

October 23, 2023

THE CITY COUNCIL OF THE CITY OF LEWISTON, IDAHO, met in a Regular Meeting at the Lewiston Library Second Floor Activity Room at 411 D Street. Mayor Johnson called the meeting to order at 6:00 p.m.

I. CALL TO ORDER

COUNCILORS PRESENT: Mayor Johnson; Council President Liedkie (Zoom); Councilor Forsmann; Councilor Kleeburg; Councilor Schroeder; Councilor Spickelmire; Councilor Tousley

II. PLEDGE OF ALLEGIANCE

Mayor Johnson led the Pledge of Allegiance.

III. CITIZENS COMMENTS

Library Director Johnson shared that the Idaho Commission for Libraries and all libraries across the state will be celebrating Idaho family reading week November 6th - 12th. She encouraged families to visit the Army Corps of Engineers and the Washington State University Raptor Club November 8th at the Library.

Rick Eldridge read a question from a social media page related to concerns about the City potentially purchasing the Twin City Foods and the property being contaminated.

Kathy Shock, resident of Lewiston, questioned if there is a city ordinance related to hoarding and junk cars and if the city has decided not to pursue the community park.

IV. PRESENTATIONS

A. PROCLAMATION: NATIONAL FAMILY LITERACY DAY: Recognizing November 1, 2023 as National Family Literacy Day

Mayor Johnson read and presented a proclamation for National Family Literacy Day to the National Society Daughters of the American Revolution Alice Whitman Chapter.

B. FINANCIAL REPORT - SEPTEMBER 2023: Financial report for September 2023, in accordance with Idaho Code 50-208 - Oral report

City Treasurer Gordon provided a summary of the September 2023 financial report.

V. PUBLIC HEARINGS AND RELATED ACTION ITEMS

- A. PUBLIC HEARING: PROPOSED GRANT ACTIVITIES:** Accepting testimony on a proposal to the Idaho Department of Commerce for an Idaho Community Development Block Grant CARES to replace and upgrade the playground equipment, surfacing material, add an accessible drinking fountain and to provide additional accessible parking options at Pioneer Park

Mayor Johnson explained the public hearing process, opened the public hearing and asked for the staff report.

Parks and Recreation Director Barker explained the request is for various playground equipment replacement, ADA parking stalls and upgrade of the water fountain for the Pioneer Park. The request is for \$250,000 and has an additional \$25,000 provided as in-kind labor from city staff for an estimated total value of improvements to be \$275,000.

There being no public testimony, Mayor Johnson closed the public hearing.

- B. IDAHO COMMUNITY DEVELOPMENT BLOCK GRANT CARES APPLICATION:** Considering approval of the proposal to the Idaho Department of Commerce for an Idaho Community Development Block Grant CARES in the amount of \$250,000 for improvements at Pioneer Park - Action Item

Councilors Tousley and Schroeder moved and seconded, respectively, to approve the proposal to the Idaho Department of Commerce for an Idaho Community Development Block Grant CARES in the amount of \$250,000 for improvements at Pioneer Park. The motion passed 6-0.

- C. PUBLIC HEARING VA-02-2023:** Accepting additional testimony on a request to vacate a section of the Bryden Avenue public right-of-way beginning at the east side of 18th Street and extending a distance of 476.00 feet east, with the condition that an alternate public right-of-way be dedicated in the final plat of the Canyon Crest South Addition that connects 18th Street to the remaining portion of Bryden Avenue not vacated in a location satisfactory to the City Engineer

Mayor Johnson announced the public hearing was being held to receive additional testimony as a result of the City Council's decision to have a second public hearing to receive testimony from the applicant. Mayor Johnson explained the public hearing process, opened the public hearing and announced that the public hearing asked for the staff report.

City Surveyor Weigand provided a brief background of the request and a brief history of the Bryden Avenue Transportation Corridor. Mr. Weigand then informed the City Council that they have two options: 1) uphold their decision to deny the

request; or 2) reverse their decision and conditionally approve the request.

Dan Yonge, owner of DK Holdings, explained he has been working with city staff and his proposed plan is a compromise that would allow the continuation of the street network and also eliminate the double frontage condition of existing lots along Clearview Point Drive by moving the Bryden Avenue transportation corridor approximately 104 feet south of its current location. Mr. Yonge also explained that it would be nearly impossible to connect Bryden Avenue all the way to Lindsay Creek due to a canyon on one side and a cliff on the other side.

Mayor Johnson asked for public testimony and again explained the public hearing is for additional testimony, so all prior public comments have been duly noted and will continue to be considered by the City Council. Additionally, an email was received from Mr. Volk and distributed to City Council, staff and the applicant prior to the meeting (see Attachment A).

Peter Volk, a resident of Viola, Idaho and attorney for Brian Steele, objected to the request because the city is without legal authority to make any decision different than what they made at the September 25, 2023 City Council meeting, due to the requirements of the Local Land Use Planning Act.

Garrett Smith, a resident of Lewiston, is in favor of the proposal, as it doesn't put a road behind their homes and keeps the traffic and noise impact away.

There being no additional testimony, Mayor Johnson closed the public hearing.

- D. CONSIDERATION OF VA-02-2023:** Considering vacating the public right-of-way in VA-02-2023 conditioned upon the dedication of an alternate public right-of-way in the final plat of the Canyon Crest South Addition that connects 18th Street to the remaining portion of Bryden Avenue not vacated in a location satisfactory to the City Engineer prior to passage of the resolution implementing the vacation - Action Item

Councilors Schroeder and Tousley moved and seconded, respectively, to approve VA-02-2023 conditioned upon the dedication of an alternate public right-of-way in the final plat of the Canyon Crest South Addition that connects 18th Street to the remaining portion of Bryden Avenue not vacated in a location satisfactory to the City Engineer.

The motion tied 3-3 with Councilors Liedkie, Forsmann and Kleeburg opposed. With the vote being tied, Mayor Johnson voted aye and the motion passed.

- E. PUBLIC HEARING: ZA-02-2023:** Accepting testimony on a proposal to delete Lewiston City Code Section 37-159.1, Setback from overhead electrical transmission

lines

Mayor Johnson explained the public hearing process, opened the public hearing and asked for the staff report.

Assistant City Planner Hollingshead explained the proposal is to repeal Section 37-159.1 of the Lewiston City Code titled "Setback from overhead electrical transmission lines" and reserve such section.

There being no public testimony, Mayor Johnson closed the public hearing.

- F. **ORDINANCE 4896: FIRST READING:** Considering repealing Section 37-159.1 of the Lewiston City Code titled "Setback from Overhead Electrical Transmission Lines" and reserving such section - Action Item

Councilors Schroeder and Forsmann moved and seconded, respectively, to approve the first reading of Ordinance number 4896. The motion passed 6-0.

ORDINANCE 4896: AN ORDINANCE OF THE CITY OF LEWISTON REPEALING SECTION 37-159.1 OF THE LEWISTON CITY CODE TITLED "SETBACK FROM OVERHEAD ELECTRICAL TRANSMISSION LINES" AND RESERVING SUCH SECTION, AND PROVIDING AN EFFECTIVE DATE.

VI. **CONSENT AGENDA**

Mayor Johnson explained that all items on the Consent Agenda are considered routine by the Council and will be enacted by one motion. There will be no separate discussion on these issues unless a Councilor so requests, in which case the item will be removed from the Consent Agenda and considered on the Active Agenda under "Items Moved from the Consent Agenda".

Councilors Tousley and Schroeder moved and seconded, respectively, adoption of the Consent Agenda. *ROLL CALL VOTE: VOTING AYE: Tousley; Forsmann; Schroeder; Kleeburg; Spickelmire; Liedkie. VOTING NAY: None.*

- A. **CITY COUNCIL MINUTES:** 10/2/2023 Work Session; 10/9/2023 Executive; 10/9/2023 Regular - Action Item
- B. **ADVISORY BOARD AND COMMISSION MINUTES:** 8/8/2023 and 9/12/2023 Urban Renewal Agency; - Action Item
- C. **VOUCHER'S PAYABLE:** Considering approval of the Voucher's Payable dated 09/22/2023 - 10/05/2023 in the amount of \$1,716,670.95 - Action Item

VII. ACTIVE AGENDA

- A. BOYS AND GIRLS CLUBS OF THE LEWIS CLARK VALLEY FY'24 SERVICE AGREEMENT:** Considering approval of the Fiscal Year 2024 Service Agreement between the City of Lewiston and the Boys and Girls Clubs of the Lewis Clark Valley, Inc. in the amount of up to \$18,000 - Action Item

Councilors Schroeder and Forsmann moved and seconded, respectively, to approve the Services Agreement between the City of Lewiston and Boys and Girls Clubs of the Lewis Clark Valley, Inc. *ROLL CALL VOTE: VOTING AYE: Tousley; Forsmann; Schroeder; Kleeburg; Spickelmire; Liedkie. VOTING NAY: None.*

- B. BEAUTIFUL DOWNTOWN LEWISTON FY'24 SERVICE AGREEMENT:** Considering approval of the Fiscal Year 2024 Service Agreement between the City of Lewiston and Beautiful Downtown Lewiston Revitalization Corporation in the amount of up to \$30,000 - Action Item

Councilors Schroeder and Tousley moved and seconded, respectively, to approve the Services Agreement between the City of Lewiston and Beautiful Downtown Lewiston Revitalization Corporation in the amount of up to \$30,000. *ROLL CALL VOTE: VOTING AYE: Tousley; Forsmann; Schroeder; Kleeburg; Spickelmire; Liedkie. VOTING NAY: None.*

- C. HISTORIC PRESERVATION PLAN:** Considering adoption of the Historic Preservation Plan for the City of Lewiston - Action Item

Councilors Schroeder and Tousley moved and seconded, respectively, to adopt the Municipal Preservation Plan for the City of Lewiston. The motion passed 6-0.

VIII. ITEMS MOVED FROM THE CONSENT AGENDA - Action Item

IX. UNFINISHED AND NEW BUSINESS

- A. CITY COUNCILOR COMMENTS:**

Councilor Schroeder thanked the people who showed up to the public outreach events and commented that they were very well attended.

Councilor Tousley noted he had a conversation with Chief Kuzik related to funds received from the opioid settlements and how the money would be dedicated to treatment and rehabilitation programs. He also enjoyed a tour of the new wastewater treatment facility and it's an amazing accomplishment for the city.

Councilor Forsmann reminded all that the election is coming up on November 7, 2023 and encouraged people to vote.

B. CITY BOARDS AND COMMISSIONS LIAISON UPDATES:

Councilor Forsmann provided an update on the Emergency Medical Services Advisory Board (EMSAB) meeting. She also noted the Parks & Recreation Commission took a tour of the parks, golf course and pickle ball courts.

C. MAYOR COMMENTS:

Mayor Johnson thanked the National Society Daughters of the American Revolution and citizens for attending the meeting, congratulated Seekins Precision for being featured in the November 2023 issue of the Guns and Ammo Magazine and introduced a special guest in attendance.

Grayson Jensen, a student of Culdesac High School, explained he attended the meeting for research related to bylaws and would be interviewing the Mayor after the meeting.

D. AGENDA TOPICS: - Action Item

X. ADJOURNMENT - Action Item

There being no further business to come before the Lewiston City Council, Councilors Tousley and Schroeder moved and seconded, respectively, to adjourn the October 23, 2023 Regular Session. The motion carried 6-0 and the meeting adjourned at approximately 7:54 p.m.

Daniel G. Johnson, Mayor

Tanya M. Brocke, City Clerk



Lewiston

ATTACHMENT A

Tanya Brocke <tbrocke@cityoflewiston.org>

PUBLIC HEARING VA-02-2023 and CONSIDERATION OF VA-02-2023

1 message

Pete Volk <petevolklaw@gmail.com>

Thu, Oct 19, 2023 at 11:38 AM

To: "tbrocke@cityoflewiston.org" <tbrocke@cityoflewiston.org>, jtengono@cityoflewiston.org, mweigand@cityoflewiston.org, Brian Steele <steelecomponents@yahoo.com>

City of Lewiston,

Please ensure this email becomes part of the public record for purposes of reconsideration and appeal.

I represent Brian Steele (owner of parcel number RPL00970010000) affected by and in regard to the above referenced Public Hearing and Consideration which is an action by the City of Lewiston to "Reopen Public Hearing VA-02-2023".

Public Hearing VA-02-2023 was heard, closed and voted upon by the Council and at that point a land use decision was made under the Local Land Use Planning Act ("LLUPA") and that Act directs the hearing process and the post decision process in this case.

I find no portion of the LLUPA that provides that a matter for consideration which has been decided can be "**reopened**" to hear additional evidence. It is my position that this hearing is without proper standing and jurisdiction because it is not authorized by LLUPA following a land use decision. Thus, any decision made at the "re-opened" hearing can have no legal effect.

I understand that the City felt compelled to engage in the action of reopening a decided closed land use hearing because an affected party (DK Holding, the applicant) complained that he was not present at the original hearing and that his due process rights had been violated.

The City is only required to provide the notice set forth in its code and state law under LLUPA. It did exactly that. **See** attached evidence of mailing notice. Notice was provided in accordance with Code, he was not present and the matter of procedure is settled on that point.

To make matter worse for DK Holdings, the applicant, the address provided to the City of Lewiston, for service of notice was locked and accepting people only upon appointment. **See** attached photo. This fact was confirmed by Brian Steele who took the photo and can testify to that fact at the coming hearing.

So it appears Lewiston is having a hearing to "re-open" a final land use decision; which action is not permitted by LLUPA (see below discussion) that is based upon a failure to receive notice, (which notice was provided in accordance with code) to a person that affirmative made him self unavailable to receive the notice. This is not a compelling situation of lack of due process.

In terms of the process following a land use decision under LLUPA the procedure is quite defined and limited. To follow any other procedure is not permitted and any decision by the local land use body is not enforceable.

First, following the land use decision of the council, LLUPA requires that local officials support their decisions on permit applications with a written "**reasoned statement**" that discloses and explains the basis of the decision in a meaningful way and documents that the decision was based upon appropriate "standards and criteria." This requirement applies to the "approval or denial of any application." Idaho Code § 67-6535(1). Obviously, this applies when a governing board (a city council) renders a decision. This was not done in this case following the decision and is mandatory by code after a decision is made.

By tradition, the reasoned statement typically takes the form of "findings of fact and conclusions of law." The issuance of the findings and conclusions, by the way, triggers the running of the time for appeal. There is no opportunity to "re open" a decision by the council. The record is now closed and the reasoned statement needs to be published. Idaho Code §§ 67-6535.

In addition to Idaho Code §§ 67-6535 discussed above, there is another provision in LLUPA that has bearing on the obligation to provide meaningful findings and conclusions. LLUPA also requires the decision maker to explain to the applicant how the application could be changed to make it acceptable: (5) Whenever a governing board or zoning or planning and zoning commission grants or denies an application, it shall specify: (a) The ordinance and standards used in

evaluating the application; (b) The reasons for approval or denial; and (c) The actions, if any, that the applicant could take to obtain approval. Idaho Code § 67-6519

The is sound reasoning for the reasoned statement being required after a decision is made. It provides that "Why" and the "How to fix" the denied application in this case. In doing so, by following the rules of LLUPA further legal action on appeal can be avoided by amending the application.

Upon deliver of the reasoned statement the next time limitation starts which is reconsideration of that reasoned statement. Any applicant or affected person seeking judicial review of compliance with the provisions of this section must first seek reconsideration of the final decision within fourteen (14) days. Idaho Code 67-6535. This is a huge next step because the state legislature enacted this required next step clarify what it should mean to exhaust all available remedies prior to appeal as a counter to In Arthur v. Shoshone County, 133 Idaho 854, 993 P.2d 617 (Ct. App. 2000).

Reconsideration is not only allowed, but required, when an applicant or affected person alleges noncompliance "with the provisions of this section." Idaho Code § 67-6535(2)(b) (emphasis supplied). In other words, seeking reconsideration is a prerequisite to all LLUPA appeals.

Note, LLUPA is a motion to the council to "reconsider" its reasoned decision. it is not an invitation for the council to "re-open" the hearing. (there is no such authority).

After the hearing for reconsideration, a written decision is delivered to the applicant or affected person within sixty (60) days of receipt of the request for reconsideration or the request is deemed denied. Following the deliver of the decision the affected person is subject to a 28 day statute of limitation to appeal that reconsideration to the District Court. Idaho Code 67-6535.

In summary, LLUPA controls this decision making process. A land use decision was made and the matter decided. LLUPA does not permit this matter to be re-opened. The City Council hears this matter without authority to make a land use decision because one has all ready been made and LLUPA must be followed. It would be best if the City Council cancel the public hearing, issue the reasoned statement and follow the LLUPA that was put into place to address this very matter.

Thank you for adding this to the record and for your attention in this matter.

Pete Volk

Volk Law PLLC
Peter Volk, attorney
PO Box 9264
Moscow Idaho 83843
208-301-1265 - cell

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2 attachments



Photo of applicant address. .jpg
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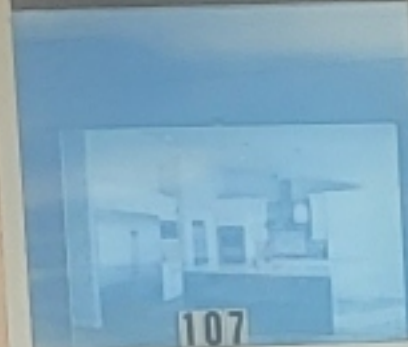


Certified Mailing to DK Holdings LLC.pdf
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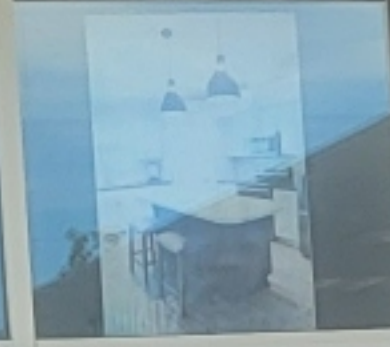
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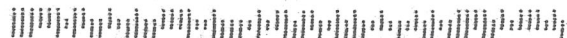
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- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

DK HOLDINGS LLC
247 THAIN RD STE 107
LEWISTON, ID 83501

(15)



9590 9402 7281 2028 7498 31

2. Article Number (Transfer from service label)

7022 0410 0002 1992 1114

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- ☐ Agent
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B. Received by (Printed Name)

C. Date of Delivery

- D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

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