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BEFORE THE CITY COUNCIL OF THE CITY OF POCA TELLO, IDAHO

IN RE: APPEAL OF HEARING EXAMINER DECISION DENYING CONDITIONAL USE PERMIT APPLICATION NO. CUP26-00003, LEX DEVELOPMENTS LLC, Applicant/Appellant.	CUP No. CUP26-00003 APPELLANT LEX DEVELOPMENTS, LLC’S REQUEST FOR RECONSIDERATION (Idaho Code § 67-6535(2)(b))
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Applicant/Appellant Lex Developments, LLC (“Lex Developments”), by and through its counsel of record, Parsons Behle & Latimer, respectfully submits this Request for Reconsideration pursuant to Idaho Code § 67-6535(2)(b) of the City Council’s July 16, 2026 decision affirming the Hearing Examiner’s May 19, 2026 denial of Conditional Use Permit Application No. CUP26-00003 (the “Decision”). Citations herein in the form “Tr. __” are to the timestamped record of the Council’s July 16, 2026 appellate hearing.¹

I. INTRODUCTION AND PROCEDURAL BACKGROUND

Lex Developments is the owner of two parcels comprising approximately 59 acres at 1800 River Park Way, the former Hoku Materials site, zoned Industrial District (Zone I), with a land use designation of Industrial District. (Tr. 44:04–44:27.) At the express direction of the City’s

¹ Operating under the timeframe required by statute to raise a request for reconsideration to exhaust administrative remedies, Applicant acknowledges that no certified transcript has been prepared. Accordingly, transcription references are provided tracking to the publicly available recording of the proceeding on YouTube and are supplied for the convenience of the Council in this request.

Planning Department, Lex Developments applied for a conditional use permit to develop a data center on the property. The Hearing Examiner conducted a public hearing on May 14, 2026, on the conditional use permit application and issued a written denial on May 19, 2026. Lex Developments timely appealed on June 1, 2026, raising three independent grounds for reversal. On July 16, 2026, the Council heard the appeal as the final item of its regular meeting and voted 4–1 to affirm the Hearing Examiner’s denial of the application.

The Council’s own procedural framework for the appeal was stated on the record at the outset: the Council sat in a quasi-judicial capacity, “similar to that of a judge reviewing a case”; it was “not conducting a new public hearing” and would “not receive additional public testimony or new evidence” (Tr. 31:01); and it could not “consider new evidence, new opinions, or information that was not presented during the original public hearing” (Tr. 32:07). City planning staff likewise cautioned that “[t]his agenda item is not a public hearing, and council should remain vigilant in their procedural duties with regards to their motion and their discussion of this agenda item.” (Tr. 43:40.)

However, the proceeding that followed did not honor those articulated constraints. As set forth below, the presiding officer solicited and received new evidence from the applicant on matters never before the Hearing Examiner; deliberations were repeatedly punctuated by audience applause and cheering that the record shows influenced the tenor of the proceeding; at least one affirmative vote was expressly cast in part on the basis of “aligning with what the populace . . . desire is” (Tr. 2:16:46); and the Council failed, in any respect, to address the due process and interpretive grounds squarely raised in the appeal. Each defect independently warrants reconsideration. Together, they render the Decision arbitrary, capricious, procedurally defective, and unsupported by the record, and they expose the City to reversal on judicial review that

individual Council members themselves predicted is likely to occur. (Tr. 2:14:32–2:15:33; Tr. 2:16:46–2:17:21.)

II. STANDARD ON RECONSIDERATION

Idaho Code § 67-6535 requires that the approval or denial of a land use application “be based upon standards and criteria” set forth in the applicable ordinance, and that a denial be accompanied by a written, reasoned statement explaining the criteria and standards relevant to the decision and the factual basis for it. An affected person seeking judicial review must first seek reconsideration of the final decision within fourteen (14) days, whereupon the governing body has sixty (60) days to issue a written decision identifying its reasoning. I.C. § 67-6535(2)(b). Because the Council sat in a quasi-judicial capacity to hear the appeal, its decision should have been made exclusively on the record, needed to comport with procedural due process as safeguards, and ought not have been the result of public clamor, extra-record evidence, or considerations outside the governing criteria. *See, e.g., Chambers v. Kootenai Cnty. Bd. of Comm’rs*, 125 Idaho 115 (1994); *Idaho Historic Pres. Council, Inc. v. City Council of Boise*, 134 Idaho 651 (2000); *Cooper v. Bd. of Cnty. Comm’rs of Ada Cnty.*, 101 Idaho 407 (1980).

Lex Developments notes that, as of the date of this Request, the Council has not adopted the written reasoned statement its counsel indicated would be “create[d] . . . for council’s consideration at a future meeting.” (Tr. 2:11:28.) That said, this Request is made within fourteen days of the Council’s July 16, 2026 oral decision out of an abundance of caution. Lex Developments expressly reserves the right to supplement or amend this Request upon issuance of the requisite written reasoned statement and reserves all objections to any statement of reasons adopted after the vote it purports to explain or that occurred outside of a public hearing and recorded deliberations.

III. GROUNDS FOR RECONSIDERATION

A. The Council relied on extraneous evidence outside the record violating its own stated rules and procedures.

Notwithstanding the Council's repeated acknowledgment that it could not receive new evidence, the presiding officer called the applicant's principal, Gus Schultz, to the podium during deliberations and examined him on subjects that were never before the Hearing Examiner and appear nowhere in the record: whether the project was "a speculative venture"; whether Lex Developments had "a company that's committed to build the data center on the site"; and, after Mr. Schultz confirmed multiple committed parties were engaged in discussing the same, the demand, "Why aren't any of them here?", which drew immediate applause from the assembled crowd. (Tr. 1:43:03–1:43:26.) The examination continued: "I'm just asking if you had a letter of intent kind of thing from . . . an actual company that's coming in. . . . [D]o you have any kind of signed letter of intent?" (Tr. 1:44:45–1:44:52.) Mr. Schultz responded (Tr. 1:44:58), upon which a Councilmember then volunteered that Mr. Schultz was "probably under some kind of NDA or something like that . . . because that's a standard business practice" (Tr. 1:45:02–1:45:17).

None of this colloquy fell under the auspices of the seven criteria of Pocatello Municipal Code § 17.02.130.D that should have constrained the decision-making process, nor within the four specific and limited criteria in § 17.01.160.C (which is the proper section that should govern approval of this project). The identity of a tenant or builder, the existence of letters of intent, and the commercial "commitment" behind the project are not criteria for a conditional use permit, were not raised before the Hearing Examiner, and were not part of the record the Council was confined to in order to render a compliant decision. Soliciting that testimony and then pressing the applicant to disclose confidential commercial arrangements before a hostile audience, is decidedly the receipt of new evidence in a proceeding at which the applicant was told no new evidence would

be received and at which the applicant was afforded no opportunity to prepare or present responsive evidence. That is a flagrant and textbook denial of procedural due process in a quasi-judicial proceeding.

And the Mayor's grandstanding was not an isolated lapse. The proceeding as a whole devolved into what the Idaho Supreme Court has condemned as "a second fact-gathering session without proper notice[.]" *Chambers v. Kootenai Cnty. Bd. of Comm'rs*, 125 Idaho 115, 118, 867 P.2d 989, 992 (1994). The Public Works Director, called to the podium mid-deliberation, offered new comparative evidence going directly to the adequacy-of-services criterion of § 17.02.130.D.4: "[S]ome of our larger commercial users range anywhere from about 150 to 300,000 gallons a day. . . . [T]hose numbers are pretty common." (Tr. 1:12:15.). Nowhere does that testimony appear as a finding of fact relied upon by the Hearing Examiner. Likewise, the assistant planner testified that the applicant's anticipated capacity requests were "lower than what HOKU would have been using," attributing that comparison to "conversations with the applicant." (Tr. 55:18.) Those conversations are not part of the record either. Whether individual items of extra-record testimony favored or disfavored the application is beside the point: when a quasi-judicial body deviates from the record produced at the public hearing, it "essentially conducts a second fact-gathering session without proper notice, a clear violation of due process," *Chambers*, 125 Idaho at 118, 867 P.2d at 992, because no party received notice that evidence would be taken, no party could prepare, and no party could clarify or rebut. The July 16 proceeding, in which the presiding officer examined the applicant on extra-record commercial matters, staff supplied new comparative utility evidence, and deliberations were punctuated by audience applause, was, in substance, an unnoticed evidentiary hearing conducted under the label of appellate record review.

The extra-record inquiry was not neutral. The presiding officer's own deliberative comments tied the "speculative" concern directly to the City's experience with the prior occupant of the site: "I've also heard through the years that that ugly [Hoku] site, that terrible building, and what a waste of space, and I wish somebody would come in and do something with that building." (Tr. 1:47:39–1:48:00.) The import was unmistakable: the applicant was being examined publicly and outside the record and outside the criteria, to prove it was not another Hoku. Whatever institutional embarrassment the Hoku failure represents for the City, it is not a criterion under § 17.02.130.D, it was not a basis of the Hearing Examiner's decision, and its injection into the Council's deliberations was severely prejudicial to Lex Developments.

The record likewise reflects that the proceeding was conducted before, and repeatedly interrupted by, an audibly partisan audience without the Council's adherence to decorum befitting of the task: applause and cheering punctuated deliberative comments adverse to the application (Tr. 1:16:29; 1:18:01; 1:40:08), including the applause that immediately followed "Why aren't any of them here?" (Tr. 1:43:26), and the presiding officer admonishing the crowd mid-deliberation (Tr. 1:48:00). One Council member then announced, immediately before casting an affirmative vote, that affirmance was warranted "not only [as] part of our purview as council members, but also aligning with what the populace . . . desire is," adding, "this is going to be interesting to see what the judge does [with] this and come what may I guess." (Tr. 2:16:46–2:17:21.) A quasi-judicial decision expressly cast to align with popular desire, especially by a member who simultaneously concurred in another member's assessment that the decision was vulnerable to judicial review, is the definition of a decision driven by public clamor rather than record evidence. Idaho law does not tolerate it. *See generally, Chambers*, 125 Idaho at 115. The Council was supposed to act in its quasi-judicial capacity here, not its legislative. The distinction is critical, as

uniform application of the law in a quasi-judicial capacity should not turn on or be influenced by what the populace wants – the Council’s role is only a strict, even-handed application of the law.

On this ground alone, the Decision cannot stand. The Council should grant reconsideration, disregard the extra-record colloquy and public reaction, and decide the appeal on the record and criteria alone which, as Council Member Bates demonstrated in his criterion-by-criterion analysis of D4, D6, and D7 (Tr. 1:21:08–1:32:11), compels reversal of the Hearing Examiner.

B. The Council ignored a fundamental due process violation: the Director’s interpretation arrived just hours before the public hearing, denying Lex Developments its 14-Day right to appeal the interpretation.

The threshold determination in this matter, namely, whether a data center (an unlisted use in an Industrial Zone) is sufficiently similar and compatible with the uses already allowed within Industrial zoning district under Pocatello Municipal Code § 17.01.160.C, belongs initially to the Planning Director. But the Planning Director avoided his responsibility by requiring a public conditional use permit hearing.

Moreover, the Director’s faulty written interpretation was emailed to Lex Developments just five (5) hours before the scheduled CUP hearing on May 14, 2026. To maintain procedural integrity, the City’s code affords an aggrieved applicant a fourteen (14)-day period within which to appeal a director’s determination under § 17.01.160.C to the City Council. So, by withholding the Director’s faulty written interpretation until just hours before the hearing, the City effectively denied the applicant of its appeal right: Lex Developments could not timely appeal a determination it received at the last minute, with the public CUP hearing predicated on that faulty determination. The process due to an applicant is: (1) notice of the determination; and (2) a meaningful opportunity to challenge it before it is applied was denied, (3) the City Council’s review of the determination, and (3) judicial review of the City Council’s decision. Notice was hardly provided

and no meaningful opportunity (14-days under the code) to challenge it was afforded before being subjected to an unnecessary and adverse public hearing.

Due process regarding the notice of the Director's interpretation was squarely raised in the appeal. Yet the City Council did not even consider the lack of due process during its quasi-judicial review. When Council Member Bates asked whether the process leading to the CUP requirement was properly followed, the City Attorney responded that it was one of the three points raised in the appeal and "really up to the council to decide" (Tr. 48:55–49:26). But the law is not so subjective and worse, the Council never addressed it. The motion to affirm, and the only stated reason for it "I believe the hearing examiner met the requirements of the con[ditional] use permit process" (Tr. 2:11:59) was conclusory and failed to address addressed any of the three appeal grounds individually. The Council articulated no findings on the timeliness, validity, or the merits of the Director's interpretation. A governing body acting in an appellate, quasi-judicial capacity must *actually decide* the issues presented on appeal and must explain its reasoning. I.C. § 67-6535. Certainly, the merits of the appeal warrant reversal, but its silence on a dispositive due process challenge is itself reversible error and independently warrants reconsideration.

C. The Director failed to analyze the Data Center against the Industrial Zone's maximum classification which permits *all* industrial uses.

The Director's interpretation under § 17.01.160.C stated only that data centers are an unlisted use in the City's Classification Table, not a prohibited use. It is undisputed that the property lies in the Industrial zone, the City's most intensive and therefore the most permissive classification, and by design, an all-encompassing, catch-all designation for industrial uses the City does not want elsewhere. The Classification Table's Industrial-zone entries include Industrial Services, Heavy Industrial, Light Industrial, Railroad Yards, Research and Development, and Waste Related uses (*see* Use Table at 17.03.500). The Director conducted no analysis of why a

data center would not fall within this maximally regulated, catch-all classification. Had he done so, the only supportable conclusion is that a data center, under any definition of the term, fits completely within the Industrial zone's permitted classifications, and no conditional use permit was required. Which is not to say regulatory safeguards do not exist, and the Applicant does not suggest anything to the contrary as the building permitting process so provides.

Section 17.01.160.C requires four specific and limited criteria for zone determination. "Approval or denial of an unlisted use application by the director shall be based on findings of whether:"

- a. The use is consistent with the intent and purpose of the applicable zoning district;
- b. The use is similar to and of the same general type as the uses listed in the zoning district;
- c. The use has similar impacts as the uses listed in the zoning district;
- and
- d. The use has similar impacts on the community facilities as the uses listed in the zoning district....

Pocatello Municipal Code § 17.01.160.C.

Had the Director followed proper procedure, his interpretation would have been strictly limited to providing a determination as to these four unambiguous criteria. And there is no plausible explanation for why a data center would not fit comfortably in each Industrial category. But the Director's own testimony before the Council confirms the required analysis was absent. Describing his review, the Director conceded: "As I looked at those criteria, lots of them did align with a data center. I think an industrial zone would be the proper zone for a data center." (Tr. 58:54-59:17.) The sole reservations he identified, uncertainty about "the consumption of . . . utilities, water, [and] wastewater" (Tr. 59:17), are not classification criteria at all; they are development-stage questions resolved through the building permit, site plan, and utility approval

processes that staff testified would follow any conclusion that a data center could be an approved use (Tr. 46:37–47:04), and that apply with equal force to every listed industrial use. Indeed, the Director admitted that “the biggest issue really was the power consumption,” and that the information later supplied by Idaho Power “came after the fact, after I made that determination to move forward with a conditional use permit.” (Tr. 1:01:01–1:01:26.).

D. The Director manufactured a “Light Industrial” ambiguity as pretext to require the CUP Public Hearing in order to avoid political backlash.

Rather than analyze the data center against the Heavy Industrial zone’s listed classifications, the Director’s written interpretation redirected attention to lesser classifications, describing the use as “functionally similar to listed industrial and infrastructure-related uses, including but not limited to light industrial, research and development”. The reference to “light industrial,” in his analysis of an Industrial zone application served no logical purpose except to conjure a question as to whether the use fits within a lesser district, and that manufactured “zoning question” was then deployed as the pretext for requiring a public hearing on a conditional use permit. The logical extension is that the City opted for providing itself political cover for a clearly approved and permitted Industrial zone use that is rhetorically a hot button issue and an often misunderstood topic.

The Director’s testimony said the quiet part out loud: “[O]bviously the public is very interested in this . . . type of use in the city and I felt it was most appropriate to go through the conditional use permit process because of that.” (Tr. 1:00:02–1:00:17.) But public interest in a use is not a criterion under § 17.01.160.C and is not a lawful basis for imposing a public hearing on a use the Director himself acknowledged aligns with the zone. Routing a politically controversial, but code-compliant use into a discretionary CUP process because of anticipated public opposition inverts the function of zoning classification and denies the applicant equal application of the City’s

own ordinances. In short, it guts the rule of law and purpose of a uniform development code in favor of political cover.

Taken to its logical conclusion, the Director's rationale would swallow the distinction between permitted and conditional uses entirely. If "public interest" alone were sufficient to trigger discretionary CUP review, then any permitted use—no matter how squarely it fits the zone—could be relegated into a public hearing process simply because neighbors showed up to object, or because a proposal attracted media attention, or because the Director (or his bosses) anticipated that it might cause political harm. Under that logic, *every single* land use application would effectively become a conditional use application, and the very category of "permitted use" would become a nullity, since a use is never more likely to draw public interest than when someone opposes it. That is not how Idaho's land use scheme works, and it is directly antithetical to Idaho's bedrock principles of free use of land and inherent rights to property development. Once a use is designated permitted within a zone, an applicant's entitlement to develop it does not depend on a headcount of supporters and opponents; a permitted use is not put to a direct vote each time it proves unpopular with a vocal segment of the public. The Local Land Use Planning Act draws a deliberate line between uses that are permitted outright and uses that require discretionary review precisely so that an applicant's rights do not turn on the volume of public opposition a project happens to generate. Allowing an administrative official to relocate a use from one track to the other based on his own assessment of political interest—rather than the criteria the City itself adopted in § 17.01.160.C—substitutes ad hoc discretion for the rule of law the ordinance was designed to provide.

Council Member Bates recognized this structural problem on the record: "[T]his is a land use decision. This is not a building code. . . . We're not asking for final design and engineering.

This is simply asking if this use fits within our code, which most all of city staff has . . . essentially said yes, it fits.” (Tr. 1:52:56–1:53:11.)

E. The City ignored its disparate treatment of materially similar uses, including an existing data center and the Hoku plant.

The record before the Council contained undisputed references to two materially similar uses that were never subjected to a conditional use permit requirement. First, the federal government operates an existing data center “right down the street” from the subject property, a fact acknowledged both by the applicant (Tr. 1:46:47) and by the presiding officer during deliberations: “[I]t’s not lost on me that the FBI also has a data center right down the street. The power consumption and all of these different factors.” (Tr. 1:48:40–1:48:55.). Second, the Hoku polysilicon manufacturing plant, a use city staff itself characterized as significantly environmentally impactful, with water and power demands exceeding those proposed here (Tr. 53:14–53:20; 55:18–55:34; 1:28:26–1:28:49), was developed on this very site without a conditional use permit.

Lex Developments raised this disparity in its appeal. It is unjust to permit other operators to develop similarly or more impactful facilities without the detailed pre-authorization studies now demanded of Lex Developments alone and underscores the political animus driving the decision-making in contravention of due process. The Council referenced both comparators during the hearing but conducted no analysis of the disparity as there were no findings distinguishing the uses and no explanation of why the same ordinances yield a discretionary gauntlet for this applicant but outright permission for others. Arbitrary and unequal administration of the same or similar ordinances against similarly situated applicants is itself grounds for reversal, and the Council’s failure to engage the issue raised on appeal leaves the Decision unsupported by any reasoned statement on a ground properly presented. I.C. § 67-6535.

IV. RELIEF REQUESTED

For each of the foregoing independent reasons, Lex Developments respectfully requests that the City Council: (1) grant reconsideration of its July 16, 2026 decision; (2) reverse the Director's Interpretation allowing the building permit process to move forward without requiring a public conditional use permit application.

Lex Developments further requests that, should the Council deny this Request in whole or in part, the Council's written decision identify its reasoning as to each ground presented, as required by Idaho Code § 67-6535(2)(b). This Request is made expressly to exhaust administrative remedies, and Lex Developments reserves all rights to seek judicial review pursuant to Idaho Code §§ 67-6519, 67-6521, and 67-6535 and the Idaho Administrative Procedure Act, and to assert all claims arising from the deprivations of due process described herein.

DATED this 29th day of July, 2026.

PARSONS BEHLE & LATIMER

By: /s/ Jon A. Stenquist
Jon A. Stenquist
Attorneys for Applicant/Appellant
Lex Developments LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 29th day of July, 2026, I caused a true and correct copy of the foregoing REQUEST FOR RECONSIDERATION to be served upon the following by the method indicated:

City of Pocatello, Planning and Development Services Brent McLane, Pocatello City Planning Director Konni Kendell, City Clerk 911 N 7 th Avenue Pocatello, ID 83201	☒ Priority Mail ☐ Hand Delivery ☒ Email planning@pocatello.gov bmclane@pocatello.gov kkendell@pocatello.gov
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/s/ Jon A. Stenquist
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