roadways to the north of the subject property, such as Lindsey Creek Road, are of insufficient quality to provide adequate transportation and is only intended to provide an emergency access route. The City Development Supervisor provided testimony that the road is a private road and will not be impacted by this development. Further, during the subdivision and platting process, proposed lot and street configurations, traffic, and utilities will be evaluated by the necessary parties. The Commission determined that the contested facts were either unsubstantiated or could be mitigated at later steps in the development process, and did not affect the determination on whether or not the subject property should be rezoned from its current zoning designations to the Low Density Residential, R-2, Zone.

IX. RELEVANT CRITERIA AND STANDARDS:

The following relevant criteria, standards, facts, and considerations are hereby declared as reasons for the decision on this zoning district boundary change/rezone:

1. The proposed rezone **is** in general conformance with the Lewiston Comprehensive Plan.
Applicable commentary:

The subject property is in the Area of City Impact (ACI), and if annexed will be in the Lewiston Comprehensive Plan (Plan) Neighborhood Number 7, East Orchards. Property in the ACI is recognized as being appropriate for annexation into the City of Lewiston and eventual low density residential development. The Plan provides, in relevant part, that “ACI’s are transition areas between each city and the county and act as place holders for future annexation and eventual urban development.” (Chapter 6.8) Further, the Plan states that “ACI’s are important tools that help coordinate growth with the availability of services... to concentrate density to those areas best prepared to receive new developments.” (Chapter 6.8).

Other applicable provisions of the Plan include:

From Chapter 6.7:

Generally lying east of 16th Street and north of Burrell Avenue are a number of major ravines and drainage ways best suited to remain undeveloped or as links among public open space as shown in the Parks and Open Space Master Plan. Another substantial drainage pattern lies northeast of 21st Street and Grelle Avenue is an area which should remain undeveloped. (Section 6.7.e) Further, residents of this neighborhood have strongly expressed a desire for the retention of animal rights. Whenever possible, preservation of animal rights should be retained especially along the extremities of the urban boundary. More intense agricultural uses and active farming within the city limits should be phased out over time to more urban uses. (Section 6.7.h.4)

From Chapter 1:

First, people of all income groups have safe and adequate housing available; residential areas are protected from commercial incursion. A variety of housing types are provided throughout the community while respecting the development pattern of the neighborhood in which they are located. The City of Lewiston is a compact urban community, preventing sprawl and efficiently using our land resources and infrastructure, understanding that the random spread of a community wastes valuable resources while adding little to the tax base. Development will be occurring next to already developed areas, rather than in a random, leapfrog pattern and will be developed to city standards.

The Commission determined that the applicant is in general conformance with the Plan, and that it will blend in nicely with the neighboring properties.

2. The subject property **is** at least as well suited or is better suited for the proposed zoning district than the existing zoning district. Applicable commentary:

Two (2) of the parcels that make up the subject property are currently located in the ACI and zoned as Farm, F-1, Zone. The third (3rd) parcel that makes up the subject property is south of the two parcels currently located in the county island and has a zoning designation of Suburban Residential, R-1, Zone. All three parcels are currently bare land that has been farmed in the past. The Commission believes three (3) parcels are better suited for the proposed zoning designation of Low Density Residential, R-2, Zone because they will further the goals and objectives stated in the Plan and provide additional housing for residents of the City. Further the annexation of the two parcels in the county will eliminate an island of county property to allow for the continuation of the city's limits in that area.

The Commission concurred with the staff report that the Low Density Residential, R-2, Zone allows for residential uses that will be compatible with the existing neighborhood and the single family dwellings that currently exists. The Commission noted in approving the annexation and rezone of the subject property that the proposed rezone would not affect the existing animal rights of neighboring properties since no one that already has livestock will be put in jeopardy as a result of this rezone.

3. The proposed rezone **does not** present foreseen, immitigable impacts of incompatible uses or development being located in the same vicinity. Applicable commentary:

The subject property consists of three large parcels from the original Orchards Tracts comprised of 10 underlying lots. Two (2) of these parcels are currently located in Nez Perce County and are surrounded on all four sides by city zoned property. These two parcels are under Nez Perce County's Farm, F-1, Zone designation. The third parcel is south of the two parcels currently located in the county and has the zoning designation of Suburban Residential, R-1, Zone. All three parcels are currently bare land that has been farmed in the past. Surrounding properties are a mix of single family dwellings and bare land with a ravine separating the Nez Perce County zoned parcels from the single family dwellings to the west. Properties to the north and east of the two Nez Perce County zoned parcels are part of the Canyon Crest Estates Planned Unit Development which allows for a mix of housing types, some community commercial and a variety of lot sizes ranging from 6,000 square feet to almost one (1) acre in size. The city zoned parcel is surrounded mostly by a variety of zoning districts, including Agricultural Transitional, F-2, Suburban Residential, R-1, Low Density Residential, R-2A, and Medium Density Residential, R-3, Zones. Mostly single family dwellings and vacant land occupy the land in these various zoning districts.

Uses or development incompatible with the proposed zoning does not appear to exist in the same vicinity of the subject property. The proposed rezoning of the subject property is expected to result in detached single family residential development very similar to that already existing in the vicinity. The current zoning and use (farming) of the subject property is less compatible

with the existing uses and development in the vicinity than that expected to result from the proposed zoning.

The Low Density Residential, R-2, Zone allows for residential uses that will be compatible with the existing neighborhood and the single family dwellings that currently exist. The proposed annexation of two parcels within the subject property will eliminate an island of county zoned property and allow for the continued development of this neighborhood. These parcels are identified in the Plan as areas suitable for future annexation and a future land designation of Low Density Residential.

The Commission determined that any possible impacts of the proposed rezone could be mitigated by the requirements of City Code during the subdivision and platting process for the property.

4. The effects of the proposed rezone **are not** anticipated to place undue burden upon delivery of services provided by any political subdivision within the planning jurisdiction, including school districts. Applicable commentary:

All political subdivisions within the planning jurisdiction were provided notice of the hearing for the proposed rezone, and none of them provided any testimony or other evidence or information about the proposed rezone causing undue burden on their ability to provide services, including the school district. The Lewiston Fire Department commented that “access and water supply shall be evaluated during the plat design phase(s).” The City’s Engineering Division of the Public Works Department commented that it had no objections to the proposed action, and that “proposed lot/street configurations, traffic and utilities will be evaluated during [the] platting process.” Further, the 2020 Transportation Plan currently identifies 18th Street as a local road, but it’s future connection and classification is as a collector street. If the rezone is approved, the traffic impact will be evaluated as a part of the subdivision process. Finally, it noted that the subject property is not on either of the City’s bus routes, so there will be no impact. The Lewiston Orchards Irrigation District’s (LOID) General Manager, Barney Metz, commented that neither of the two parcels in the ACI are currently eligible for water, and that the property owner will have to go through the domestic only annexation process for each parcel. Further, the property owner will be required to submit plans to LOID for review of proposed infrastructure for it to comment on.

The Commission decided that based upon the various comments from those political subdivisions that provided comment, and the information within Section VIII of this Reasoned Statement, it was apparent that the rezone would not place undue burden upon the delivery of the services provided. Further, utility providers will be required to provide the developer with “will serve” letters prior to receiving approval by the City to proceed with development. As such, the Commission believed that there was sufficient evidence presented that the subject property is appropriate for rezoning.

5. The size, type, intensity, and density of development expected to occur on the subject property as a result of this rezoning **is** suitable for the area and **will not** unduly burden the neighborhood, public infrastructure, or environmental resources. Applicable commentary:

The Commission determined that the size, type, intensity, and density of development expected to occur on the subject property as a result of this rezoning is very similar to that of the other properties in the vicinity in accordance with their previous discussions noted above. Adequate public infrastructure and services for such development of the subject property will be required as a condition of development approval through the subdivision and building permit approval processes. The Department of Environmental Quality, the Idaho Health North Central District, and other agencies entrusted with guarding environmental resources are part of the development review and approval process.

Pursuant to Idaho Code § 67-6519(5)(c), if the decision on this application is to deny it and the applicant **could not** take actions to obtain approval, the explanation is: Not applicable.

Pursuant to Idaho Code § 67-6519(5)(c), if the decision on this application is to deny it and the applicant **could** take actions to obtain approval, such actions might include: Not applicable.

NOTICE TO APPLICANT: Every final decision rendered shall provide or be accompanied by notice to the applicant regarding the applicant's right to request a regulatory taking analysis pursuant to Idaho Code § 67-8003. The mailing of a signed and dated copy of this document by the City to the applicant shall constitute compliance with such notice requirement. An applicant denied an application or an affected person aggrieved by a final decision concerning matters identified in Idaho Code § 67-6521(1)(a) may, within twenty-eight (28) days after all remedies have been exhausted under local ordinance, seek judicial review under the procedures provided by Title 67, Chapter 52, Idaho Code.

An action or ruling by the Planning and Zoning Commission pursuant to the City of Lewiston Zoning Code may be appealed to the Lewiston City Council by the person who initiated the action before the Planning and Zoning Commission or by any person entitled to notice by mail of the action under section 37-184(b)(2) of the City of Lewiston Zoning Code. Such appeal must be filed within fifteen (15) calendar days after the Planning and Zoning Commission has adopted its written Reasoned Statement of Relevant Criteria and Standards. Written notice of the appeal must be filed with the City Clerk within such fifteen (15) day period. If an appeal is not filed and the fee required by section 37-188 of the City of Lewiston Zoning Code is not deposited with the City Clerk within such fifteen (15) day period, the decision of the Planning and Zoning Commission shall be final.

By: _____
Signature of Planning and Zoning Commission Chair or Vice Chair or Acting Chair

Printed: _____

Date of Signature: _____

ATTEST: _____
Dawn Ortiz, Community Development Specialist

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the Lewiston Planning and Zoning Commission will conduct a public hearing at which you may provide testimony on

Wednesday October 11, 2023 at 5:30 pm.

**COMMUNITY DEVELOPMENT DEPARTMENT BUILDING
2ND FLOOR MEETING ROOM,
215 D STREET LEWISTON, ID 83501**

Seating will be available on a first-come, first-served basis. All others who wish to observe this meeting may watch and listen to the livestream on their own device(s) by visiting the City of Lewiston's Youtube page or the City's website at cityoflewiston.org.

Testimony for public hearings may be made: in-person, by emailing Dawn Ortiz at dortiz@cityoflewiston.org, or by calling (208)746-1318 ext 7265 and leaving a message.

This public hearing will be to determine approval or denial of the following proposal:

ZONING CODE AMENDMENT, ZA-01-23: A proposal to amend Lewiston City Code section 37-183, related to the duties of the Planning and Zoning Commission; section 37-184, regarding the conduct of public hearings, repealing and replacing section 37-185, regarding actions after final decisions of the Planning and Zoning Commission and/or the City Council; and section 37-192, amending the deadline to file an appeal.

FOR FURTHER INFORMATION AND TO SUBMIT TESTIMONY, contact the Community Development Department at (208) 746-1318, ext. 7261.

Hearing notice publication date: Sunday September 24, 2023.

CITY ORDINANCE NO. 4891

AN ORDINANCE OF THE CITY OF LEWISTON AMENDING SECTION 37-183 RELATED TO THE DUTIES OF THE PLANNING AND ZONING COMMISSION; AMENDING SECTION 37-184 REGARDING THE CONDUCT OF PUBLIC HEARINGS; REPEALING AND REPLACING SECTION 37-185 REGARDING ACTIONS AFTER FINAL DECISIONS OF THE PLANNING AND ZONING COMMISSION AND/OR THE CITY COUNCIL; AMENDING THE DEADLINE TO FILE AN APPEAL IN SECTION 37-192; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF LEWISTON, IDAHO:

SECTION 1: Lewiston City Code § 37-183 is hereby amended as follows:

Sec. 37-183. Duties of the planning and zoning commission.

The planning and zoning commission shall have jurisdiction and authority as follows:

...

- (7) To hear appeals from rulings of the community development department related to its administration and enforcement of this chapter.

...

SECTION 2: Lewiston City Code § 37-184 is hereby amended as follows:

Sec. 37-184. Rules for conduct of public hearings and subsequent decisions.

...

- (c) Conduct of public hearings. A public hearing shall be held to determine whether the application is consistent with the policies and goals enumerated in this chapter. The procedure for such public hearings shall be as set forth in Section 2-26(n) of this Code, in addition to the following:

~~(1) No person shall be permitted to testify at such a hearing until the person has been recognized and called upon by the chairman or the mayor.~~

~~(2)~~(1) All public hearings shall be recorded and all persons speaking at such hearings shall speak in such a manner as to ensure the accuracy of the recorded testimony and remarks. ~~A person desiring to testify may also submit written testimony at any time prior to the conclusion of the public hearing.~~

~~(3) At the commencement of the public hearing, the chairman may establish a time limit to be observed by all speakers.~~

~~(4) Each commission member or council member, when recognized by the mayor, shall be allowed to question the speaker, and the speaker shall be limited to answers to the questions asked. The question and answer period shall not be included in the speaker's time limit that might be established by the chairman. The speaker shall not be~~

~~interrupted by the planning and zoning commission or the city council until his time has been expended or until he has finished his statement.~~

- ~~(5)(2) Any person who disrupts a public hearing by making impertinent, slanderous, or threatening comments or gestures, unauthorized remarks, or who becomes disruptive, or who fails to remain on-topic (during a public hearing) while addressing the commission or attending a public hearing shall first be warned by the chairman that he or she is out of order and that further disruption shall be cause to remove the person from the hearing. If the person continues to cause a disruption after being warned, the person may be removed by order of the chairman. not conforming to the above rules may be prohibited from speaking during the public hearing. Should such person refuse to comply with such prohibition, he may be removed from the room by order of the chairman or mayor.~~
- ~~(6) Prior to closing the public hearing, the public hearing may be continued or recessed to a date certain, or indefinitely, upon a majority vote of the city councilors or commissioners present.~~
- ~~(7) Cross-examination of persons testifying at the public hearing shall not be permitted. An applicant shall have an opportunity to rebut any testimony submitted.~~
- ~~(8) Any exhibit introduced by any person shall be retained and made a part of the record.~~

...

SECTION 3: Lewiston City Code § 37-185, titled “Appeal from action or ruling of planning and zoning commission,” is hereby repealed in its entirety.

SECTION 4: A new § 37-185 of the Lewiston City Code is hereby enacted as follows:

Sec. 37-185. Actions after a final decision of the planning and zoning commission and/or city council.

- (a) *Final decisions.* A decision is not considered final, and no petition for judicial review of the decision may be filed, until the provisions of this Section have been completed and the provisions below have been exhausted as provided by this section and Idaho Code § 67-6535(2)(b), as may be amended from time-to-time.

- (1) A final decision of the commission is not a final decision for the purposes of judicial review until the commission has issued a final decision upon reconsideration and the city council has issued a final decision on appeal.

a. Commission recommendations to city council are not final decisions and, thus, shall not be subject to reconsideration or appeal.

- (b) *Request for reconsideration of a final decision by the commission or by the city council.*

- (1) Procedure: An applicant or affected person may file a written request for reconsideration with the city clerk to request that the commission or the city council reconsider a final decision within fourteen (14) calendar days by 5:00 p.m. on the fourteenth (14th) day after the commission or city council has adopted its

written reasoned statement of relevant criteria and standards. The written request for reconsideration shall include, at a minimum, the following information: (i) the name and address of the applicant or affected person requesting reconsideration, (ii) the specific deficiencies in the decision for which reconsideration is sought, and (iii) a description of any procedural injury or substantial harm to real property interest(s) suffered as a result of the decision.

a. A request for reconsideration shall be a mandatory exhaustion of an applicant or affected person's administrative remedies prior to the filing of an appeal of a commission decision to the city council or petition for judicial review of a final decision by the city council.

(2) Stay of action: The filing of a request for reconsideration stays further action on the project, including recording of any related ordinances or resolutions.

(3) Reconsideration.

a. Upon receipt of a request for reconsideration that complies with the requirements of this section, the matter shall be scheduled for reconsideration by the commission or city council, as applicable, no later than the second regularly scheduled meeting after the filing of the request for reconsideration.

b. Upon reconsideration, the decision may be affirmed, reversed, or modified, pursuant to Idaho Code § 67-6535, as may be amended from time-to-time. A written decision shall be provided to the applicant or affected person within thirty (30) days of reconsideration, in accordance with Idaho Code § 67-6535, as may be amended from time-to-time.

c. A decision on reconsideration of a final decision made by the city council is not eligible for reconsideration under the provisions of this section.

(c) Appeal of a final decision of planning and zoning commission.

(1) Procedure: Within fourteen (14) calendar days after the commission has adopted its written decision on reconsideration, an applicant or affected person may file with the city clerk a written notice of appeal to the city council. The written notice of appeal shall include, at a minimum, the following information: (i) the name and address of the applicant or affected person, (ii) identification of the section(s) of this Code or applicable state or federal law(s) that has been incorrectly applied or violated and a description of how they have been incorrectly applied or violated, and (iii) a description of the real or potential prejudice to a substantial right of the applicant or affected person. Written notice of the appeal shall be filed with the city clerk and the fee required by section 37-188 of this Code shall be deposited with the city clerk within the fourteen (14)-day period. If an appeal is not filed and/or the fee required by section 37-188 of this Code is not deposited with the city clerk within the fourteen (14)-day period, then the decision of the commission shall be final. If an appeal is filed and the required fee is deposited within the required time, the commission shall make a written report of the case to the council.

- a. The council may, in its sole discretion and without hearing or notice, either refuse to accept jurisdiction of such appeal, in which case the decision of the commission shall be final, and any appeal fees shall be refunded; or it may provide that such appeal shall be heard at a public hearing before the city council at such time and pursuant to such rules as the council may determine.
- (2) Stay of proceedings: The filing of an appeal of a commission decision stays further approvals and/or actions on the project.
- (3) Conduct of appeal hearing.
 - a. The city council shall hear an appeal of a final decision of the commission de novo, and is not required to rely upon or be bound by the reasoning or conclusions made by the commission.
 - b. In the event the council decides to hold a public hearing regarding an appeal, the city clerk shall publish notice of a public hearing on the matter as required by section 37-184(b) of this Code.
 - c. During the public hearing, testimony shall be limited to those issues that were set forth in the written appeal. The city council may ask about or request information regarding aspects of the project that were not included in the written appeal, if they desire, but shall not supplement or alter the specific grounds upon which the appeal is made.
- (d) *Criteria on which decision may be based.*
 - (1) After hearing a request for reconsideration or an appeal, the commission or city council may affirm, reverse, or modify any final decision, or the city council may order the case back to the commission for further proceedings. The commission's or city council's decision to affirm, reverse, or modify a final decision shall be based on one or more of the following criteria:
 - a. The decision violates state or federal law.
 - b. The decision exceeds the statutory or delegated authority of the commission or city council.
 - c. The decision was made through procedures that were unlawful or inconsistent with this Code.
 - d. The decision is not supported by substantial evidence.
 - e. The decision is arbitrary, capricious, or an abuse of discretion in that it was made without rational basis, or in disregard of the facts and circumstances presented. Even if the record would support two different interpretations of what this Code and applicable state and federal law requires, the action is not arbitrary, capricious, or an abuse of discretion if exercised honestly and after due consideration upon review.
 - (2) If error is found, the commission or city council may reverse or modify the decision.

- (3) If no error is found, the commission or city council shall deny the request for reconsideration or appeal, and the decision shall be upheld.
- (4) The city clerk shall mail to the applicant and the appellant notice of the decision together with the reasoned statement and a notification of the right to seek further review, including judicial review.

SECTION 5: Lewiston City Code § 37-192(c) is hereby amended as follows:

Sec. 37-192. – Duties of the community development department.

...

(c) An appeal from a ruling of the community development department may be made in writing to the commission by an affected person, within ~~fifteen (15)~~fourteen (14) days of the ruling. Notices of the appeal shall be sent to all adjacent property owners, giving the date and time the commission will consider the appeal.

SECTION 6: This ordinance shall take effect and be in full force from and after its passage and publication.

PASSED this _____ day of _____ 2023.

CITY OF LEWISTON

By: _____
Daniel G. Johnson, Mayor

ATTEST:

Tanya M. Brocke, City Clerk