

Moscow City Council



Regular Meeting ~Agenda~

www.ci.moscow.id.us

Laurie M. Hopkins
City Clerk

208.883.7015

**Monday
May 1, 2023**

7:00 PM

**Council Chambers
206 E. Third St.**

The Moscow Mayor, City Council and Staff welcome you to tonight's meeting. This meeting is open to the public. We appreciate and encourage public participation. For regular agenda items, an opportunity for public comment is sometimes provided after the staff report. However, the formality of procedures varies with the purpose and subject of the agenda item; therefore, the Mayor may exercise discretion in deciding when to allow public comment during the course of the proceedings and limitations may be placed on the time allowed for comments. Citizens wishing to comment on business that is not on the agenda will be provided the opportunity to do so during the public comment item on the agenda. If you plan to address the Council, you will find a list of "Tips for Addressing the Council" in the door pocket outside the City Council Chambers. Please note that Moscow City Council meetings are televised, videotaped and/or recorded. Links to view the City Council meeting live can be found on the City website, YouTube, Facebook and Spectrum Cable 1301. Thank you for your interest in City government.

PLEDGE OF ALLEGIANCE

PROCLAMATION

Renaissance Fair 50th Anniversary

Bike Month

Public Service Recognition Week

CONSENT AGENDA

1. All Consent Items (ACTION ITEM)

A. Approval of Moscow City Council April 17, 2023 Minutes - Laurie M. Hopkins

B. Written Decision Regarding the Appeal of a Conditional Use Permit 2518 Itani Drive – Aimee Hennrich

On January 6, 2023, John and Candis Write applied for a Conditional Use Permit (CUP) to allow a Bed and Breakfast Inn, utilizing two of the four existing bedrooms in the single-family home at 2518 Itani Drive. The Board of Adjustment conducted a public hearing for the proposed CUP on February 7, 2023, and subsequently voted to approve the CUP application with the condition that the applicant provide six (6) off-street parking spaces on the property. On February 23, 2023, the Community Development Department received an appeal from John and Candis Write, stating that they wish to appeal the Board of Adjustment's decision to City Council in order to eliminate the condition of approval. On April 17, 2023, City Council considered the appeal during a public meeting and reversed the decision in part, upholding the approval and eliminating the condition to provide additional parking spaces. Staff has prepared the written decision for the Council's review and approval. This was reviewed by the Administrative Committee on April 24, 2023 and recommended for approval.

ACTION: Approve the proposed written decision.

C. Repeal of Resolution 2000-17 (Appeal Procedures) - Cody Riddle

Resolution 2000-17 details appeal procedures that are in conflict with provisions already in Moscow City Code. This redundancy creates confusion for those involved in the public hearing process. To eliminate this issue, Staff is recommending this resolution be repealed and users rely exclusively on provisions already established in Moscow City Code. This was reviewed by the Administrative Committee on April 24, 2023 and recommended for approval.

ACTION: Approve the resolution repealing Resolution 2000-17.

D. Bennett Lumber Radio Tower Lease Agreement - Bill Belknap

The City is currently working toward the replacement of the City's emergency communications radio system due to the current equipment reaching end-of-life as well as system coverage deficiencies. One component of that project will include the installation of additional radio antennas and equipment on the radio tower located on West Twin Peak of Moscow Mountain owned by Bennett Lumber. Staff worked with Bennett Lumber to prepare a new lease agreement to replace the City's existing equipment with the new and additional equipment planned for installation with the new radio system. The Lease Agreement is now before the Council for the Council's review and approval. This was reviewed by the Administrative Committee on April 24, 2023 and recommended for approval.

ACTION: Approve the Tower Lease Agreement with Bennett Lumber.

REGULAR AGENDA

- 2. Staff Recognition**
- 3. Public Comment and Mayor's Response Period (limit 15 minutes)**
- 4. Citizen Commission Report - Moscow Pathways Commission - David Schott / Tanya Denison**
- 5. 2022-2023 Snow Report - Steve Schulte**
- 6. Downtown Streetscape Study Update - Cody Riddle**

REPORTS

City Council

Mayor

ADJOURN

NOTICE: It is the policy of the City of Moscow that all City-sponsored public meetings and events are accessible to all people. If you need assistance in participating in this meeting or event due to a disability under the ADA, please contact the City's ADA Coordinator by phone at (208) 883-7600, TDD (208) 883-7019, or by email at adacoordinator@ci.moscow.id.us at least 48 hours prior to the scheduled meeting or event to request an accommodation. The City of Moscow is committed to ensuring that all reasonable accommodation requests are fulfilled.

MOSCOW RENAISSANCE FAIR FIFTIETH ANNIVERSARY PROCLAMATION

- WHEREAS,** Moscow Renaissance Fair was established by a grassroots effort in 1974; and
- WHEREAS,** the Moscow Renaissance Fair has been an annual spring festival since its inception, providing the community with live music, art and crafts, children's activities, and homemade food from local nonprofits; and
- WHEREAS,** the two-day festival in East City Park is free to all and held regardless of the weather; and
- WHEREAS,** the Moscow Renaissance Fair is a self-supported event that is produced through the efforts of dedicated volunteers; and
- WHEREAS,** the Moscow Renaissance Fair has contributed to the City of Moscow by donating bike racks, a drinking fountain, and the construction of the Peter Basoa Stage in East City Park; and
- WHEREAS,** the Moscow Renaissance Fair provides a model for the community through its exemplary recycling and composting program which has greatly reduced the waste generated by the event; and
- WHEREAS,** the 2023 Renaissance Fair marks the 50th anniversary of this treasured community event.

NOW, THEREFORE, I, Art Bettge, Mayor for the City of Moscow, do hereby proclaim May 6th and May 7th, 2023 as

50th Anniversary Moscow Renaissance Fair Weekend

in the city of Moscow, and I encourage all citizens to celebrate the anniversary of the Renaissance Fair and its contributions to Moscow and the greater Palouse region.



DATED this 1st day of May 2023.

Arthur D. Bettge, Mayor

BIKE MONTH PROCLAMATION

WHEREAS, National Bike Month began in May 1956; and

WHEREAS, bicycling has been an affordable, environmentally-sound mode of transportation, an excellent form of exercise, and fun recreation since the first pedal-propelled bicycle appeared in the 1860s; and

WHEREAS, bicycling contributes to retail sales, tourism dollars, infrastructure, and policies that support community livability; and

WHEREAS, bicycle commuting benefits both employees and employers through better health and fitness, lower costs, and reduced parking space; and

WHEREAS, bicycling reduces heart disease, obesity, diabetes, and hypertension, and improves mental health and cardio-vascular fitness; and

WHEREAS, Bike to Work Week 2023 will take place May 15th through May 21st; and

WHEREAS, Bike to Work Day 2023 will take place Friday, May 19th. To celebrate Bike to Work Day, the Moscow Pathways Commission will be on the corner of Sixth and Main Street on Friday, May 19th from 7:00 to 9:00 a.m. The public is welcome to stop by and enjoy coffee donated by One World Café and light refreshments donated by the Moscow Food Co-op; and

WHEREAS, to celebrate Bike Month, the Moscow Pathways Commission will host their annual Bike Tour on Sunday, May 21st, 2023, from 1:30 p.m. to 3:30 p.m. The annual Bike Tour will begin at Alturas Park and follow the Paradise Pathway to Highway 95 and then back to Berman Creekside Park for light refreshments.

NOW, THEREFORE, I, Art Bettge, Mayor for the City of Moscow, do hereby proclaim May 2023 to be

Bike Month

in Moscow, and I urge everyone who can, to cycle to work, school, shopping, and errands, or simply for pleasure.



DATED this 1st day of May 2023

Arthur D. Bettge, Mayor

PUBLIC SERVICE RECOGNITION WEEK

In honor of the millions of public employees at the federal, state, county, and city levels:

WHEREAS, Americans are served every single day by public servants at the city, county, state, and federal levels to do the work that keeps our nation working; and

WHEREAS, Moscow's public servants include a wide range of professionals who work each and every day to deliver quality municipal services and enhance Moscow's sense of community; and

WHEREAS, day in and day out, Moscow's public servants provide the diverse services required by our community with efficiency and integrity; and

WHEREAS, public servants at every level of public service provide continuity and support to our representative democracy providing for stability and the orderly transition of elected officials and representatives.

NOW, THEREFORE, I, Art Bettge, Mayor for the City of Moscow, do hereby proclaim May 7th through May 13th, 2023 as

Public Service Recognition Week

in the city of Moscow, and I encourage all citizens to recognize the accomplishments and contributions of government employees at all levels – city, county, state, and federal.



DATED this 1st day of May, 2023.

Arthur D. Bettge, Mayor

Moscow City Council



Regular Meeting ~Minutes~

Laurie M. Hopkins
City Clerk

www.ci.moscow.id.us

208.883.7015

**Monday
April 17, 2023**

7:00 PM

**Council Chambers
206 E. Third St.**

The meeting was called to order at 7:00 p.m.

PRESENT: Mayor Art Bettge, Sandra Kelly, Maureen Laflin, Hailey Lewis, Julia Parker, Gina Taruscio
STAFF: Bill Belknap, Mia Bautista, Cody Riddle Brian Nickerson, Amanda Argona, Tyler Palmer, Aimee Hennrich, Cody Riddle, Alisa Anderson, David Schott, Brian Strain, Ty Thompson, Laurie M. Hopkins

PLEDGE OF ALLEGIANCE

Council President Laflin led the Pledge of Allegiance.

PROCLAMATION

Earth Day

Mayor Bettge read the proclamation and presented it to Tina Hilding.

Arbor Day

Mayor Bettge read the proclamation and presented it to David Schott. Schott shared the information for the Arbor Day celebration and invited everyone to attend.

Moscow Food Co-op

Mayor Bettge read the proclamation.

CONSENT AGENDA

1. All Consent Items (ACTION ITEM)

A. Approval of Moscow City Council April 3, 2023 Minutes - Laurie M. Hopkins

B. Disbursement Report March 2023 - Sarah Banks

Staff presented the March 2023 Accounts Payable Report to the Public Works / Finance Committee on April 10th, 2023. The Committee received the report and approved the disbursements as presented.

ACTION: Accept the Disbursements Report for the month of March 2023.

C. Second Quarter Financial Report January 1, 2023 to March 31, 2023 for FY2023 - Sarah Banks

Staff presented the second quarter financial report of Fiscal Year 2023 (January 1, 2023 to March 31, 2023) to the Public Works / Finance Committee on April 10th, 2023. The Committee received the financial report and approved it as presented.

ACTION: Accept the FY2023 Second Quarter Financial Report.

D. Recycling Services Agreement Between City of Moscow and University of Idaho - Tim Davis

The University of Idaho is committed to begin a single stream recycling program on campus with collection of recyclables performed in-house by Facilities staff. The City of Moscow implemented a single stream recycling program in 2016 for residential and multi-family customers. The City later made the single stream recycling program available to commercial customers in 2018. The City of Moscow has a long history of supporting recycling as a part of an overall sanitation strategy including owning the Moscow Recycling Center where all recyclables collected in Moscow are delivered and processed. The City of Moscow supports the University's commitment to begin a single stream recycling program on campus and is committed to accept, process and ultimately ship the University's single stream recycling materials to a Material Recovery Facility. This was reviewed by the Public Works/Finance Committee on April 10, 2023 and recommended for approval.

ACTION: Approve the Services Agreement between the City of Moscow, Idaho and University of Idaho for single stream recycling program as presented.

E. Asphalt Rubber Chip - 2023 Bid Results and Contract Award - Todd Drage

The Pavement Preservation Program for FY2023 includes Asphalt Rubber (AR) Chip Seal road treatments to address multiple locations throughout the City. The City published an advertisement for bids for the project on March 11, 2023. Bids were opened on Tuesday, March 28, 2023. One responsive bid was received from Doolittle Construction LLC of Snoqualmie Washington for the amount of \$433,962.33. This was reviewed by the Public Works/Finance Committee on April 10, 2023, and recommended for approval.

ACTION: Accept the low bid from Doolittle Construction, award the contract in the amount of \$433,962.33, and authorize staff approval for construction change orders in an amount not to exceed 10% of the contract amount.

F. Palouse Mall AC Water Main Replacement Bid Results and Contract Award - Nate Suhr

The Palouse Mall AC Water Main Replacement project consists of the removal and replacement of approximately 740 feet of 12-inch asbestos cement (AC) water main located behind the northeast corner of the Palouse Empire Mall. This project will also replace various drainage structures, water valves, and fire hydrants as needed. The replacement is necessary due to the brittle nature of AC pipe which is of high concern, especially when located near a production well where it will see daily pressure fluctuations due to well operation. This was reviewed by the Public Works/Finance Committee on Monday April 10, 2023 and recommended for approval.

ACTION: Accept the bid from M.L. Albright & Sons, Inc., award the contract in the amount of \$422,530.00, and authorize staff approval of construction change orders in an amount not to exceed 10% of the contract amount.

G. Artwalk Season Finale Alcohol Use Request in Entertainment District - Amanda Argona

The City of Moscow Arts Department is hosting the Artwalk Season Finale on Thursday, June 15th, from 4 pm to 8 pm on Main Street between 3rd and 6th Streets. This annual event concludes the 2022-2023 Artwalk Season in an artistic and festive manner. As a City-hosted event, the Arts Department has facilitated the registration of Main Street vendors and demonstrators, as well as business and non-profit host locations. No more than 5 (five) beer/wine vendors will be authorized for beer/wine sales, and a variety of activities will take place including live music, Kidwalk, food sales, art demonstrations, and more. The event has been reviewed and approved as of March 1, 2023. Following standard operating procedures for events with alcohol that are within the Entertainment District boundaries, Artwalk is requesting a temporary suspension of the open container law by resolution. Per Moscow City Code, Section 10-1-12; a draft resolution has been prepared for Council's consideration. This was reviewed by the Public Works/Finance Committee on April 10,

2023 and recommended for approval.

ACTION: Approve the resolution allowing for the temporary suspension of the open container law within the event footprint of the Artwalk Season Finale for the duration of the event.

H. Moscow Renaissance Fair Alcohol Use Request in East City Park - Amanda Argona

Moscow Renaissance Fair LLC is hosting the annual Moscow Renaissance Fair on Saturday, May 6 and Sunday, May 7 in East City Park. The annual event is a community celebration of spring. Live music, artisans, kid-friendly activities, food vendors, and a beer garden are traditional aspects of this event. The applicant anticipates 1 (one) licensed beer and/or wine vendor in the beer garden, which is estimated to be 30'x20' in size. Following standard operating procedures for events with alcohol within a City Park, Moscow Renaissance Fair LLC is requesting the allowance of attendees to possess and consume alcoholic beverages within the 30'x20' beer garden from 12:00-7:30 pm on Sat., May 6 and 12:00-5:00 pm on Sun., May 7. Per Moscow City Code, Section 5-13-4, a draft resolution has been prepared by the Community Events Division and reviewed by the Legal Department for the Council's consideration to permit this typically prohibited activity. This was reviewed by the Public Works/Finance Committee on April 10, 2023 and recommended for approval.

ACTION: Approve the resolution allowing for the possession and consumption of alcoholic beverages in the designated beer garden in East City Park for Moscow Renaissance Fair for the listed dates and times during the event.

Kelly moved, Taruscio seconded, to approve the consent agenda as presented. Roll Call Vote: Ayes: Unanimous. Nays: None. Abstentions: None. Motion carried.

REGULAR AGENDA

2. Staff Recognition

None offered.

3. Mayors Appointments (ACTION ITEM)

None offered.

4. Public Comment and Mayor's Response Period (limit 15 minutes)

Kent Salisbury (Moscow) sent email to council regarding artwork at Jackson and A Street and the implications of the painting and the larger meaning in the current climate. He looks forward to the day we don't have to make a statement in public on a mural so emboldened. There is also box mural art by One Word and Nectar that says Murder in Moscow. With the November event, perhaps the title should be changed out to something more hopeful.

Paul Kimmel (Viola) passed out information related to keys to economic success and what builds a community. He went through the top 5 reasons people and businesses either come or stay in a community. Number 5, tax rate; 4, infrastructure; 3, workforce and housing; 2, quality of life; 1, collaboration and cooperation. He also passed out an excerpt from Strong Towns regarding choosing a place that is able to grow stronger and wealthy and provide a good home for its inhabitants. The author argues two components: people that are well traveled and brings ideas (he feels U of I does that) and then mystic patriots, a person who works tirelessly to improve the place they live and loves not as a consumer but because it is their place. He thinks the council serve as that reason and thanked the Council.

Kelli Cooper, City of Moscow staff, invited everyone to downtown cleanup at 9:30 a.m. this Friday.

5. Mayor's Earth Day Awards

Mayor Bettge provided the history of the Mayor's Earth Day awards and presented the awards to the winning recipients. See attachment.

6. Appeal of Conditional Use Permit at 2518 Itani Drive (ACTION ITEM) - Aimee Hennrich

On January 6, 2023, John and Candis Write applied for a Conditional Use Permit (CUP) to allow a Bed and Breakfast Inn, utilizing two of the four existing bedrooms in the single family home at 2518 Itani Drive. The Board of Adjustment conducted a public hearing for the proposed CUP on February 7, 2023, and subsequently voted to approve the CUP application with the condition that the applicant provide six (6) off-street parking spaces on the property. Under current City standards, a single-family home would require two (2) off-street parking spaces and a two (2) bedroom Bed and Breakfast would require one (1) additional parking space for a total of three (3) off-street parking spaces. On February 23, 2023, the Community Development Department received an appeal from John and Candis Write, stating that they wish to appeal the Board of Adjustment's decision to City Council in order to eliminate the condition of approval.

PROPOSED ACTIONS:

1. After considering the record and appeal request; sustain the decision of the Board in whole or in part; reverse the decision of the Board in whole or in part; or remand the matter in whole or in part to the Board with comments and/or instructions for further consideration by the Board; or take other such action deemed appropriate.
2. Direct staff to prepare a written decision based on the Council's action.

Mayor Bettge and Aimee Hennrich explained the appeal process. Hennrich continued by introducing the item with the above details, including requirements for zoning and short term rentals. At the Board of Adjustment hearing there was verbal testimony given by four (4) people and one (1) letter the was read into the record in opposition to the proposed bed and breakfast. Concerns included parking, snow removal and not wanting the character of the neighborhood to change.

John Wright, owner, said the direct and immediate effect wasn't discussed at the BOA meeting which is by extending his driveway into the yard would eliminate one or possibly two on-street parking spaces. There are no current parking issues. If he must comply with the BOA requirement it would also de-conform the look of his house. Eliminating on-street parking isn't desirable. In his appeal application he included a brief map of businesses in the neighborhood but it doesn't show other rentals in the neighborhood, which do exist. The basis for his appeal is they exceed all the minimum requirements, by adding two more off-street parking spaces it would take out one to two on-street parking and de-conform his home. Because of family activities, he won't be renting much on weekends. He anticipates most visitors will parking at night and not during the day.

Taruscio said she feels uncomfortable with the additional requirements that have a somewhat cascading affect and doesn't agree with the possibility of losing one on-street parking space, potentially two She feels it was an extreme condition. Davis agreed with Taruscio that the extra parking was an extreme condition. With the condition of the neighborhood, one or two cars on the street, he didn't see it as a detriment. He added when considering the lack of housing in all of Moscow, bed and breakfasts and accessory dwelling units are a way to mitigate by using them as additional housing. Lewis stated she appreciates that neighbors are voicing their concerns and after rereading the transcript, she feels the BOA made the decision to be sure the neighbors were heard. She doesn't feel it is the best solution. Parker felt it is arbitrary to add parking spaces to this BNB. It is unfortunate neighbors are having conflict with parking but doesn't agree with imposing an extra requirement on one particular BNB.

Parker moved to reverse in part and remove condition of requiring the additional parking spaces. Davis seconded.

Kelly is hesitant to go against the City boards and all the work they put in. She felt the neighbors wanted to be heard and they were. She agrees the extra parking is not needed. Laflin said it is hard to understand why this one BNB has more requirements than the other BNB's in town and doesn't agree that there are different rules for this one because the neighbors complained.

Roll Call Vote: Ayes: Unanimous. Nays: None. Abstentions: None. Motion carried.

Parker moved to direct staff to prepare a written decision based on the Council's action. Taruscio seconded. Roll Call Vote: Ayes: Unanimous. Nays: None. Abstentions: None. Motion carried.

7. Public Hearing: Idaho Community Development Block Grant - Status of Grant Funded Project Activities for Fire Truck Acquisition (ACTION ITEM) - Alisa Anderson

In April of 2022, the City of Moscow received an Idaho Community Development Block Grant (ICDBG) in the amount of Three Hundred Thirty-Five Thousand Dollars (\$335,000) from the Idaho Department of Commerce. This funding is allocated to the State of Idaho from the U.S. Department of Housing and Urban Development. The funds are currently being used to purchase a new Pumper Fire Engine for the Moscow Volunteer Fire Department. The hearing will include a review of project activities and accomplishments to date, a summary of all expenditures to date, a general description of remaining work and any changes made to the scope of work, budget, schedule, location or beneficiaries. Verbal and written questions and comments will be accepted at the public hearing.

PROPOSED ACTIONS: Conduct a public hearing regarding project activities and accomplishments to date, a summary of all expenditures to date, a general description of remaining work and any changes made to the scope of work, budget, schedule, location or beneficiaries. Accept verbal and written comments and questions at the public hearing.

Bettge opened the hearing at 8:08 p.m.

Anderson introduced the item as written above. The engine to be replaced was due for retirement in 2018 and the new engine will be housed at Fire Station No. 2. It is a Pierce Saber Pumper with a price of \$687,081. The grant award is \$335,000 and City match is \$352,081 which was budgeted in FY2022 but carried over to FY2023. It is being built in Florida and final inspection and delivery is anticipated to be in August.

Nickerson said the vendor drives it to Moscow and upon arrival there is a final inspection by staff. Palmer said the fleet and fire departments have a very critical and comprehensive checking process for the review of the engine. Nickerson provided construction and assembly photos. The extra equipment has to be installed by the Fleet Division and it will be identical to the other two engines. The retired engine will then be housed at Station 3 and be used as a rescue truck.

Mayor Bettge asked for testimony in favor, opposition, and of a general nature. No testimony was received and he closed the public hearing at 8:24 p.m. No Council action is necessary.

REPORTS

City Council

Moscow Tree Commission – Taruscio reminded everyone there will be free seedlings at the Arbor Day event on April 29th.

Planning and Zoning Commission – Taruscio said the Commission discussed intersections.

Moscow Urban Renewal Agency – Laflin reported they received a presentation from Riddle regarding proposal requirements and designs for the Jackson and Sixth Street property.

Moscow Arts Commission – Parker said the Commission is getting ready for the next Artwalk.

Council members spoke on other meetings and events including Town and Gown.

Mayor

Mayor Bettge said he attended the live fire training with the Fire Department; taught a few high school government classes; and tomorrow is the AIC spring district workshop.

Belknap said the MVFD agreed to participate with the City on a pilot program for residents and volunteers to provide a stipend to stay over the holiday weeks when coverage is difficult. It will be proposed in the FY2024 budget at a cost of \$24,000. The Board also approved an EMS waiver due to lack of paramedic coverage. The waiver is a method to let the state know that licenses them as an Advanced Life Support provider and that there may not be paramedic coverage and that there is an operations plan on who to notify when it happens. It assists to protect the volunteer's liability.

ADJOURN

It was moved, seconded and mutually agreed upon to adjourn at 8:39 p.m.

Arthur D. Bettge, Mayor

ATTEST:

Laurie M. Hopkins, City Clerk

COMMITTEE / CITY COUNCIL STAFF REPORT

DATE: Monday, May 1, 2023



AGENDA ITEM TITLE

Written Decision Regarding the Appeal of a Conditional Use Permit 2518 Itani Drive – Aimee Hennrich

RESPONSIBLE STAFF

Aimee Hennrich, Planner I

ADDITIONAL PRESENTER(S)

DESCRIPTION

On January 6, 2023, John and Candis Write applied for a Conditional Use Permit (CUP) to allow a Bed and Breakfast Inn, utilizing two of the four existing bedrooms in the single-family home at 2518 Itani Drive. The Board of Adjustment conducted a public hearing for the proposed CUP on February 7, 2023, and subsequently voted to approve the CUP application with the condition that the applicant provide six (6) off-street parking spaces on the property. On February 23, 2023, the Community Development Department received an appeal from John and Candis Write, stating that they wish to appeal the Board of Adjustment's decision to City Council in order to eliminate the condition of approval. On April 17, 2023, City Council considered the appeal during a public meeting and reversed the decision in part, upholding the approval and eliminating the condition to provide additional parking spaces. This was reviewed by the Administrative Committee on April 24, 2023 and recommended for approval.

REVIEWED BY

This was reviewed by the Administrative Committee on April 24, 2023 and recommended for approval.

PROPOSED ACTIONS

ACTION: Approve the proposed written decision.

STAFF RECOMMENDATION

Approve the proposed written decision.

OTHER RESOURCES

FISCAL IMPACT

No fiscal impact.

PERSONNEL IMPACT

ATTACHMENTS

1. LUP2023-0003 - 2518 Itani Drive CUP Council written decision 4-17-23

**BEFORE THE CITY COUNCIL
OF THE CITY OF MOSCOW, COUNTY OF LATAH,
STATE OF IDAHO**

WRITTEN DECISION OF THE MOSCOW CITY COUNCIL REGARDING AN APPEAL TO THE APPROVAL OF A CONDITIONAL USE PERMIT BY THE MOSCOW ZONING BOARD OF ADJUSTMENT TO ALLOW A BED AND BREAKFAST INN LOCATED AT 2518 ITANI DRIVE IN THE CITY OF MOSCOW, IDAHO WITHIN THE MODERATE DENSITY SINGLE FAMILY RESIDENTIAL (R-2) ZONING DISTRICT PER MOSCOW CITY CODE 4-3-4.

WHEREAS, John and Candis Wright, the applicants, filed application LUP2023-0001, for a Conditional Use Permit on January 6, 2023; and

WHEREAS, the Moscow Board of Adjustment conducted a duly noticed public hearing upon the subject Conditional Use Permit on February 7, 2023; and

WHEREAS, having considered the matter including all materials presented and testimony received, the Moscow Zoning Board of Adjustment approved the proposed Conditional Use Permit, LUP2023-0001, with one condition of approval, and instructed Staff to prepare the Reasoned Statement of Relevant Criteria for the Board's review and approval; and

WHEREAS, on February 15, 2023, the Moscow Zoning Board of Adjustment met and approved the Reasoned Statement of Relevant Criteria establishing the Board's written decision upon the request and serving as the Board's final action upon the matter; and

WHEREAS, on February 23, 2023, John and Candis Wright filed a timely appeal to the decision of the Moscow Zoning Board of Adjustment in accordance with the requirements of Moscow City Code Section 4-8-5; and

WHEREAS, the Moscow City Council considered the appeal during a public meeting conducted on April 17, 2023; and

WHEREAS, the Moscow City Council reviewed the record established by the Board of Adjustment, did not consider any new or additional evidence, and heard the appellant's argument on the appeal; and

WHEREAS, having considered the record established by the Board of Adjustment, and having considered the issues presented by the appellant, the Council reversed the decision of the Zoning Board of Adjustment in part, upholding the approval of the Bed and Breakfast Inn and removing the sole condition placed upon the approval.

THE CITY COUNCIL OF THE CITY OF MOSCOW, IDAHO, AFTER DUE DELIBERATION AND CONSIDERATION OF THE RECORD ESTABLISHED BY THE MOSCOW ZONING BOARD OF ADJUSTMENT AND HAVING CONSIDERED THE

ISSUES PRESENTED BY THE APPELLANT AND THE APPLICANT, HEREBY CONCLUDES:

DECISION

The Moscow City Council hereby **REVERSES** the decision of the Zoning Board of Adjustment in part, upholding the approval and removing the Zoning Board of Adjustment's condition of approval requiring additional off-street parking spaces upon LUP2023-0001.

PASSED BY THE CITY COUNCIL OF THE CITY OF MOSCOW THE ____ DAY OF _____, 2023.

Arthur D. Bettge, Mayor

COMMITTEE / CITY COUNCIL STAFF REPORT

DATE: Monday, May 1, 2023



AGENDA ITEM TITLE

Repeal of Resolution 2000-17 (Appeal Procedures) - Cody Riddle

RESPONSIBLE STAFF

Cody Riddle, Deputy City Supervisor - Community Development

ADDITIONAL PRESENTER(S)

Mia Bautista, City Attorney

DESCRIPTION

Resolution 2000-17, adopted in September of 2000, details appeal procedures that are in conflict with provisions already in Moscow City Code. This redundancy is unnecessary and creates confusion for those involved in the public hearing process. Repeal of Resolution 2000-17 will eliminate the confusion and allow users to appropriately rely on the procedures already included in Sections 4-8-2, 4-8-5, and 4-10-8 of City Code.

Staff anticipates providing further refinement and clarification to the appeal process through a follow-up ordinance amendment. Repeal of the resolution will not create any procedural issues in the interim.

REVIEWED BY

This was reviewed by the Administrative Committee on April 24, 2023 and recommended for approval.

PROPOSED ACTIONS

ACTION: Approve the resolution repealing Resolution 2000-17.

STAFF RECOMMENDATION

Approve the resolution repealing Resolution 2000-17.

OTHER RESOURCES

N/A

FISCAL IMPACT

N/A

PERSONNEL IMPACT

N/A

ATTACHMENTS

1. Resolution 2023-__ Repealing Resolution 2000-17_final
2. Title 4, Chapter 8 City Code
3. Title 4, Chapter 10 City Code

RESOLUTION NO. 2023-__

A RESOLUTION OF THE CITY OF MOSCOW, IDAHO, A MUNICIPAL CORPORATION OF THE STATE OF IDAHO, AUTHORIZING THE REPEAL OF RESOLUTION 2000-17 WHICH ESTABLISHED GUIDELINES FOR APPEALS TO CITY COUNCIL FROM THE BOARD OF ADJUSTMENT OR FROM THE PLANNING AND ZONING COMMISSION; TO BE EFFECTIVE UPON ITS PASSAGE AND APPROVAL.

WHEREAS, Resolution 2000-17 (see Attachment “A”) establishes appeal procedures that were adopted by City Council on September 5, 2000; and

WHEREAS, on September 19, 2007, through Ordinance 2007-10, City Council amended Moscow City Code Title 4, Chapter 8, Sec. 8-2 by adding a provision that consideration of appeals shall be pursuant to Moscow City Code Section 4-10-8, and through the same Ordinance, City Council also amended Title 4, Chapter 10, by adding Sec. 10-8 that provides procedures for appeals; and

WHEREAS, the appeal procedures detailed in Resolution 2000-17 are in conflict with the Moscow City Code; and

WHEREAS, City wishes to repeal Resolution 2000-17 to avoid any confusion as to the appeal process pursuant to Moscow City Code;

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Moscow that all matters stated above are true and correct and are incorporated herein by reference as if copied in their entirety and shall be adopted with the following:

1. That City of Moscow Resolution 2000-17 be repealed in its entirety.
2. That this Resolution shall be effective upon its passage and approval.

PASSED on Motion by the Following Vote:

	Aye	Nay	Abstain	Absent
Drew Davis	_____	_____	_____	_____
Sandra Kelly	_____	_____	_____	_____
Maureen Laflin	_____	_____	_____	_____
Hailey Lewis	_____	_____	_____	_____
Julia Parker	_____	_____	_____	_____

Gina Taruscio _____

ADOPTED by the City Council of the City of Moscow, Idaho and **APPROVED** by the Mayor of the City of Moscow, this ____ day of _____, 2023.

Arthur D. Bettge, Mayor

CERTIFICATION and ATTESTATION. I hereby certify that the above is a true copy of a Resolution passed at a regular meeting of the City Council, City of Moscow, held on _____, 2023 and attest to the Mayor's signature.

Laurie M. Hopkins, City Clerk

Attachment A

RESOLUTION NO. 2000 - 17

A RESOLUTION OF THE CITY OF MOSCOW, A MUNICIPAL CORPORATION OF THE STATE OF IDAHO, ESTABLISHING GUIDELINES FOR APPEALS TO CITY COUNCIL FROM THE BOARD OF ADJUSTMENT OR FROM THE PLANNING AND ZONING COMMISSION.

WHEREAS, the City has established ordinances which control appeals to City Council from a decision of the Board of Adjustment or from a decision of the Planning and Zoning Commission; and

WHEREAS, the Council desires that any appeal be handled in an orderly, fair, consistent, and efficient manner; and

WHEREAS, the Council wishes to establish guidelines to promote such order, fairness, consistency, and efficiency;

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the City of Moscow, Idaho, as follows:

I. DEFINITIONS:

A. Appellant: The person or entity, or their legal counsel, who claims to be suffering a legal wrong or who believes that they have been adversely affected or aggrieved by action of the Board or of the Commission. An appellant must perfect an appeal pursuant to Moscow City Code.

B. Action: The whole or a part of the process of deliberating, considering, discussing, formulating, amending, and/or repealing a decision on an appeal to the Board or on an application before the Board or before the Commission.

C. Board: The Moscow Board of Adjustment.

D. Commission: The Moscow Planning and Zoning Commission.

E. Reasoned Statement: A statement which explains the criteria and standards considered relevant, states the relevant contested facts relied upon, and explains the rationale for a decision by the Board or by the Commission based on the applicable provisions, pertinent constitutional principles and factual information contained in the record, all pursuant to Idaho Code § 67-6535.

RESOLUTION

Page 1

II. ISSUES ON APPEAL

Issues to be presented on appeal shall be limited to action, findings, decisions, and conclusions made on the record. An appeal should clearly and concisely state the reasons for the appeal; the relevant facts in support of the appeal; the relevant laws, statutes, and ordinances relied upon; and the relief requested. If oral argument is desired, a request for oral argument must be in writing.

III. BURDEN OF PROOF

The burden of proof on appeal rests upon the Appellant. The Council, as a matter of policy, may refuse to consider irrelevant, immaterial, or unduly repetitious argument. It is the Appellant's burden to show to the Council, by a preponderance of the evidence, that the basis upon which the decision of the Board or of the Commission:

1. Violated constitution or statutory laws; or
2. Was rendered on the basis of unlawful procedure; or
3. Was unsupported by substantial evidence; or
4. Was arbitrary, capricious, or an abuse of discretion.

IV. SCOPE OF REVIEW

To the extent necessary to make a decision regarding an appeal, the Council shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an action by the Board or by the Commission. In making the foregoing determinations, the Council shall review the whole record or those parts of it cited by the Appellant and others as relevant.

V. EVIDENCE

Each document to be submitted or referred to upon appeal shall bear a letter, number, or combination thereof which makes the document easily identifiable for purposes of discussion. Such letter, number, or combination thereof should be attached to the document prior to consideration of the appeal.

VI. ORDER OF PRESENTATION ON APPEAL

A. Opening of public portion of the hearing as may be required for a full and true consideration of the facts and issues on appeal.

1. Staff Presentation (background)
2. Opening Public Input Portion of the Hearing
 - a. Appellant
 - b. Opposition, if any
 - c. Other interested parties, if any
 - d. Appellant rebuttal, if any
 - e. Surebuttal by opposition, if any

RESOLUTION

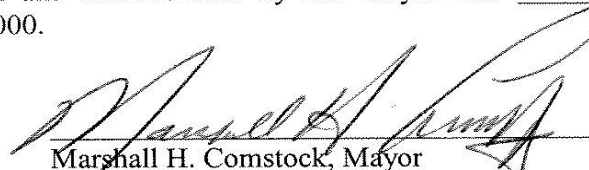
Page 2

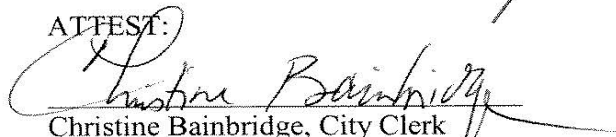
- B. Closing public input portion of the hearing
- C. Discussion and consideration by Council
- D. Final Decision/Reasoned Statement

VII. APPEAL OF CITY COUNCIL'S FINAL DECISION

An appeal, if any, from a final decision of the Council shall be pursuant to Idaho Code.

PASSED by the City Council and APPROVED by the Mayor this 5th day of September, 2000.


Marshall H. Comstock, Mayor

ATTEST:

Christine Bainbridge, City Clerk



Resolutions\Appeals\pm

RESOLUTION

Page 3

Chapter 8

**APPEALS, VARIANCES,
CONDITIONAL AND SPECIAL USES**

- Sec. 8-1:** Duties of the Board of Adjustment
Sec. 8-2: Appeals
Sec. 8-3: Variances
Sec. 8-4: Conditional Uses
Sec. 8-5: Special Uses
Sec. 8-6: Ability of Use Permits to Assume Variance Functions

Sec. 8-1: Duties of the Board of Adjustment.

The Board of Adjustment shall have the authority to grant, in particular cases and subject to appropriate conditions and safeguards, conditional use permits and variances as authorized by this Zoning Code. The Board of Adjustment shall also have the authority to hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination made by the Zoning Administrator in enforcement of this Zoning Code.

Sec. 8-2. Appeals.

A. Appeals to the Board of Adjustment concerning interpretation or administration of this Zoning Code by the Zoning Administrator may be made by any applicant, City representative or affected person thereby. Such appeal shall be made within thirty (30) days from the date the appellant first knew of or, with reasonable diligence, could have known of such interpretation or administration of the Zoning Code by the Zoning Administrator. An appeal shall be made by filing with the Zoning Administrator a written notice of appeal specifying the grounds thereof and paying an appeal fee established from time to time by Resolution of the Council. Upon the filing of an appeal, the Zoning Administrator shall forthwith submit to the Board of Adjustment all materials constituting the record upon which the appeal is made.

B. The Board of Adjustment shall fix a reasonable time for the consideration of the appeal within thirty (30) days of the receipt of notice of appeal by the Zoning Administrator. Consideration of the appeal shall be pursuant to Section 4-10-8 of this Code. At the consideration on the appeal, the appellant and any affected person may appear in person or by agent or attorney.

C. Stay of Proceedings: The filing of an appeal shall stay all interpretations, proceedings and/or activities and furtherance of the action appealed from, including the issuance of building and/or other permits related to the subject property. A stay may be lifted, in whole or in part, only where the Zoning Administrator files a written affidavit with the City Clerk certifying that a stay would, in the opinion of the Zoning Administrator, not serve the purposes for which relevant Code provisions were intended or would cause endangerment to life and/or property. The Zoning Administrator should lift the stay, in whole or in part, only to the extent necessary to further the intent of relevant Code provisions. Where the Zoning Administrator files such an affidavit, interpretations, proceedings and/or activities shall not be stayed other than by the Board, Commission or Council before whom the matter is pending or by a Court of Record. A request for review of the Zoning Administrator's affidavit regarding the stay shall be heard with the consideration of the related appeal, if requested by an affected person not less than ten (10) days prior to such consideration.

(Ord. 2007-10, 09/17/2007)

Sec. 8-3. Variances.**A. Procedures.**

1. A written application for a variance indicating the section(s) of this Zoning Code for which a variance is sought and stating the grounds on which it is requested shall be submitted to the

Zoning Administrator at least sixteen (16) days before the hearing at which the matter will be considered by the Board of Adjustment or the Planning and Zoning Commission.

2. The Board of Adjustment or the Planning and Zoning Commission shall hold a hearing on the application not less than sixteen (16) days and not more than sixty (60) days from receipt of application by the Zoning Administrator and shall provide notice to adjoining property owners and an opportunity to be heard in accordance with the Idaho Code and this Code.

3. The hearing shall be a Type 1 Quasi-Judicial Hearing pursuant to Section 4-10-4 of this Code.

B. Relevant Criteria and Standards. Approval or denial of a variance application shall be based upon the following criteria:

1. The applicant has demonstrated that special conditions and/or circumstances exist which are peculiar to the property (such as size, shape, topography or location) which are not applicable to other property similarly situated in the same zoning district.

2. The applicant has demonstrated that, because of the aforementioned special conditions of the property, application of the provisions of this Zoning Code would impose undue hardship and would deprive the property owner of rights commonly enjoyed by owners of other property similarly situated in the same zoning district under the terms of this Zoning Code.

3. Granting of the variance will not be in conflict with the public interest or injurious to property or persons in the vicinity of the subject property.

C. Reasoned Statement in Writing. Approval or denial of variance application shall be in writing and shall be accompanied by a reasoned statement that explains the criteria and standards considered by the Board of Adjustment or by the Planning and Zoning Commission to be relevant, the relevant

contested facts relied upon, and explains the rationale for the decision based upon the Comprehensive Plan, the Idaho Code, this Code, the U.S. Constitution and the facts in the record. The reasoned statement herein may be in the form of minutes when such minutes are adopted by the Board of Adjustment or by the Planning and Zoning Commission or may be in the form of a separate written document formally adopted by the Board of Adjustment or by the Planning and Zoning Commission. In every case, a reasoned statement shall be adopted by the Board or by the Commission not more than twenty-one (21) days following the date of approval or denial of the variance application.

D. Conditions of Approval. In granting any variance, the Board of Adjustment or the Planning and Zoning Commission may prescribe appropriate conditions and safeguards that enable the Board or the Commission to approve the variance application and ensure the variance is consistent with the purposes, and intents of this Zoning Code.

E. Use Variances. With respect to uses of land, buildings and other structures, this Zoning Code is declared to be a definition of the public interest by the Council, and the spirit of this Zoning Code will not be observed by any variance which permits a use not permitted in the zoning district involved, or any use expressly or by implication prohibited, by the terms of this Zoning Code in said zoning district. Therefore, under no circumstances shall the Board of Adjustment or the Planning and Zoning Commission grant a variance to permit a use not permitted in the zoning district involved, or any use expressly or by implication prohibited, by the terms of this Zoning Code, in said zoning district.

F. Final Decision. A decision of the Board of Adjustment or of the Planning and Zoning Commission, granting or denying a variance, shall become final upon the date of adoption of a written

reasoned statement in the official records of the Board of Adjustment or of the Planning and Zoning Commission or when the Board or the Commission shall find that making the decision effective immediately is necessary for the preservation of property and/or personal rights and shall so certify on the record, whichever comes first in time. A decision of the Board of Adjustment or of the Planning and Zoning Commission shall be final, subject to appeal of the decision to the Council pursuant to this Code.

G. Compliance.

1. In the event of failure to comply with the plans approved by the Board of Adjustment or by the Planning and Zoning Commission, or with any conditions imposed upon the variance, such permit shall thereupon be immediately revoked and shall automatically be null and void.

2. Where plans are submitted as part of the application for a variance, modifications of the original plans may be required by the Board of Adjustment or by the Planning and Zoning Commission as a condition of approval.

3. Where plans approved by the Board of Adjustment or by the Planning and Zoning Commission are modified following such approval, such plan modifications must be determined by City staff to be in substantial conformance with the plans approved by the Board or the Commission. If plan modifications are not in substantial conformance, the plan modifications must be resubmitted to the Board or to the Commission for an additional public hearing as an amendment to the variance application.

H. Term of Approval. The term of approval of a variance shall not exceed two (2) years from the date of the final decision, unless otherwise approved by the Board of Adjustment. The approval shall expire if the holder of the permit has not completed one (1) or more of the following actions prior to the expiration

date:

1. Acquired construction permits and commenced placement of permanent footings and infrastructure; or

2. Commenced the use.

I. Extension of Approval Term. The Zoning Administrator may grant one (1) two (2) year extension to an unexpired variance, upon written request of the applicant. Extensions of variances shall also extend any associated zoning approvals such as variances.

(Ord. 2007-10, 09/17/2007; 2016-04, 04/04/2016; 2018-11, 08/20/2018)

Sec. 8-4. Conditional Uses.

A. Procedures.

1. A written application for a Conditional Use Permit indicating the section of this Zoning Code under which the permit is sought and stating the grounds on which it is requested shall be submitted at least twenty-one (21) days before the hearing at which the request is to be considered by the Board of Adjustment.

2. The Zoning Administrator shall hold a hearing on the conditional use permit application not less than twenty-one (21) days and not more than sixty (60) days from the receipt of the application by the Zoning Administrator, giving notice in accordance with Idaho Code Section 67-6512.

3. The public hearing shall be a Type 1 Quasi-Judicial Hearing pursuant to Section 4-10-4 of this Code.

4. Prior to granting a Conditional Use Permit, studies may be required of the social, economic, fiscal, and environmental effects of the proposed conditional use.

B. Relevant Criteria and Standards. Approval or denial of a Conditional Use Permit application shall be based upon the following criteria:

1. The proposed use is a conditionally permitted use within the Zoning District.

2. The character of the proposed use

will be in harmony with the neighborhood and surrounding land uses.

3. The proposed use as approved, or as approved with conditions, will not generate nuisances that would be injurious or detrimental to adjoining properties or the neighborhood (including, but not limited to, noise, dust, glare, vibrations, odors, and the like).

4. The location, design, and size of the proposed use will be adequately served by existing streets, public facilities and services.

5. The proposed use will not endanger the public health or safety if located where proposed.

6. The proposed use meets all applicable development standards of the Zoning Code.

7. The proposed use will not be in conflict with the Comprehensive Plan.

C. Reasoned Statement in Writing. Approval or denial of a Conditional Use Permit application shall be in writing and shall be accompanied by a reasoned statement that explains the criteria and standards considered by the Board of Adjustment to be relevant, the relevant contested facts relied upon, and explains the rationale for the decision based upon the Comprehensive Plan, the Idaho Code, this Code, the U.S. Constitution and the facts in the record. The reasoned statement herein may be in the form of minutes when such minutes are adopted by the Board of Adjustment or may be in the form of a separate written document formally adopted by the Board of Adjustment. In every case, a reasoned statement shall be adopted by the Board not more than twenty-one (21) days following the date of approval or denial of the Conditional Use Permit application.

D. Conditions of Approval. The Board of Adjustment may impose conditions including, but not limited to, those (1) minimizing adverse impact on other development; (2) controlling the

sequence and timing of development; (3) controlling the duration of development; (4) assuring that development is maintained properly; (5) designating the exact location and nature of development; (6) requiring the provision for on-site or off-site public facilities or services; (7) requiring more restrictive standards than those generally required in an ordinance; and/or (8) requiring mitigation of effects of the proposed development upon service delivery by any political subdivision, including school districts, providing services within the planning jurisdiction.

E. No Precedent or Transfer. A Conditional Use Permit shall not be considered as establishing a binding precedent to grant other Conditional Use Permits. A Conditional Use Permit is not transferable from one (1) parcel of land to another.

F. Final Decision. A decision of the Board of Adjustment, granting or denying a Conditional Use Permit shall become final upon the date of adoption of a written reasoned statement in the official records of the Board of Adjustment or when the Board of Adjustment shall find that making the decision effective immediately is necessary for the preservation of property and/or personal rights and shall so certify on the record, whichever comes first in time. A decision of the Board of Adjustment shall be final, subject to appeal of decision to the Council pursuant to this Code.

G. Compliance.

1. In the event of failure to comply with the plans approved by the Board of Adjustment, or with any conditions imposed upon the Conditional Use Permit, such permit shall thereupon be immediately revoked and shall automatically be null and void.

2. Where plans are submitted as part of the application for a Conditional Use Permit, modifications of the original plans may be required by the Board of

Adjustment as a condition of approval.

3. Where plans approved by the Board of Adjustment are modified following such approval, such plan modifications must be determined by City Staff to be in substantial conformance with the plans approved by the Board. If plan modifications are not in substantial conformance, the plan modifications must be resubmitted to the Board for an additional public hearing as an amendment to the Conditional Use Permit application.

H. Term of Approval. The term of approval of a variance shall not exceed two (2) years from the date of the final decision, unless otherwise approved by the Board of Adjustment. The approval shall expire if the holder of the permit has not completed one (1) or more of the following actions prior to the expiration date:

1. Acquired construction permits and commenced placement of permanent footings and infrastructure; or
2. Commenced the use.

I. Extension of Approval Term. The Zoning Administrator may grant one (1) two (2) year extension to an unexpired variance, upon written request of the applicant. Extensions of variances shall also extend any associated zoning approvals such as variances.

J. Revocations. If the use and/or occupancy for which the conditional use permit is approved ceases for a period of twenty-four (24) consecutive months, unless otherwise provided for in the Conditional Use Permit, the Conditional Use Permit shall be immediately revoked and shall be automatically null and void.

(Ord. 97-33, 11/3/97; 2007-10, 09/17/2007; 2016-04, 04/04/2016; 2018-11, 08/20/2018)

Sec. 8-5. Appeals to City Council.

A. Appellant. Any applicant, City representative or affected person, may appeal a final decision of the Board of Adjustment or of the Planning and Zoning Commission to the Council

within ten (10) calendar days following a final decision of such Board or Commission regarding an interpretation of or administration of the Zoning Code by the Zoning Administrator; a variance application; conditional use permit; special use permit; or PUD, by filing written notice of appeal specifying the grounds therefor with the City Clerk.

B. The Council shall review the appeal on the written record generated and/or preserved by the Board or Commission. It is the intent of the Council that decisions made regarding appeals herein should be founded upon sound reason and practical application of recognized principles of law. The Council shall not act on an appeal, which, in the judgment of the Council, differs materially from that which was considered by the Board or Commission. When considering the merits of an appeal, no additional public testimony or information shall be taken or considered by the Council. After considering the record and the reasons for the appeal, the Council shall take one or more of the following actions:

1. Sustain the Decision. Sustain the decision of the Board or Commission in whole or in part.
2. Reverse the Decision. Reverse the decision of the Board or Commission in whole or in part.
3. Remand the Decision.

a. Remand the matter in whole or in part to the Board or Commission with comments and/or instructions for further consideration by the Board or Commission. The Council shall remand an appeal in whole or in part for gathering of additional material information, and a decision and an accompanying reasoned statement based upon the original and the additional presented evidence where the appellant shows the Council, by a preponderance of the evidence, that there is:

- i. New material information which was not available or

readily discoverable at the time of the final decision, and

ii. It is in the public interest to develop such additional material information on the matter.

b. Any public hearing on remand, at which additional testimony or evidence is to be admitted, shall observe notice and hearing requirements applicable to the original public hearing.

C. The appellant shall submit an appeal fee established from time to time by the Council by resolution.

D. Procedures and guidelines for an appeal in addition to that contained herein shall be established from time to time by resolution of the Council.
(Ord. 2007-10, 09/17/2007)

Sec. 8-6. Ability of Use Permits to Assume Variance Functions.

When an application for a Variance is submitted concurrently with an application for a Conditional Use Permit or a Special Use Permit, and when said Variance would be incidental to said use permit, the applications shall be under the authority of the body hearing the use permit and may be decided upon in the same public hearing as the use permit, provided that the decision regarding the variance is based upon relevant criteria and standards in Section 4-8-3(B) of this Code.

(Ord. 96-20, 9/9/96; 2000-18, 09/05/2000)

Chapter 10

PUBLIC HEARING PROCEDURES

Sec. 10-1:	Purpose
Sec. 10-2:	Organization
Sec. 10-3:	Types of Hearings
Sec. 10-4:	Procedures for Type 1 Quasi-Judicial Hearings
Sec. 10-5:	Procedures for Type 2 Quasi-Judicial Hearings
Sec. 10-6:	Procedures for Legislative Hearings
Sec. 10-7:	The Neighborhood Meeting
Sec. 10-8:	Procedures for Appeals of Interpretation or Administration

Sec. 10-1. Purpose.

To provide consistency in the conduct of public hearings held in conjunction with the process of regulating the use and development of land within the jurisdiction of the City; to protect the public interest and the private rights of all participants in the public hearing process; and to comply with the requirements of Idaho Code 67-6534.

For purposes of this Chapter, the term “decision-making board” shall mean the Board of Adjustment, Planning and Zoning Commission, Council, hearing examiner or advisory board and any other person or persons duly authorized to make a determination regarding zoning or land use planning pursuant to Idaho Code or this Code, excluding City staff.

Sec. 10-2. Organization.

This Chapter shall be organized into three distinct types of hearing procedures which are required by various portions of this Code and by the Idaho Code. Basic rights and responsibilities are spelled out for the participants in these different hearing procedures toward the goal of making the hearing process predictable and understandable.

Sec. 10-3. Types of Hearings.

Three primary types of public hearings

shall be included in the scope of this Chapter.

A. Quasi-Judicial Hearings - Type 1. Type 1 Quasi-Judicial hearings shall be required when a permit or discretionary administrative ruling is sought from a decision-making board such as the Board of Adjustment, Planning and Zoning Commission, or Council and only one public hearing is required by this Code or the Idaho Code before final action can be taken on the request. Because such a hearing may influence the individual rights of applicants, this administrative procedure shall be more strictly controlled to protect individual rights. Decisions following Type 1 Quasi-Judicial hearings shall be final subject to appeal to a higher decision making authority as provided by this Code or the Idaho Code. Permits to which this procedure shall apply are the variance, Conditional Use Permit, Special Use Permit, vacation of a portion of a subdivision plat, or an appeal from a decision of the Zoning Administrator.

B. Quasi-Judicial Hearings - Type 2. Type 2 Quasi-Judicial hearings shall be required when the permit or regulatory change sought requires a sequence of two (2) or more public hearings before final action may be taken on the request. The initial public hearing shall be conducted by the Planning and Zoning Commission whose task is to prepare a recommendation for submittal to the Council. Following receipt of the recommendation from the advisory board, a second public hearing must be scheduled before the Council before a decision on the request may be rendered. Like those hearings classified as Type 1 Quasi-Judicial hearings the rights of individuals are at stake and the protection of those rights is a prime purpose of the required procedure. Like a Type 1 procedure the resulting decision from a Type 2 procedure is final unless appealed to a subsequent decision-making tribunal. Unlike the Type 1 procedure, care must be taken in the steps between the initial and second hearing to protect the interests of all parties involved. Type 2 Quasi-Judicial hearings are used in

request for changes in zoning district boundaries, changes to the Comprehensive Plan when sought in conjunction with a request for a change in zoning district boundaries, Planned Unit Developments and subdivision plats.

- C. Legislative Hearings. Legislative hearings shall be required when amendments are contemplated to the substantive or procedural terms of Title 3, Chapters 1 and 2, all of Title 4, and Title 5, Chapters 1 and 2 of this Code. Legislative hearings are characterized by their general applicability to the community as a whole. Legislative hearings may only be initiated by the Planning and Zoning Commission or by the direction of the Council. Included in this category are public hearings leading up to changes in the zoning ordinance, the subdivision ordinance, and the comprehensive plan of the City.

(Ord. 2007-10, 09/17/2007)

Sec. 10-4. Procedures for Type 1 Quasi-Judicial Hearings.

- A. Pre-Hearing Procedures.
1. General Requirements and Responsibilities.
 - a. Prior to the conduct of the hearing no person shall attempt to discuss the subject of the hearing with a member of the decision-making board destined to decide the issue. Any such attempt shall be reported by the decision-making board member so approached to legal counsel for the decision-making board who shall advise the decision-making board in that regard.
 - b. Notices of public hearing shall provide adequate information to allow notice recipients to participate in the hearing process.
 2. Applicant's Responsibilities.
 - a. The applicant for a permit shall submit a completed application on a form provided by the City to the appropriate City official.
 - b. The applicant shall, in a timely manner, provide the names and addresses, on mailing labels provided by the City, of

all persons entitled to notice under the provisions of this Chapter. In the alternative the applicant may contract with the City for research and preparation of the list of landowners and residents who require notice. The City shall have the option of billing for this service based on its out-of-pocket costs plus administrative expenses or the City may charge a fixed charge per notice, with said charge established by the Council from time to time by resolution.

c. The applicant should submit such additional written material as the applicant may desire to tender to the decision-making board at the public hearing at the time of application filing. Such written submittals should be made at this time so they may be reviewed by the interested public prior to the hearing. Petitions may be submitted by the applicant after the filing deadline. Materials provided tardy may be admitted subject to the discretion of the decision-making board.

3. Public Participant's Responsibilities.

a. Public participants in the hearing process shall have the opportunity to examine written materials submitted by the applicant prior to the hearing.

b. Public participants desiring to submit textual materials (excluding petitions) to the decision-making board shall make that submission at least five (5) calendar working days in advance of the scheduled meeting. Material provided tardy may be admitted subject to the discretion of the decision-making Board.

4. City's Responsibilities.

a. The responsible City administrative personnel shall provide appropriate application forms and related materials to applicants.

b. Where required, the City shall publish notice of the public hearing in accordance with the requirements of this Code and the appropriate Idaho Code sections.

c. Where required, the City shall provide proper notice to the residents and/or land owners entitled to notice within the terms of this code or applicable

sections of the Idaho Code.

d. The City shall maintain a file of materials relating to the application available for public inspection during regular business hours.

B. Hearing Procedures.

1. General Requirements.

a. Public hearings shall be conducted according to orderly procedures as specified by the chairperson of the meeting, subject to the will of the decision-making board.

b. All procedures shall be directed to providing the participants in the hearing a fair chance to be heard by an impartial decision-making board.

c. Decision-making board members having a conflict of interest involving the subject matter of a hearing shall not participate in the deliberations related to the item in which they possess an interest. Said abstention shall be governed by the applicable provisions of this Code, the Idaho Code, and the member's personal perception of the situation. The decision to abstain from participation shall be the personal decision of the individual decision-making board member.

d. The chairperson of the decision-making board shall have sole authority to recognize participants in the hearing process and to maintain order in its conduct.

e. Subject to decision-making board objection, the chairperson may establish time limits on presentations in the interest of fairness and to provide more people with a chance to participate. Said limitations may be established at the beginning of the hearing or may be invoked during the hearing when conditions warrant.

f. Formal rules of evidence will not apply during the hearing, but the chairperson may rule that certain testimony may be excluded or shortened because of its relevance to the subject of the hearing.

g. Hearings conducted in accord with this section shall generally be conducted in the following order:

(1) Opening of hearing and call to order.

(2) Introduction of hearing item and explanation of request.

(3) Presentation by applicant.

(4) Public testimony in support of the application.

(5) Public testimony in opposition to the application.

(6) Other public testimony.

(7) Response of applicant to public testimony.

(8) Closure of the public hearing.

(9) Board deliberations without further unsolicited comment.

h. All inquiries regarding the presentation of any party shall be directed to the chairperson who shall decide the need for a response and seek one where necessary or appropriate.

i. At the close of the initial public hearing the decision-making board may take any of the following actions concerning the application before it:

(1) Approve the application as presented.

(2) Reject the application as presented.

(3) Approve the application subject to specific conditions as permitted by the applicable substantive Zoning Code sections.

(4) Table the application to allow fact finding by the City staff, to receive answers to specific factual questions from the applicant or the interested public, or to defer the decision for further reflection. When a request is tabled, the final decision shall be made at a succeeding regularly scheduled meeting, or at a special meeting for which proper notice has been given.

(5) Schedule a continuation of the public hearing at a specific time and place. This provision shall apply to any visit to the site in question by the decision-making board.

j. Each person who testifies shall provide the recording secretary with his or her name and a true and accurate mailing

address.

k. All information upon which a decision rests, including information held by decision-making board members from their own experience, shall be placed upon the record before the public hearing is closed.

l. Members of the decision-making board may question any participant in the hearing process concerning any representations made or questions raised in the course of the hearing or in written materials submitted prior to the hearing.

m. The chairperson of the decision-making board conducting the hearing may solicit a response to a question seeking a specific objective fact from any participant without reopening the hearing for general testimony.

n. Any person may testify through a designated representative. The decision-making board may request proof of authorization from anyone purporting to speak for another. All writings submitted as testimony shall contain the name and address of the testifying party in legible form and shall include that person's signature.

o. All votes on final decisions or adoption of findings of fact shall be recorded in the official minutes of the meeting.

2. Applicant's Responsibilities.

a. The applicant or a duly authorized representative shall be present at the public hearing to present the application to the decision-making board unless excused by the decision-making board.

b. The applicant shall describe the application with reasonable detail to inform the decision-making board and those in attendance of the character of the application, the permission being sought, and the efforts undertaken to make the permission, if granted, acceptable to the community. The applicant's presentation shall address the criteria detailed in this Code or the Idaho Code for the type of permission sought.

3. Public Participant's Responsibilities.

a. Public participants in the hearing

process shall address the facts of the issue at hand and may state opinions as they relate to the criteria of the applicable Code sections governing the request for permission made by the applicant.

b. Questions from public participants to the applicant, City staff, members of the decision-making board, or other public participants shall be directed to the chairperson of the decision-making board during the hearing.

4. City Responsibilities.

a. The City shall provide meeting facilities adequate to accommodate all who wish to participate in the hearing process.

b. The City shall provide a person who shall produce minutes of the proceeding as required by this Code or the Idaho Code.

c. The City shall maintain a transcribable verbatim record of all hearing proceedings for six (6) months following the date of a final decision in a matter for which a public hearing of this type is conducted.

C. Post-Hearing Procedures.

1. General Requirements.

a. After the close of a public hearing, the only public communication with the decision-making board concerning the application before them shall be specific factual answers to questions raised at the hearing or during deliberations and requiring a subsequent reply. The decision-making board may communicate freely with City staff and its own legal counsel following the closure of the public hearing.

b. Following each public hearing the decision-making board shall reach a decision regarding the permission sought in the subject application. The deliberations and final decision shall be conducted in an open meeting subject to the public scrutiny, and shall be made in a timely manner.

c. Decisions in such applications shall be accompanied by a written Reasoned Statement of Relevant Criteria and Standards which shall set forth the

reasons for the decision-making board's decision pursuant to Idaho Code Section 67-6535. Reasoned Statement of Relevant Criteria and Standards shall be adopted by specific motion of the decision-making board.

d. The decision-making board may reach a decision in each application in any of the following ways:

(1) A final decision may be reached on the day of the hearing subject to adoption of Reasoned Statement of Relevant Criteria and Standards at a later date.

(2) A final decision may be reached on the day of the hearing immediately followed by adoption of Reasoned Statement of Relevant Criteria and Standards at the same meeting.

(3) A tentative decision may be reached on the day of the hearing subject to development of suitable Reasoned Statement of Relevant Criteria and Standards at a later date.

(4) A decision may be deferred to a later date at either the next regularly scheduled meeting of the decision-making board or at a subsequent regular meeting or a properly scheduled special meeting identified at the public hearing.

e. Draft Reasoned Statement of Relevant Criteria and Standards may be developed by motion of the decision-making board immediately following the hearing in question; by a subcommittee of the decision-making board, numbering less than necessary to constitute a quorum, to be brought to the entire board for final action; or by delegation to City staff or legal counsel to be brought to the entire decision-making board for final action.

f. Adoption of Reasoned Statement of Relevant Criteria and Standards shall constitute a final decision for purposes of appeal.

(Ord. 2004-35, 09/07/2004)

Sec. 10-5. Procedures for Type 2 Quasi-Judicial Hearings.

A. Comparison to Type 1 Quasi-Judicial

Hearings.

1. The Type 2 Quasi-Judicial hearings are to be conducted according to the same format as the Type 1 Quasi-Judicial hearings in the preceding section. The Type 2 procedure differs only in that two (2) successive hearings on the same matter (not on appeal) are required to complete the process. Both hearings are de novo hearings which allow presentation of any pertinent information regardless of prior participation and/or deliberation in the process.

2. The first hearing shall be conducted by the Planning and Zoning Commission and shall be held for the purpose of formulating a recommendation to be forwarded to the Council. The Planning and Zoning Commission shall be responsible for considering all information submitted to it by participants in the hearing process and for developing a proposed Reasoned Statement of Relevant Criteria and Standards for the Council. The entire product of the Planning and Zoning Commission hearing and deliberation process shall be made available to the Council before the close of the second hearing. Dissenting members of the Planning and Zoning Commission may submit written statements explaining their disagreement with the proposed Reasoned Statement of Relevant Criteria and Standards. Such statements shall be made available to the Council before the close of the second hearing.

3. The second hearing shall be conducted by the Council according to the same guidelines and requirements which are applied to a Type 1 Quasi-Judicial hearing. Any member of the Planning and Zoning Commission who participates in the second hearing, in person or by written submission, shall do so only for themselves and not as a representative of the opinion of the Planning and Zoning Commission as a body. Evidence received by the Planning and Zoning Commission at the first hearing shall have the weight at the second hearing that each

- Council member assigns to such evidence.
- B. At the conclusion of the public hearing held by the Council, the Council may take any of the following actions.
1. Approve the recommendation of the Planning and Zoning Commission, and adopt the Planning and Zoning Commission's Reasoned Statement of Relevant Criteria and Standards.
 2. Approve the recommendation of the Planning and Zoning Commission, subject to modifications to the Planning and Zoning Commission's Reasoned Statement of Relevant Criteria and Standards.
 3. Render a decision different from the recommendation of the Planning and Zoning Commission, and adopt a new Reasoned Statement of Relevant Criteria and Standards.
 4. Defer decision on the request to a later meeting date.
 5. Remand the recommendation to the Planning and Zoning Commission for clarification or further documentation of the recommendation prior to reaching a decision.
- C. A decision shall be deemed final when a proposal has been either approved or disapproved by the Council.
- (Ord. 2004-07, 02/17/2004; 2004-35, 09/07/2004)

Sec. 10-6. Procedures for Legislative Hearings.

- A. General Requirements and Conditions.
1. Legislative hearings are required when changes are proposed to the land use regulations of the City which are subject to the requirements of Title 67, Chapter 65 of the Idaho Code.
 2. Legislative hearings are required in tandem as are Type 2 Quasi-Judicial hearings, but legislative hearings are not subject to the same procedural restrictions as are Quasi-Judicial hearings.
 3. Ex-parte contacts are not forbidden in conjunction with the legislative hearing process.
- B. Pre-Hearing Procedures.
1. A legislative hearing may be scheduled by order of the chairperson of

the Planning and Zoning Commission or the Mayor or by a motion passed by a majority of the membership of the respective board involved.

2. Upon said order the City staff shall cause to be published a public notice containing the nature of the proposed change contemplated to the land use regulations of the City and the time and place of the hearing.
 3. A copy of the proposed change shall be made available to the public for inspection from the time notice is published to the time of the hearing.
 4. Written comments may be forwarded for consideration any time prior to the close of comments as determined by the board hearing the matter.
- C. Hearing Procedures.
1. Testimony may be submitted in any form by any person interested in the legislative proposition, subject to rulings by the chairperson concerning form, length, or relevance.
 2. Hearings conducted in accordance with this section shall generally be conducted in the following order:
 - a. Opening of the hearing and call to order.
 - b. Introduction of hearing item and explanation of proposal.
 - c. Public testimony in support of the proposal.
 - d. Public testimony in opposition to the proposal.
 - e. Other testimony on the proposal.
 - f. Closure of the public hearing.
 - g. Board deliberations without further unsolicited commitment.
 3. The chairperson shall be free to vary the order of hearing procedures as necessary or desirable.
 4. Minutes shall be kept of all legislative hearings and said minutes shall be available for public inspection during regular business hours.
 5. All deliberations on matters which are the subject of legislative hearings shall be conducted in a properly called open meeting of the board considering the

proposal.

6. All persons testifying at a legislative hearing shall state their name and address prior to addressing the hearing board.

D. Post-Hearing Procedures.

1. At the close of the initial hearing, the Planning and Zoning Commission shall prepare a recommendation to the Council concerning the proposal before them. This recommendation may take any of the following forms:

a. Approval of the proposal as presented.

b. Rejection of the proposal as presented.

c. Approval of the proposal subject to modifications as included in the Planning and Zoning Commission's recommendation.

2. The Planning and Zoning Commission shall forward its recommendation to the Council within forty-five (45) days of the close of the initial public hearing. The recommendation shall be in writing and shall set forth the reasons for the Planning and Zoning Commission's recommendation. Dissenting members may submit written comments stating their reasons for disagreement with the majority position on the proposal.

3. Upon receipt of the Planning and Zoning Commission's recommendation, the Council shall determine whether to hold a second public hearing on the subject of the initial legislative hearing. Upon an affirmative finding the City shall publish notice of a legislative public hearing before the Council stating the nature of the proposal and the time, place, and date of the hearing.

E. Second Hearing Procedures.

1. Procedures for the second hearing, conducted this time before the Council, shall be the same as for the initial hearing before the Planning and Zoning Commission.

2. At the conclusion of the second hearing the Council may take any of the following actions:

a. Adopt the proposal in ordinance

form as originally proposed or as recommended or modified by the Planning and Zoning Commission.

b. Reject the change as proposed.

c. Propose substantial modifications to the proposal originally made or to the proposal recommended by the Planning and Zoning Commission and return the substantially modified proposal to the Planning and Zoning Commission for a new initial hearing.

Sec. 10-7. The Neighborhood Meeting.

A. Purpose.

The purpose of the neighborhood meeting is to allow the developer to present the proposal to neighbors and other members of the public prior to the formal public hearing so that the parties can discuss and consider neighborhood impacts, mitigation, design and construction elements, and the like. A further purpose is to allow developers to have related applications considered concurrently by the hearing bodies.

B. When required.

1. A neighborhood meeting shall be required for each of the land use matters below. Where the applicant desires to file more than one (1) application involving the same project and/or property and desires all related applications to be considered within the same hearing, one (1) neighborhood meeting shall be necessary.

2. A neighborhood meeting shall be required as a prerequisite to filing of an application with the City for the following land use matters:

a. Annexation;

b. Request to amend Comprehensive Plan Map land use designation;

c. Request to amend Zoning District;

d. Preliminary Plat;

e. Planned Unit Development; or

f. Any combination of the foregoing.

C. Notice of meeting.

1. Notice of the neighborhood meeting shall be given to all property owners of record within six hundred feet (600') of the subject property. Such notice shall be provided at least fourteen (14) days before the first neighborhood meeting regarding the subject property. Notice of the neighborhood meeting shall be made by mail to the current or last known address of the property owners of record. Property owners of record shall be determined by review of records in the possession of Latah County. Alternatively, the City may provide a list of property owners to the applicant upon receipt by City of the proper request form and the appropriate fee.

2. Notice shall include a vicinity map, the general nature of the proposal, the size of the land, the number of lots/dwelling units, the date, time and location of the meeting, and the name, address, telephone number and email address of a contact person.

The neighborhood meeting shall be set at a date, time, and place reasonably calculated to facilitate the attendance of the property owners required to receive notice. Evening meetings during the work week are encouraged.

D. Format.

1. General.

The applicant or applicant's representative shall chair and conduct the meeting according to orderly procedures. The Chair should provide the participants in the neighborhood meeting a fair chance to be heard. The Chair will have the authority to recognize participants in the meeting and to maintain order in the conduct of the neighborhood meeting. Formal rules of evidence will not apply during the neighborhood meeting but the Chair may limit the duration of comments or presentation where necessary to give the broadest number of participants the opportunity to express their views.

2. Order.

The neighborhood meeting shall generally be conducted in the following order; however, the meeting should not be

so formal that it precludes or unduly limits participation by those in attendance nor should it be so unruly that information gathering and exchange cannot occur:

a. Opening of the meeting and a call to order;

b. Introduction of the proposal/project by the applicant and/or the applicant's representatives;

c. Public comments in support of the application;

d. Public comments in opposition of the application;

e. Questions and/or other public testimony;

f. A response of the applicant (if desired by applicant);

g. Any related business; and

h. Close of the neighborhood meeting.

3. Other.

Conduct by all participating in the neighborhood meeting should be respectful, should avoid personal attack, and should be directed toward gathering and exchanging information regarding the proposal(s).

E. Scope.

Each neighborhood meeting shall be conducted so that those in attendance can discuss the project/proposal which is the subject of the application(s) to be filed. Where more than one (1) application is to be considered in the same public hearing, the meeting shall include discussion of all related matters. For example, where there is to be a submittal for a rezoning along with a preliminary plat, both shall be thoroughly discussed in the neighborhood meeting.

F. Submission of neighborhood meeting materials to City.

1. Time to submit materials.

Neighborhood meeting materials required to be submitted pursuant to this Chapter shall be submitted with the application(s) and relevant fee(s).

2. Materials to be submitted.

The following shall be submitted to the City with the original filing of the land use application(s) and shall constitute part

of such land use application(s):

- a. Time, date and location of the neighborhood meeting;
- b. Names and addresses of property owners to whom notice was sent;
- c. Names and addresses of all attendees;
- d. Summary of comments, suggestions and discussion;
- e. Applicant's response to comments, suggestions and discussion, including any modifications made or intended to be made to the project proposal/application as a result of the neighborhood meeting comments; and
- f. Materials utilized or submitted (including plans, proposals, designs, power point presentations, maps, handouts, petitions, letters, studies, etc.) shall be submitted with the application for the related project(s).

A verbatim transcript is not required nor is a video and/or audio tape (unless the applicant wishes to submit it). The summary of comments, suggestions and discussion should be extensive enough to allow the reader to understand what occurred.

G. Notice of hearing.

Following receipt by City staff of the required submittals, notice of a public hearing on the related application(s) shall be scheduled before the Planning and Zoning Commission. Notice of such public hearing shall take place not less than fifteen (15) days prior to the required public hearing before the Planning and Zoning Commission pursuant to this Code and City policy.

(Ord. 2007-03, 05/07/2007; 2018-11, 08/20/2018)

Sec. 10-8. Procedures for Appeals of Interpretation or Administration.

- A.** The Council shall review the appeal on the written record generated and/or preserved by the Board. Decisions made regarding appeals herein should be founded upon sound reason and practical application of recognized principles of law. When considering the merits of an appeal, no

additional public testimony or information shall be taken or considered by the Council. After considering the record and the reasons for the appeal, the Council shall take one or more of the following actions:

1. Sustain the Decision. Sustain the decision of the Board in whole or in part.
2. Reverse the Decision. Reverse the decision of the Board in whole or in part.
3. Remand the Decision.

a. Remand the matter in whole or in part to the Board with comments and/or instructions for further consideration by the Board or for remand by the Board to the Zoning Administrator in order to gather more information on the matter. The Council shall remand the appeal in whole or in part for gathering of additional material information and a subsequent decision only where it is shown by a preponderance of the evidence that there is:

(1) New material information not available or readily discoverable at the time of the Zoning Administrator's decision; and

(2) It is in the public interest to develop such additional material information on the matter.

- B.** Procedures and guidelines for an appeal in addition to that contained herein may be established from time to time by resolution of the Council.

(Ord. 2007-10, 09/17/2007)

COMMITTEE / CITY COUNCIL STAFF REPORT

DATE: Monday, May 1, 2023



AGENDA ITEM TITLE

Bennett Lumber Radio Tower Lease Agreement - Bill Belknap

RESPONSIBLE STAFF

Bill Belknap, City Supervisor

ADDITIONAL PRESENTER(S)

DESCRIPTION

The City is currently working toward the replacement of the City's emergency communications radio system due to the current equipment reaching end-of-life as well as system coverage deficiencies. One component of that project will include the installation of additional radio antennas and equipment on the radio tower located on West Twin Peak of Moscow Mountain owned by Bennett Lumber. Staff worked with Bennett Lumber to prepare a new lease agreement to replace the City's existing equipment with the new and additional equipment planned for installation with the new radio system. The Lease Agreement is now before the Council for the Council's review and approval.

REVIEWED BY

This was reviewed by the Administrative Committee on April 24, 2023 and recommended for approval.

PROPOSED ACTIONS

ACTION: Approve the Tower Lease Agreement with Bennett Lumber.

STAFF RECOMMENDATION

Approve the Tower Lease Agreement with Bennett Lumber.

OTHER RESOURCES

FISCAL IMPACT

PERSONNEL IMPACT

ATTACHMENTS

1. Bennett Lumber Lease Agreement

REAL ESTATE LEASE

AGREEMENT BETWEEN BENNETT LUMBER PRODUCTS, INC. (herein referred to as "LESSOR") AND CITY OF MOSCOW, IDAHO (herein referred to as "LESSEE"), is entered into this ____ day of _____, 2023, between Bennett Lumber Products, Inc., PO Box 130, Princeton, Idaho, 83857, a general business corporation of the State of Idaho (hereinafter "BENNETT") and the City of Moscow, Idaho, 206 East Third Street, Moscow, Idaho 83843, a municipal corporation of the State of Idaho (hereinafter "CITY").

WITNESSETH:

LESSOR leases and rents to LESSEE, and LESSEE leases and rents from LESSOR, the real property described as follows:

A parcel of real property sufficient to fulfill the purposes of this lease, the center point of which has the following GPS coordinates: N 46 degrees 48 minutes 41.4 seconds, W 116 degrees 55 minutes 02.8 seconds, all of which is located within the following described real property: SE 1/4 NE 1/4 of Section 14 Township 40N Range 5W of the Boise Meridian, Latah County. All of the foregoing real estate is situated in the County of Latah, State of Idaho.

1. DURATION. The lease shall commence on October 1st, 2023, and shall terminate on September 30th, 2028.

2. RENT. LESSEE agrees to pay LESSOR rent in annual installments of Three Thousand and Seventy-Five Dollars (\$3,075.00) per Lease year, payable upon execution of the Lease for the first Lease year and payable on or before October 31st of each Lease year thereafter during the term of this Lease.

3. UTILITY. LESSEE also agrees to pay its pro rata share, as reasonably determined by LESSOR, of utility services provided to the Premises within thirty (30) days of receipt of billing for said services from LESSOR, which bill shall be provided not later than September 1st of each Lease year.

LESSEE agrees to pay Five Hundred Dollars (\$500.00) to LESSOR upon execution of this Lease as consideration for LESSOR's installation and maintenance of a back-up generator for non-exclusive use for LESSEE's benefit during the term of this Lease or such time that LESSEE installs separately metered power.

The annual utility bill will be billed out around September 1st and will be due by September 30th.

RENT AND UTILITY PAYMENTS are to be mailed to:
Bennett Lumber Product, Inc.
P.O. Box 130
Princeton, ID 83857

4. USE OF THE PROPERTY. This lease is for the non-exclusive purpose of maintaining and operating a radio and microwave communications system, on said premises with equipment owned by LESSEE to be placed on a tower owned and maintained by LESSOR, equipment owned and maintained by LESSEE placed in a building owned and maintained by LESSOR. LESSEE's equipment is detailed in the attached Exhibit A. Said lease includes the right of LESSEE, and any agent of LESSEE, to access the premises at any time for the purposes of installing and maintaining the listed equipment. Access to the premises for the purposes of installing, maintaining, or repairing said equipment shall be limited to those persons approved by both LESSEE and LESSOR as detailed in the attached Exhibit B, provided, however, that in the event of an emergency when immediate repair is necessary, as determined by LESSEE, and LESSEE is unable to effect repairs using a person listed on Exhibit B, LESSEE may hire any reputable, licensed company or individual to effect immediate repairs. Access to the premises by LESSEE for the purposes of inspection, where no installation, repair, or maintenance is taking place, shall not be limited and any agent of LESSEE may access the premises. Exhibit A may be amended at any time by LESSEE, provided that LESSEE does not increase the associated equipment, and Exhibit B may be amended at any time upon approval by both parties. LESSEE shall have the right to substitute similar type equipment. LESSOR will be given an update list, Exhibit A, and notification of intent to install new or substitution equipment prior to the installation of the new or substitution equipment. LESSOR has seven days to respond to LESSEE's requested change. If there is no response from LESSOR, LESSEE can proceed with the changes. The installations of LESSEE will not interfere with installations presently installed.

5. INTERFERENCE. LESSEE's Installations will not interfere with Installations presently installed (Present Installations) as of October 1st, 2023. LESSEE, and or LESSEE's agent, shall be on site when Installations become active to immediately turn off and remedy, at the sole expense of LESSEE, any interference to Present Installations and will remain on site until Present Installations affirm no interference. After LESSEE's approved Installation occurs, if subsequent changes or equipment deterioration of any Present Installations or future Installations draws interference or causes interference with LESSEE's Installations then the remedy will be at the expense of the owner responsible for the interfering Installation at which time LESSOR shall require the responsible party of the interference to cease operation until remedied.

6. INSURANCE. Each party is responsible for maintaining/covering their own personal/real property and maintaining workers compensation to cover their employees. LESSEE is a government entity subject to the limits authorized pursuant to the Idaho Tort Claims Act under Idaho Code Title 6, Chapter 9, and is insured through the Idaho Counties Risk Management Program ("ICRMP") and will maintain such insurance during the term of this lease.

7. PROPERTY TAXES. LESSOR is responsible for covering the cell tower, building, and land taxes. LESSEE is responsible for their equipment/personal taxes.

8. COMPLIANCE WITH REGULATIONS. LESSEE and LESSOR shall at all times ensure that its activities and facilities on the premises comply with any applicable laws or other regulations.

9. MAINTENANCE, ALTERATIONS, IMPROVEMENTS AND ENTRY BY LESSORS. No alteration, additions, or improvements will be made to the premises, nor any sign placed upon the leased premises by LESSEE without first obtaining the written consent of LESSOR. LESSOR shall, at its own expense, maintain the tower and the building. LESSEE shall maintain at its own expense equipment owned by LESSEE and shall be responsible for any damages that may be caused to LESSOR's equipment by improper connection or installation of LESSEE's equipment.

10. FIRE OR OTHER LOSS. If the aforesaid building, tower, or electrical connections shall be damaged by fire, the elements, or other causes, LESSOR will cause the same to be promptly repaired and restored unless the damages are caused by the acts or negligence of LESSEE or its employees, in which case LESSEE shall promptly restore and repair the premises. If the building or tower is so damaged as to be unfit for use, or is destroyed to the extent of fifty percent (50%) or more of its value, LESSOR may, at its option, terminate this lease rather than restore the premises.

11. TIME OF ESSENCE AND DEFAULT. Time is of the essence of this agreement. If LESSEE defaults in any of the terms of this agreement for a period of ten (10) days after written notice of default has been sent by LESSOR, and LESSEE has failed to remedy the default within the agreed upon period of time, then LESSOR, at its option and in addition to all other legal and equitable remedies, may declare this lease forfeited and terminated and re-enter and repossess the leased premises. Upon such forfeiture and termination, all rights of LESSEE under this agreement shall immediately terminate.

12. RENEWALS. Upon expiration of this lease, LESSEE shall have the right to renew this lease for additional periods of not more than five (5) years by giving written notice of renewal between July 1st and September 30th of the last year of the lease. All renewals of this lease shall be under terms and conditions as agreed to by the parties. For each five (5) year renewal period, the rent shall be increased by five percent (5%) of the prior term's rent amount which shall be the new annual rent amount for the duration of that renewal period.

13. TERMINATION. Either party may terminate this lease on September 30 of each year by providing written notice to the other party of its intent to terminate the lease by no later than July 1 of the year in which the party intends to terminate the lease. In the event notice of intent to terminate the lease is not provided to the other party by July 1, then the lease shall remain in full force and effect unless terminated the following year in accordance with this paragraph. Upon termination, all rights and duties of each party shall immediately terminate and LESSEE will be permitted to remove LESSEE's equipment.

14. ASSIGNMENTS OR SUBLETTING. This lease may not be sold, assigned, or transferred by LESSEE without the written consent of LESSOR, which consent will not be unreasonably withheld or delayed.

15. VENUE AND ATTORNEY FEES. This Lease shall be governed by, and construed in accordance with the laws of the State of Idaho. If litigation is commenced regarding

the enforceability or validity of this Lease, venue for such action shall be in the District Court of the Second Judicial District of the State of Idaho, in and for the County of Latah. If action is brought to enforce the terms or provisions of this lease, or to enforce forfeiture for default, or to collect damages for breach, the prevailing party in such action shall be entitled to recover from the losing party reasonable attorney fees together with costs authorized by law.

16. SERVICE OF NOTICES. Any notice shall be served upon LESSOR by certified mail to LESSOR at P.O. Box 130, Princeton, ID 83857. Any notice shall be served upon LESSEE by certified mail to LESSEE at City of Moscow, ATTN: City Supervisor, 206 East Third Street, Moscow, ID 83843. Service of a notice by certified mail shall be deemed complete upon the date of the postmark by certified mail. Either party may change the address for service of notice by written notice to the other party.

17. NON-APPROPRIATIONS. This Lease is contingent upon CITY receiving the necessary funding to cover the obligations of CITY. In the event that such funding is not received or appropriated, then, and in that event, CITY's obligations under this Agreement shall cease and each Party shall be released from further performance under this Lease without any liability to the other Party, and BENNETT shall be entitled to receive just and equitable compensation for any costs incurred hereunder.

18. SEVERABILITY. If any part of this Agreement is held unenforceable, the remaining portions of the Agreement will nevertheless remain in full force and effect.

Both signatories certify under penalty of perjury pursuant to the law of the State of Idaho that they are authorized agents to bind their respective Parties to this Lease.

DATED this _____ day of _____, 2023.

LESSEE:

LESSORS:

Bennett Lumber Products, Inc.

By _____
Name: Arthur D. Bettge
Title: Mayor

By _____
Name: _____
Title: _____

ATTEST:

Laurie M. Hopkins, City Clerk

ACKNOWLEDGMENT

STATE OF _____)
) ss.
COUNTY OF _____)

On this _____ day of _____, 2023, before me, a Notary Public in and for said State, appeared _____, known to me to be the person named above and acknowledged that they executed the foregoing document as the duly authorized representative for Bennet Lumber Products, Inc.

Notary Public for the State of _____
Residing at _____
My commission expires _____

EXHIBIT A

RADIO ANTENNAS:

Description	Manufacture	Part Number	Quantity
SINCLAIR D222-SF8PASNM (6 dBd GAIN OFFSET PATTERN) ANTENNA [VHF TX ANTENNA]	SINCLAIR	D222-SF8PASNM	1
VHF Collinear omni antenna, 6 dBd gain, 156-164 MHz [VHF RX ANTENNA]	Telewave	ANT150F6-4	1
Three-Foot Microwave Antenna	RFS	SC3-100B 11GHz	2
Four-Foot Microwave Antenna	RFS	SC4-100B 11GHz	1

RADIO EQUIPMENT LOCATED WITHIN BUILDING:

Description	Manufacture	Part Number	Quantity
2 Post 43U Network/Communications Equipment Rack	B-Line	SB506084XUZ	2
Integrated 48 VDC Power Supply/Charger System with Distribution Bus	LaMarche	DCPS-200	1
3000 Watt 48 VDC Rectifier Module	LaMarche	DCR-50	4
48 VDC Battery String (VRLA Batteries, 12-hour constant current rating: 86 Amps) VRLA Batteries	C&D Technologies	AT-19P	1
VHF Transmitter Combiner/Receiver Multicoupler System for Proposed VHF Simulcast System	TX-RX	74-37-20259_E	1
VHF (136-174 MHz) NBFM Base Station Repeater with -48 VDC Power Supply	CODAN	CASCADE SERIES	5
ODU 600 Microwave Radio system equipment	ODU	600	1
TX Combiner & RX Multicoupler Equipment	TX-RX	74-37-20259_E	1

EXHIBIT B

Day Wireless Communications
13212 East Indiana Ave
Spokane Valley, WA 99216
Phone: 509-484-1400

RACOM Corporation
16608 E Sprague Ave
Spokane Valley, WA 99037
Phone 509-928-0322