

3-31-2010

Eddins v. City of Lewiston Clerk's Record Dckt. 37209

Follow this and additional works at: https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs

Recommended Citation

"Eddins v. City of Lewiston Clerk's Record Dckt. 37209" (2010). *Idaho Supreme Court Records & Briefs*. 2421.
https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs/2421

This Court Document is brought to you for free and open access by Digital Commons @ UIdaho Law. It has been accepted for inclusion in Idaho Supreme Court Records & Briefs by an authorized administrator of Digital Commons @ UIdaho Law. For more information, please contact annablaine@uidaho.edu.

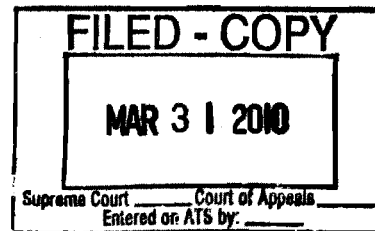
In the
SUPREME COURT
of the
STATE OF IDAHO

STEVEN LEE EDDINS,
Petitioner-Appellant,

v.

CITY OF LEWISTON, an Idaho
Municipal Corporation,

Respondent.



CLERK'S RECORD ON APPEAL

Appealed from the District Court of the
Second Judicial District of the State of Idaho,
in and for the County of Nez Perce

The Honorable JEFF M. BRUDIE

Supreme Court No. 37209

JOHN MITCHELL
ATTORNEY FOR PETITIONER-APPELLANT

DON L. ROBERTS
ATTORNEY FOR RESPONDENT

IN THE SUPREME COURT OF THE STATE OF IDAHO

STEVEN LEE EDDINS,)	
)	
Petitioner-Appellant,	)	SUPREME COURT NO. 37209
)	
vs.)	
)	
CITY OF LEWISTON, an Idaho,)	
Municipal Corporation,)	
)	
Respondent.)	

CLERK'S RECORD

Appeal from the District Court of the Second Judicial District
of the State of Idaho, in and for the County of Nez Perce

BEFORE THE HONORABLE JEFF M. BRUDIE, DISTRICT JUDGE

Counsel for Appellant

Mr. John Mitchell
P O Drawer 285
Lewiston, ID 83501

Counsel for Respondent

Mr. Don L. Roberts
P O Box 617
Lewiston, ID 83501

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
 THE STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

STEVEN LEE EDDINS,)	
)	
Petitioner-Appellant,	)	SUPREME COURT NO. 37209
)	
vs.)	
	)	TABLE OF CONTENTS
)	
CITY OF LEWISTON, an Idaho,)	
Municipal Corporation,)	
)	
Respondent.)	

	<u>Page</u>
Register of Actions	A-C
Petition for Judicial Review filed May 23, 2008	1-6
Record of Proceedings filed October 7, 2008	7-83
Petitioner's Initial Brief on Judicial Review filed April 14, 2009	84-96
Respondent's Brief filed May 15, 2009	97-124
Opinion and Order on Petition for Judicial Review filed October 29, 2009	125-131
Notice of Appeal filed December 10, 2009	132-135
Clerk's Certificate	136-137
Certificate of Service	138-

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

STEVEN LEE EDDINS,)	
)	
Petitioner-Appellant,	)	SUPREME COURT NO. 37209
)	
vs.)	
	)	INDEX
)	
CITY OF LEWISTON, an Idaho,)	
Municipal Corporation,)	
)	
Respondent.)	

	<u>Page</u>
Certificate of Service	138-
Clerk's Certificate	136-137
Notice of Appeal filed December 10, 2009	132-135
Opinion and Order on Petition for Judicial Review filed October 29, 2009	125-131
Petition for Judicial Review filed May 23, 2008	1-6
Petitioner's Initial Brief on Judicial Review filed April 14, 2009	84-96
Record of Proceedings filed October 7, 2008	7-83
Register of Actions	A-C
Respondent's Brief filed May 15, 2009	97-124

Steven Lee Eddins vs. City Of Lewiston

Date	Code	User		Judge
5/23/2008	NCOC	DIANE	New Case Filed-Other Claims	Carl B. Kerrick
		DIANE	Filing: R2 - Appeals And Transfers For Judicial Review To The District Court Paid by: Danny Radakovich Receipt number: 0314644 Dated: 5/23/2008 Amount: \$78.00 (Check) For: [NONE]	Carl B. Kerrick
	ATTR	DIANE	Plaintiff: Eddins, Steven Lee Attorney Retained Danny J Radakovich	Carl B. Kerrick
	COMP	DIANE	Complaint Filed	Carl B. Kerrick
	FSUM	DIANE	Summons Filed	Carl B. Kerrick
5/27/2008	ORDQ	TERESA	Order Regarding Disqualification of Judge--KERRICK	Carl B. Kerrick
	ORAJ	TERESA	Order Assigning Judge--BRUDIE	Carl B. Kerrick
5/28/2008	NOAP	PAM	Notice Of Appearance--Don Roberts for Defendant City of Lewiston	Jeff M. Brudie
	ATTR	PAM	Defendant: City Of Lewiston Attorney Retained Don L Roberts	Jeff M. Brudie
5/29/2008	AFSV	PAM	Affidavit Of Service--Served: 5-23-08	Jeff M. Brudie
6/9/2008	NOAP	PAM	Notice Of Appearance	Jeff M. Brudie
		PAM	Filing: I1A - Civil Answer Or Appear. More Than \$1000 No Prior Appearance Paid by: Anderson, Julian & Hull LLP Receipt number: 0315377 Dated: 6/9/2008 Amount: \$58.00 (Check) For: City Of Lewiston (defendant)	Jeff M. Brudie
	ATTR	PAM	Defendant: City Of Lewiston Attorney Retained Brian K Julian	Jeff M. Brudie
6/25/2008	ATTR	SHELLIE	Defendant: City Of Lewiston Attorney Retained Don L Roberts	Jeff M. Brudie
	MISC	SHELLIE	**Per call from Ellie @ City Attorney's office - Don Roberts is head counsel in this case, and notices should go to him**	Jeff M. Brudie
9/3/2008	STIP	PAM	Stipulation to Continue Hearing on Def's Motion to Dismiss--9-18-08 @ 9:00am	Jeff M. Brudie
	HRSC	PAM	Hearing Scheduled (Motion to Dismiss 09/18/2008 09:00 AM) Defendant--by Telephone	Jeff M. Brudie
9/17/2008	HRVC	PAM	Hearing result for Motion to Dismiss held on 09/18/2008 09:00 AM: Hearing Vacated Defendant--by Telephone	Jeff M. Brudie
	MISC	PAM	**Mr. Radakovich Called Judge and Vacated Hearing Set for 9-18-08 @ 9:00am**	Jeff M. Brudie
10/7/2008	MISC	PAM	Record of Proceedings--Defendant City of Lewiston	Jeff M. Brudie
10/31/2008	MISC	PAM	Request for Status Conference and Settlement of Clerk's Record--Respondent City of Lewiston	Jeff M. Brudie
12/29/2008	HRSC	JANET	Hearing Scheduled (Telephonic Scheduling Conference 01/07/2009 03:15 PM)	Jeff M. Brudie

REGISTER OF ACTIONS

A

Steven Lee Eddins vs. City Of Lewiston

Date	Code	User		Judge
12/29/2008	NOTC	PAM	Notice of Telephonic Scheduling Conference--1-7-09 @ 3:15pm	Jeff M. Brudie
1/7/2009	HRHD	PAM	Hearing result for Telephonic Scheduling Conference held on 01/07/2009 03:15 PM: Hearing Held	Jeff M. Brudie
1/12/2009	ORDR	PAM	Order Scheduling Briefs and Argument	Jeff M. Brudie
	HRSC	PAM	Hearing Scheduled (Hearing 05/28/2009 11:00 AM) Argument on Petition for Judicial Review	Jeff M. Brudie
3/31/2009	MOTN	PAM	Motion for Extension of Time to File Brief	Jeff M. Brudie
4/10/2009	STIP	PAM	Stipulation--Petitioner to have until 4-13-09 to submit his initial brief on appeal. Attorney for Respondent has until 4-26-09 to file brief on appeal if he so desires.	Jeff M. Brudie
4/14/2009	BRFD	PAM	Petitioner's Initial Brief on Judicial Review Filed	Jeff M. Brudie
5/15/2009	BRFD	PAM	Respondent's Brief Filed	Jeff M. Brudie
5/27/2009	MOTN	PAM	Motion to Vacate Oral Argument Set for 5-28-09	Jeff M. Brudie
	MOTN	PAM	Verified Motion for Leave to Withdraw --Petitioner	Jeff M. Brudie
	NTHR	PAM	Notice Of Hearing--6-4-09 @ 9:30am Petitioner's Motion for Leave to Withdraw	Jeff M. Brudie
	HRVC	PAM	Hearing result for Hearing held on 05/28/2009 11:00 AM: Hearing Vacated Argument on Petition for Judicial Review	Jeff M. Brudie
	HRSC	PAM	Hearing Scheduled (Motion for Leave to Withdraw as Attorney 06/04/2009 09:30 AM) Plaintiff	Jeff M. Brudie
6/4/2009	HRHD	PAM	Hearing result for Motion for Leave to Withdraw as Attorney held on 06/04/2009 09:30 AM: Hearing Held Plaintiff	Jeff M. Brudie
	GRNT	PAM	Hearing result for Motion for Leave to Withdraw as Attorney held on 06/04/2009 09:30 AM: Motion Granted Plaintiff	Jeff M. Brudie
	DCHH	PAM	District Court Hearing Held Court Reporter: Linda Carlton Number of Transcript Pages for this hearing estimated: Less than 100 pages	Jeff M. Brudie
	ORDR	PAM	Order Granting Leave to Withdraw	Jeff M. Brudie
	MINE	PAM	Minute Entry Hearing type: Motion for Leave to Withdraw as Attorney Hearing date: 6/4/2009 Time: 9:37 am Court reporter: Linda Carlton Audio tape number: Crtrm 1	Jeff M. Brudie
8/3/2009	NOAP	PAM	Notice Of Appearance--Plaintiff	Jeff M. Brudie
	ATTR	PAM	Plaintiff: Eddins, Steven Lee Attorney Retained John Charles Mitchell	Jeff M. Brudie

REGISTER OF ACTIONS

B

Steven Lee Eddins vs. City Of Lewiston

Date	Code	User	Judge
8/6/2009		DIANE	Miscellaneous Payment: For Making Copy Of Any File Or Record By The Clerk, Per Page Paid by: Clark & Feeney Receipt number: 0340055 Dated: 8/6/2009 Amount: \$144.00 (Check)
8/27/2009	HRSC	JANET	Hearing Scheduled (Oral Argument 10/01/2009 11:00 AM)
		JANET	Notice Of Hearing --10-1-09 @ 11:00am Oral Argument
9/30/2009	CONT	JANET	Continued (Oral Argument 10/01/2009 09:30 AM)
10/1/2009	ADVS	JANET	Hearing result for Oral Argument held on 10/01/2009 09:30 AM: Case Taken Under Advisement
	MINE	JANET	Minute Entry Hearing type: Oral Argument Hearing date: 10/1/2009 Time: 9:33 am Courtroom: Court reporter: Linda Carlton Minutes Clerk: JANET Tape Number: C1
10/29/2009	OPOR	PAM	Opinion & Order on Petition for Judicial Review
	MISC	PAM	**The Decision of the Lewiston City Planning & Zoning Commission and the Lewiston City Council is Affirmed**
	DPHR	PAM	Disposition With Hearing
	FJDE	PAM	Final Judgement, Order Or Decree Entered
	STAT	PAM	Case Status Changed: Closed
	CDIS	PAM	Civil Disposition entered for: City Of Lewiston, Defendant; Eddins, Steven Lee, Plaintiff. Filing date: 10/29/2009
12/10/2009	APSC	DEANNA	Appealed To The Supreme Court
		DEANNA	Filing: L4 - Appeal, Civil appeal or cross-appeal to Supreme Court Paid by: Mitchell, John Charles (attorney for Eddins, Steven Lee) Receipt number: 0346815 Dated: 12/11/2009 Amount: \$101.00 (Check) For: Eddins, Steven Lee (plaintiff)
	BNDK	DEANNA	Bond Posted - Cash (Receipt 346817 Dated 12/11/2009 for 100.00)
	BONC	DEANNA	Condition of Bond Preparation of Clerk's Record on appeal
12/18/2009	SCRT	DEANNA	Supreme Court Receipt - Clerk's Record due at the SC by February 16, 2010
	SCRT	DEANNA	Supreme Court Receipt - Clerk's Certificate filed at SC

REGISTER OF ACTIONS

C

FILED

2008 MAY 23 PM 3 39

PATTY G. WELLS
CLERK OF THE DIST. COURT

Patty G. Wells
DEPUTY

DANNY J. RADAKOVICH
Radakovich Law Office
Attorney for Petitioner
1624 G Street
Lewiston, Idaho 83501
(208) 746-8162
Idaho State Bar #1991

**IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE**

STEVEN LEE EDDINS, a single man,)
)
Petitioner,)
)
v.)
)
)
CITY OF LEWISTON, IDAHO, a)
municipal entity,)
)
Respondent.)

CASE NO. **CV08-01093**
PETITION FOR JUDICIAL REVIEW
FEE CATEGORY: R-2
FEE: \$78.00

COME NOW petitioner in the above-entitled matter and for a cause of action against the respondent alleges as follows:

COUNT ONE

I

That this is a petition for judicial review of an action by the City of Lewiston under any and all applicable statutes and regulations including, but not limited to Title 67, Chapter 65, of the Idaho Code, also known as the "Local Land Use Planning Act", and Title 67, Chapter 52, of the Idaho

1.

Code, also known as the "Idaho Administrative Procedure Act".

II

That respondent CITY OF LEWISTON, IDAHO, is a municipality and a political subdivision of the State of Idaho which governs the environs of that certain area known as the City of Lewiston, Idaho and, as such, respondent CITY OF LEWISTON, IDAHO, performs various functions including, but not limited to, passing and enforcing zoning ordinances, issuing permits for placement of certain structures and vehicles, and other related matters.

III

That the petitioner has exhausted his administrative remedies and has complied with all prerequisites to the filing of this suit.

IV

That the petitioner is the owner of that certain real property situated in Lewiston, Nez Perce County, Idaho, and more particularly described as follows, to-wit:

Lots 12, 13, and 14 in Block 2, and Lots 8, 9, 10, and 11 in Block 3, all in Stranahan's First Addition to the City of Lewiston, Idaho.

V

That the above-described real property is used by the petitioner as a mobile home park and also as a facility where recreational vehicles can be placed or parked for lengthy periods of time; that said real property has been used for those purposes for a period of multiple decades.

VI

That in or about January, 2008, the petitioner applied for a permit to park a recreational vehicle on said real property, which request was denied; that the petitioner timely appealed that

denial to the Planning and Zoning Commission of the City of Lewiston and said Planning and Zoning Commission denied said appeal; that the petitioner then timely appealed the decision of said Planning and Zoning Commission to the Lewiston City Council, which denied the petitioner's appeal on or about April 28, 2008.

VII

That the action by defendant City of Lewiston in denying the application of the petitioner to place a recreational vehicle upon the above-described real property should be overturned by the court on any applicable legal grounds including, but not limited to, the following:

1. The recreational vehicle permit sought by the petitioner was denied by the defendant City of Lewiston on the basis of the 2006 version, as well as the current version, of Chapter 23 of the Lewiston City Code but the recreational vehicle space for which the petitioner sought a permit was in existence and being used as a recreational vehicle space for a period of years prior to the enactment of the 2006, and current, versions of Chapter 23 of the Lewiston City Code and, therefore, the use of said recreational vehicle space was "grandfathered" and permissible;
2. The action of respondent City of Lewiston, as aforesaid, was in violation of provisions of the Constitution of the United State of America including, but not limited to, the 5th and 14th Amendments thereto because said action deprives the petitioner of valuable property rights;
3. The action of respondent City of Lewiston, as aforesaid, was in violation provisions of the Constitution of the State of Idaho including, but not limited to, Article I, §1 thereof because said action deprives the petitioner of valuable property rights;
4. The action of respondent City of Lewiston, as aforesaid, was made in excess of the statutory authority of said City;
5. The action of respondent City of Lewiston, as aforesaid, was made upon unlawful procedure;
6. The action of respondent City of Lewiston, as aforesaid, was arbitrary, capricious, and an abuse of discretion.

VIII

That the court should enter a judgement overturning defendant City of Lewiston's denial of a permit to the petitioner and requiring that such a permit be issued, if such a permit is required.

IX

That the petitioner has incurred costs and attorney fees in prosecuting this action and defendant City of Lewiston should be required to pay the same.

COUNT TWO

I

Petitioner incorporates by reference, as though fully set forth herein, the allegations of Count One of this petition.

II

The recreational vehicle space in question, as well as all recreational vehicle spaces located on the above-described real property, were in existence and in use prior to the enactment of any provisions of the Lewiston City Code which may be interpreted as prohibiting the same and, therefore, the use of said spaces as recreational vehicle spaces was "grandfathered" and no permit is, or should be, required to remove one (1) recreational vehicle from an existing space and to place another recreational vehicle in the same, existing space,

III

That the court should enter a declaratory judgement determining that all of the recreational vehicle spaces existing and in use prior to the enactment of any provisions of the Lewiston City Code which may be interpreted as prohibiting the same may continue to be used for that purpose without

the necessity of obtaining a permit for use and occupancy of the same.

WHEREFORE, petitioner prays judgment against the respondent as follows:

AS TO COUNT ONE:

1. For an order of the court overturning the decision of the City of Lewiston denying the plaintiff a permit to place a recreational vehicle upon the space in question on the above-described real property and requiring respondent City of Lewiston to issue said permit;

2. For costs of action;

3. For reasonable attorney fees;

4. For such other and further relief as to the court seems just;

AS TO COUNT TWO:

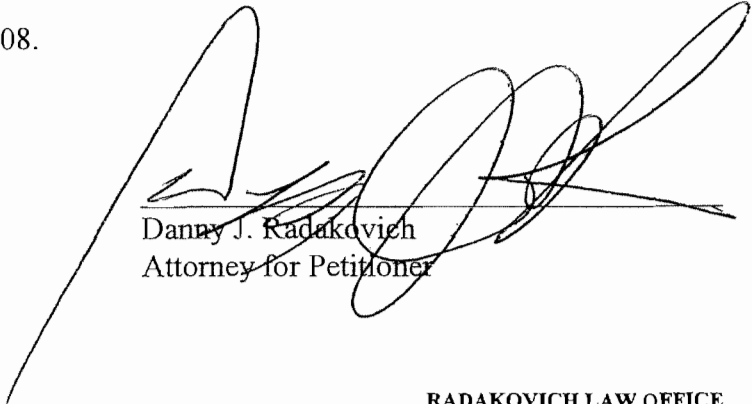
1. For entry of a declaratory judgement determining that for recreational vehicle spaces located on the above-described real property which were in actual existence and in use prior to any City of Lewiston Ordinance prohibiting the same may continue to be used for that purpose without the need to obtain a permit from defendant City of Lewiston;

2. For costs of action;

3. For reasonable attorney fees;

4. For such other and further relief as to the Court seems just.

DATED this 22nd day of May, 2008.



Danny J. Radakovich
Attorney for Petitioner

<u>ITEM</u>	<u>PAGES</u>
FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION	20-22
NOTICE OF PLANNING AND ZONING COMMISSION ACTION . . .	23
TRANSCRIPT OF MARCH 12, 2008, PLANNING AND ZONING COMMISSION MEETING	24-34
PETITIONERS APPEAL TO CITY COUNCIL	35-36
PACKET OF INFORMATION FOR CITY COUNCIL MEMBERS . . .	37-52 (portions double sided)
MINUTES OF CITY COUNCIL MEETING, APRIL 28, 2008	53-61.

DATED this 6th day of October, 2008.




Don L. Roberts
Attorney for Petitioner

CERTIFICATE OF DELIVERY

I hereby certify that on October 6, 2008, a true and correct copy of the foregoing CLERK'S RECORD OF PROCEEDINGS was hand delivered to the Petitioner at the following location:

DANNY J. RADAKOVICH
Attorney for Petitioner
1624 G Street
Lewiston, Idaho, 83501

DATED this 6th day of October, 2008 .



Don L. Roberts

January 23, 2008

Lee Eddins
23586 Big Sky Lane
PO Box 2072
Lewiston, ID 83501

 **COPY**

RE: 719 TO 803 28TH STREET N; IDAHO TRAILER PARK

Mr. Eddins:

On January 22 the Community Development Department denied a permit application to place a recreational vehicle within an established manufactured home park at 727 28th Street N. The Community Development Department does not issue permits for placement of individual recreational vehicles. Rather, the department licenses recreational vehicle parks. Your operations at 719 to 803 28th Street N are not licensed as recreational vehicle parks, and do not meet the current requirements to be licensed as such. I am writing to inform you that you may not place additional recreational vehicles within these manufactured home parks.

In 2006, the City of Lewiston adopted new regulations for manufactured home parks and recreational vehicle parks. The new regulations no longer allow the placement of recreational vehicles in manufactured home parks. All new units or any unit change-outs placed within your park(s) must meet the manufactured home construction and safety standards of the Department of Housing and Urban Development, which may also include certified rehabilitated mobile homes as provided in Title 44, Chapter 25 of Idaho Code.

On January 23, 2008 the department performed a drive-by inventory of units within the park(s) located at 719 to 803 28th Street N. The results of that inventory are:

719 28th Street N:

8 manufactured homes, 2 recreational vehicles

727 28th Street N:

7 manufactured homes, 4 recreational vehicles

One manufactured home may be vacant

803 28th Street N:

4 manufactured homes, 2 recreational vehicles

The recreational vehicles may be vacant or abandoned

805 28th Street N:

3 manufactured homes, 2 recreational vehicles

You may not replace any of the above referenced recreational vehicles with new RV units. You may only decrease the number of recreational vehicles in lieu of placement of manufactured homes meeting the construction and safety standards of the Department of Housing and Urban Development, and the development standards of the City of Lewiston.

If you believe this determination is in error, you may appeal to the Lewiston Planning and Zoning Commission. An appeal form is provided. If you believe the above inventory is inaccurate, please contact me and we can inventory your park(s) together.

Respectfully,

John Murray
Planner, Community Development Department
City of Lewiston

CC: File
Sue Gehrke, Business Licensing
Steve Campbell, Code Enforcement Officer

AP-1-08

LAW OFFICES OF

Danny J. Radakovich

Danny J. Radakovich
Attorney at Law

1624 G Street
Lewiston, ID 83501
(208) 746-8162
FAX: (208) 746-4672

February 7, 2008

City of Lewiston
Attn: John Murray
P.O. Box 617
Lewiston, ID 83501

RE: LEE EDDINS, APPEAL

Dear Mr. Murray:

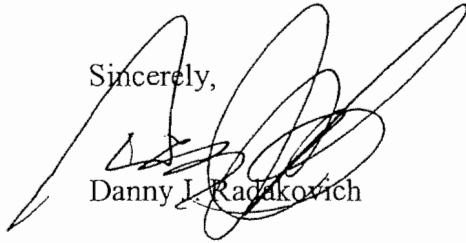
I have been retained by Mr. Lee Eddins relative to an appeal of the recent decision to deny his permit for an application to put a recreational vehicle within his park at 727 28th Street North, Lewiston, Idaho. Enclosed you will find the appeal form, which I have filled out and Mr. Eddins has signed, along with his check number 1658 in the amount of \$60.00 for payment of the appeal fee.

If Mr. Eddins will be having a hearing before the Planning and Zoning Commission, I will be there representing him. I don't know how long it takes to move these things along, but I thought I should tell you that I would not be available next week for any such hearing.

Please contact me immediately if you believe there is anything further I need to do to perfect Mr. Eddins' appeal.

Thank you for your courtesy.

Sincerely,



Danny J. Radakovich

DJR:me
cc: Lee Eddins

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that a Public Hearing will be held:

WEDNESDAY, MARCH 12, 2008
6:00 P.M.

The Lewiston City Planning and Zoning Commission will meet in the Telecommunications Classroom in the Library Building at Lewis Clark State College, 500 8TH Avenue in Lewiston, Idaho, for the purpose of determining whether to grant or deny the following request for:

APPEAL

AP-1-08 – EDDINS – 719, 727, 803, AND 805 28TH STREET N– An appeal of an administrative decision that additional recreational vehicles may not be located within the existing manufactured home park at the subject properties.

Any person (or persons) aggrieved, jointly or severally, may support or oppose, by petition or letter, the Applicant's request. Persons receiving this Notice are encouraged to attend the Public Hearing.

If you are unable to attend the Public Hearing but wish to state, for the record, your position of support or opposition, the following space is provided for your convenience. (A separate sheet of paper may also be used.) Written testimony must be received prior to the Public Hearing date stated above. Please address your correspondence to: Lewiston Planning and Zoning Commission, Post Office Box 617, Lewiston, Idaho, 83501.

For further information on the above zoning action, the public hearing process, or appeal process, please contact the Community Development Department at 746-1318. Our offices are located at 215 'D' Street, Lewiston. Business hours are Monday through Friday, 8:00 a.m. to 5:00 p.m.

Notice of this Public Hearing was mailed on February 28, 2008 and 7 persons were noticed.

TRIBUNE PUBLISHING COMPANY, INC.
Lewiston Tribune
505 C St., P.O.Box 957
Lewiston, Idaho 83501
(208) 743-9411

Date 02/24/2008 INVOICE NO. 483279

Account No. 568250

Description 483279NOTICE OF PUBLIC

Times 1 Lines 79

Tab. Lines _____

SOLD TO: CITY OF LEWISTON
P O BOX 617
LEWISTON ID 83501

\$ 68.14

PO# P&Z

NOTICE: This is an invoice of Purchase made by you. Statement will be rendered the first of the month.
Please Retain This Invoice as Your Statement Will Refer to Invoice by No. Only.

AFFIDAVIT OF PUBLICATION

NOTICE OF PUBLIC HEARING ⁴⁸³²⁷⁹

NOTICE IS HEREBY GIVEN that a Public Hearing will be held by the Lewiston City Planning and Zoning Commission on March 12, 2008 at 6:00 p.m. in the Telecommunications Classroom in the Library Building at Lewis Clark State College (L.C.S.C), 500 8th Avenue to determine whether to grant or deny the following:

AP-1-08 - EDDINS - 719, 727, 803, AND 805 28TH STREET N - An appeal of an administrative decision that additional recreational vehicles may not be located within the existing manufactured home park at the subject properties.

ZA-2-08 - DOWNTOWN PARKING - A request to amend Lewiston City Code Sections 37-145, 37-146, and 37-149 revising regulations for the provision of off street parking in the Central Business District and providing an effective date.

ZA-3-08 - CITY OF LEWISTON - C5 Zone - An ordinance amending Lewiston City Code Section 37-77 Permitted Uses and 37-78 Conditional Uses to add commercial entertainment, convention center and hotel as permitted uses; to add automobile sales and service, printing establishments, processing facilities, recycling center, service station, warehousing and welding fabrication as conditional uses.

ZC-3-08 - CITY OF LEWISTON - A rezone from M-1 Industrial to C-5 Central Commercial for all properties located north of "C" Street, west of First Street, south and east of the Levee Bypass Road.

FOR FURTHER INFORMATION, contact the Community Development Department at (208) 746-1318.

DATED this 24th day of February, 2008, Lewiston Planning and Zoning Commission

Karen Lewis, being duly sworn, deposes and says, I am the Legal Clerk of the Tribune Publishing Company, a corporation organized and existing under and by virtue of the laws of the State of Idaho and under and by virtue of the laws of the State of Washington, paper of general circulation published at Lewiston, Nez Perce County, Idaho; That the said Lewiston Tribune is an established newspaper and has been published regularly and issued regularly at least once a day for more than 105 consecutive years next immediately preceding the first publication of this notice, and has been so published uninterrupted for said period; that the 483279NOTICE OF attached hereto and which is made a part of this affidavit was published in the said Lewiston Tribune, 1 time(s). Publication being on 02/24, or once a DAY for 1 consecutive DAYS, the first publication thereof being on the 02/24/2008, and the last publication thereof being on the 02/24/2008, and said 483279NOTICE OF was so published in the regular and entire issue of said newspaper and was not in a supplement thereof and was so published in every issue and number of the said paper, during the period and times of publication as set forth above.

Karen J Lewis

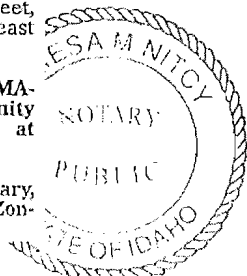
State of Idaho

S.S.

County of Nez Perce

On this 26 day of Feb in the year of 2008, before me, a Notary Public, personally appeared Karen J Lewis, known or identified to me to be the person whose name subscribed to the within instrument, and being by me first duly sworn, declared that the statements therein are true, and acknowledged to me that he executed the same.

[Signature]
Notary Public in and for the State of Idaho,
residing at Lewiston, therein
Commission Expires 1/23/2010



AP-1-08

EDDINS
719, 727, 803, AND 805 28TH STREET N



February 26, 2008

STAFF REPORT

AP-1-08

Appellant: Lee Eddins
23586 Big Sky Lane
PO Box 2072
Lewiston, ID 83501

Subject Property: 719 28th Street N, Tax Parcel RPL15400030110 and RPL1540003008A
727 28th Street N, Tax Parcel RPL1540003008B and RPL15400030100
803 28th Street N, Tax Parcel RPL15400020130 and RPL15400020140
805 28th Street N, Tax Parcel RPL15400020120

Background:

On January 22, 2008 planning staff denied a "placement" permit for a recreational vehicle within an established manufactured home park at 727 28th Street N. The reason for denial stated in a letter dated January 23 was:

"The Community Development Department does not issue permits for placement of individual recreational vehicles. Rather, the department licenses recreational vehicle parks. (The) operations at 719 to 803 28th Street N are not licensed as recreational vehicle parks, and do not meet the current requirements to be licensed as such."

The letter explaining the denial further stated, "(The Community Development Department is) writing to inform you that you may not place additional recreational vehicles within these manufactured home parks."

Mr. Lee Eddins, owner of the park, has filed an appeal, and states that the placement of recreational vehicles is "grandfathered" into his park.

Nature of the Appeal:

The appellant is appealing an administrative decision of the Community Development Department to deny a permit. Lewiston Municipal Code, Section

37-192, provides for appeals of administrative decisions of the Community Development Department:

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

(a) It shall be the duty of the community development department to enforce the provisions of this chapter...

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

Discussion and Code References

In 2006, the City of Lewiston adopted new regulations for manufactured home parks and recreational vehicle parks. Those regulations can be found in Chapter 23 of the Lewiston Municipal Code. Chapter 23 is administered by the Community Development Department (Section 23-3) and the Planning and Zoning Commission (Section 23-9).

The new regulations do not allow the placement of recreational vehicles in manufactured home parks (Section 23-14(b)). Recreational vehicles are defined in Section 23-2 as, "A vehicular type unit primarily designed as temporary living quarters for recreational, camping or travel use, which either has its own motive power or is mounted on or drawn by another vehicle. The basic entities are travel trailer, camping trailer, fifth-wheel camper and motor home." Recreational vehicles are defined separately and distinctly from manufactured homes. Section 23-14(b) states:

"Unit types permitted. Manufactured home parks shall contain a minimum of ~~seventy-five (75) percent~~ Class A manufactured homes. ~~Up to twenty-five (25) percent of a park's total units may be Class B manufactured homes. A conditional use permit must be obtained in order to increase the ratio of Class B manufactured homes.~~ Class C manufactured homes shall not be permitted." *AND*

The rules and regulations applying to manufactured home parks provide for the "grandfathering" of parks existing prior to 2006. Section 23-17 provides for the continuation of non-conforming manufactured home parks, exempting them from requirements of Section 23-14, *except that*:

"(d)...Replacement units in manufactured home parks developed prior to the effective date may be Class A or Class B units, except that the mix of Class A and B units existing as of the effective date may not move further from compliance with section 23-14(b)."

All new units or any unit change-outs placed within parks must meet the requirements of Section 23-14(b) and the manufactured home construction and safety standards of the Department of Housing and Urban Development.

Section 23-4 states:

“(a) No person shall operate or maintain upon any property owned or controlled by him a manufactured home park within the city without having first secured a city business license. Such city business license shall not be granted without the annual approval of the community development department.”

Mr. Eddins has owned and operated the manufactured home park(s) at the subject addresses since 2000. He has not renewed his business license since 2002.

A manufactured home park is differentiated from a recreational vehicle park in Chapter 23. Section 23-2 states that a manufactured home park is, “A tract of land under unified ownership developed for the purpose of providing individual rental spaces for the placement of manufactured homes within its boundaries.” Section 23-2 states that a recreational vehicle park is, “A tract of land under unified ownership upon which two (2) or more recreational vehicle sites are located, established, or maintained for occupancy as temporary living quarters.”

Manufactured home parks and recreational vehicle parks are separate entities and have been described separately since at least 1972. The code in effect in 1972 described both a “mobile home park” and a “tourist facility”, and stated, “Not more than 10 percent of the lots or spaces in a mobile home park may be utilized for tourist facilities.” Subsequent changes to the code appear to intend some exclusivity to the mobile home park designation. The 1974 code states, “Tourist facility, mobile home, mobile home park, ... and recreational vehicle shall have the definitions set forth in Section 34-1 of this code.¹ The code in effect in 1975 states, “Mobile home parks in existence as of the effective date hereof shall be permitted to continue...but shall not be altered so as to deviate below the minimum standards...”. There is no provision in the 1975 code for the placement of recreational vehicles in a mobile home park.

Past code references indicate the ability to operate a combination of manufactured home park and “tourist facility”. However, since 1976 a license to operate a manufactured home park has been required. As shown above, codes have differentiated between manufactured home parks and tourist facilities (now, recreational vehicle parks) since 1972. A license to operate a manufactured home park is not a *de facto* license to operate a tourist facility/recreational vehicle park. If Mr. Eddins desires to operate a recreational vehicle park, he may

¹ Lewiston Municipal Code, 1972, Section 34-1 defines a “Mobile Home – single wide”, a “Mobile Home – double wide”, a “Mobile Home Park”, a “Recreational Vehicle”, and a “Tourist Facility”.

apply for that license separately from the manufactured home park license. However, should he apply for the recreational vehicle park license, standards in place in the current code will apply.

To the extent each unit in the park was legally established, it may remain. However, no unit that was illegal at the time of placement may be "grandfathered". New units must comply with code in effect at the time of placement.

Recommendation:

Staff does not normally make recommendations on appeals. The Planning and Zoning Commission should use the following criteria to evaluate the appeal:

1. Did the Community Development Department have the authority to make the determination?
2. Was the determination correct?

Contact

John Murray
Planner, Community Development
746-1318, x250
jmurray@cityoflewiston.org



2-1

R-19A

EVOLUTION OF RVs IN MANUFACTURED HOME PARKS 1972 TO PRESENT

1972

- Definitions provide a distinction, though not a clearly defined one, between a "mobile home park" and a "tourist facility". It is unclear whether they can be one in the same.
- Provides for minimum distances between units and from property lines (lease lines) and units.
- "Not more than 10 percent of the lots or spaces in a mobile home park may be utilized for tourist facilities".

1974

- Definitions provide a distinction between single-wide MFH, double-wide MFH, and eliminates the definition of a travel trailer. The distinction clarifies the difference between a "mobile home park" and a "tourist facility". It appears that there is intended some exclusivity to the mobile home park designation.
- Provides for more robust setback requirements, spacing, and leased lot sizes.
- No provision created for a 'tourist facility' in any zone.

1975

- "Mobile home parks in existence as of the effective date hereof shall be permitted to continue as an established land use but shall not be altered so as to deviate below the minimum standards of this chapter."

1980

- No changes related to placement of recreational vehicles or their status under the code.

1984

- Definitions further evolve into "manufactured homes" and providing a distinction between those and a recreational vehicle.

AP-1-08

LAW OFFICES OF

Danny J. Radakovich

Danny J. Radakovich
Attorney at Law

1624 G Street
Lewiston, ID 83501
(208) 746-8162
FAX: (208) 746-4672

February 7, 2008

City of Lewiston
Attn: John Murray
P.O. Box 617
Lewiston, ID 83501

RE: LEE EDDINS, APPEAL

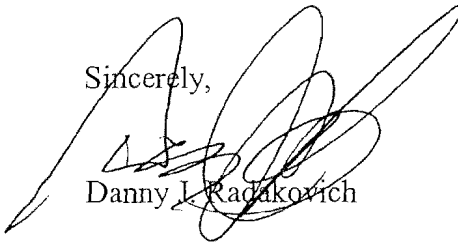
Dear Mr. Murray:

I have been retained by Mr. Lee Eddins relative to an appeal of the recent decision to deny his permit for an application to put a recreational vehicle within his park at 727 28th Street North, Lewiston, Idaho. Enclosed you will find the appeal form, which I have filled out and Mr. Eddins has signed, along with his check number 1658 in the amount of \$60.00 for payment of the appeal fee.

If Mr. Eddins will be having a hearing before the Planning and Zoning Commission, I will be there representing him. I don't know how long it takes to move these things along, but I thought I should tell you that I would not be available next week for any such hearing.

Please contact me immediately if you believe there is anything further I need to do to perfect Mr. Eddins' appeal.

Thank you for your courtesy.

Sincerely,

Danny J. Radakovich

DJR:me
cc: Lee Eddins

21
R-12

02-07-2008/ 4:53 PM
USER:R05 Total: \$60.00
K:0500

Appeal No. _____
Hearing Date: _____

**APPEAL TO THE
LEWISTON CITY PLANNING AND ZONING COMMISSION**

APPELLANT LEE EDDINS PHONE NO. c/o 208-746-8162

ADDRESS c/o 1624 G Street CITY Lewiston

ADDRESS OF SUBJECT PROPERTY: 719 to 803 28th Street, North of Lewiston

LEGAL DESCRIPTION OF PROPERTY: see above

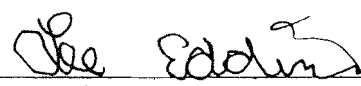
SUBDIVISION: _____ LOT: _____ BLOCK: _____

This Appeal is filed with the Planning and Zoning Commission of the City of Lewiston and is accompanied by the required \$60.00 filing fee (Effective October 1, 2007).

This is an Appeal of a decision and/or ruling made by Community Development Dept. in their written ruling of January 23, 2008.

REASON FOR APPEAL: placement of recreational vehicles is grandfathered into this park.

(NOTE: If additional space is needed, attach additional sheets or use reverse side of this sheet.)


Signature of Appellant

Received by Community Development Department: _____
Referred to Planning & Zoning Commission: _____

DECISION OF PLANNING AND ZONING COMMISSION:

DATED this _____ day of _____, 20____.

January 23, 2008

Lee Eddins
23586 Big Sky Lane
PO Box 2072
Lewiston, ID 83501

 **COPY**

RE: 719 TO 803 28TH STREET N; IDAHO TRAILER PARK

Mr. Eddins:

On January 22 the Community Development Department denied a permit application to place a recreational vehicle within an established manufactured home park at 727 28th Street N. The Community Development Department does not issue permits for placement of individual recreational vehicles. Rather, the department licenses recreational vehicle parks. Your operations at 719 to 803 28th Street N are not licensed as recreational vehicle parks, and do not meet the current requirements to be licensed as such. I am writing to inform you that you may not place additional recreational vehicles within these manufactured home parks.

In 2006, the City of Lewiston adopted new regulations for manufactured home parks and recreational vehicle parks. The new regulations no longer allow the placement of recreational vehicles in manufactured home parks. All new units or any unit change-outs placed within your park(s) must meet the manufactured home construction and safety standards of the Department of Housing and Urban Development, which may also include certified rehabilitated mobile homes as provided in Title 44, Chapter 25 of Idaho Code.

On January 23, 2008 the department performed a drive-by inventory of units within the park(s) located at 719 to 803 28th Street N. The results of that inventory are:

719 28th Street N:

8 manufactured homes, 2 recreational vehicles

727 28th Street N:

7 manufactured homes, 4 recreational vehicles

One manufactured home may be vacant

803 28th Street N:

4 manufactured homes, 2 recreational vehicles

The recreational vehicles may be vacant or abandoned

805 28th Street N:

3 manufactured homes, 2 recreational vehicles

You may not replace any of the above referenced recreational vehicles with new RV units. You may only decrease the number of recreational vehicles in lieu of placement of manufactured homes meeting the construction and safety standards of the Department of Housing and Urban Development, and the development standards of the City of Lewiston.

If you believe this determination is in error, you may appeal to the Lewiston Planning and Zoning Commission. An appeal form is provided. If you believe the above inventory is inaccurate, please contact me and we can inventory your park(s) together.

Respectfully,

John Murray
Planner, Community Development Department
City of Lewiston

CC: File
Sue Gehrke, Business Licensing
Steve Campbell, Code Enforcement Officer

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that a Public Hearing will be held:

WEDNESDAY, MARCH 12, 2008

6:00 P.M.

The Lewiston City Planning and Zoning Commission will meet in the Telecommunications Classroom in the Library Building at Lewis Clark State College, 500 8TH Avenue in Lewiston, Idaho, for the purpose of determining whether to grant or deny the following request for:

APPEAL

AP-1-08 – EDDINS – 719, 727, 803, AND 805 28TH STREET N– An appeal of an administrative decision that additional recreational vehicles may not be located within the existing manufactured home park at the subject properties.

Any person (or persons) aggrieved, jointly or severally, may support or oppose, by petition or letter, the Applicant's request. Persons receiving this Notice are encouraged to attend the Public Hearing.

If you are unable to attend the Public Hearing but wish to state, for the record, your position of support or opposition, the following space is provided for your convenience. (A separate sheet of paper may also be used.) Written testimony must be received prior to the Public Hearing date stated above. Please address your correspondence to: Lewiston Planning and Zoning Commission, Post Office Box 617, Lewiston, Idaho, 83501.

For further information on the above zoning action, the public hearing process, or appeal process, please contact the Community Development Department at 746-1318. Our offices are located at 215 'D' Street, Lewiston. Business hours are Monday through Friday, 8:00 a.m. to 5:00 p.m.

Notice of this Public Hearing was mailed on February 28, 2008 and 7 persons were noticed.

RP L15400020040 A -0153
THREE MILE RANCH INC
830 29TH ST N
LEWISTON ID 83501

AP-1-08

RP L15400020050 A -0153
THREE MILE RANCH INC
830 29TH ST N
LEWISTON ID 83501

RP L15400020060 A -0153
THREE MILE RANCH INC
830 29TH ST N
LEWISTON ID 83501

RP L15400020070 A -0153
PAFFILE DONALD
830 29TH ST N
LEWISTON ID 83501

RP L1540002010A A -0153
KOOLE 1999 REVOC LIVING TRUST
229 E MAIN ST
GRANGEVILLE ID 83530-2235

RP L1540003001B A -0153
HAYES ROBIN &
HAYES DAWN
18000 FARM HILL LN
PRUNEDALE CA 93907

RP L15400030040 A -0153
MILLER RODNEY L &
MILLER FREDERICK J &
MILLER SUSAN
403 30TH ST
LEWISTON ID 83501

RP L15400030120 A -0153
FREEBURG WILLIAM H SR &
FREEBURG KAY
713 28TH ST N
LEWISTON ID 83501

RP L365W0812955 A -0153
IDAHO STATE OF
P O BOX 36
BOISE ID 83722

MINUTES

LEWISTON PLANNING AND ZONING COMMISSION
MARCH 12, 2008

LEWIS CLARK STATE COLLEGE
TELECOMMUNICATIONS CLASSROOM
6:00 p.m.

THE LEWISTON PLANNING AND ZONING COMMISSION OF THE CITY OF LEWISTON, IDAHO met at 6:00 p.m. on Wednesday, March 12, 2008, in the Telecommunications Classroom in the Library Building at Lewis Clark State College, Lewiston, Idaho.

I. CALL TO ORDER

The meeting was called to order at 6:00 p.m. with Chairman Brown presiding.

COMMISSION MEMBERS PRESENT: Susan Wing, Su Brown, Tom Aram, Sue Somers

COMMISSION MEMBERS ABSENT: Bob McClain

PROFESSIONAL STAFF PRESENT: Laura Von Tersch, Community Development Director, John Murray, Planner, Jamie Shropshire, Assistant City Attorney and Shannon Grow, Recording Secretary

II. PUBLIC COMMENTS - There were no public comments.

III. PUBLIC HEARINGS

- A. **V-3-08 – BARRON – 3510 ½ 10TH STREET** – A request for three (3) variances to create a flag lot to the rear of 3510 ½ 10th Street. A variance of fourteen (14) feet from the required twenty (20) foot rear yard setback in an R-2A Low Density Residential Zone; a variance of one thousand five hundred and eighty seven (1,587) square feet from the required seven thousand five hundred (7,500) square foot minimum lot size for a standard lot in the R-2A zone; a variance of one thousand eighty (1,080) square feet from the required ten thousand (10,000) square foot minimum lot size for a flag lot. The intent of the variances was to allow the division of the property into two (2) lots.

Mr. Murray gave the staff report stating that the applicant was requesting 3 variances and described them. The purpose of the variance requests was to allow the applicant to split the existing lot into two lots, one being a flag lot towards the rear. Mr. Murray stated that there were currently two houses on the lot. The placement of two houses on the lot is a non-conforming use. The houses were separated by 20 feet. Mr. Murray presented a site plan of what the applicant was proposing.

The applicant, Adam Barron, 3510 10th Street, and owner of 3510 ½ 10th Street, stated that he was hoping to split the lot and sell one of the lots. Right now he uses the second home for a rental. He understood there was no hardship.

No one spoke in favor of or opposed to the variance request. The public hearing was closed. Mr. Murray gave the staff recommendation to deny V-3-08 because there was no hardship and the second home may remain as non-conforming.

Commissioner Somers moved to deny V-3-08 and Commissioner Aram seconded the motion. The motion was unanimously approved.

- B. AP-1-08 – EDDINS – 719, 727, 803, AND 805 28TH STREET N–** An appeal of an administrative decision that additional recreational vehicles may not be located within the existing manufactured home park at the subject properties.

Mr. Murray gave the staff report stating that the appellant, Mr. Eddins, was requesting that the Commission reverse a decision by the Community Development department to not allow the placement of a recreational vehicle (RV) in his manufactured home park located on 28th Street North. Mr. Murray stated that the staff denied the permit to place a RV in the park because Section 23-14(b) of the recently adopted manufactured home park regulations specifically prohibits them. Mr. Murray gave a historical account of manufactured home park regulations, including historical revisions to the code, as they relate to RVs. The historical account spanned the years 1970 to the present. Mr. Murray also stated that Eddins did not have an active business license from 2003 to the present.

Danny Radakovich, 1624 G Street, an attorney representing the appellant, Lee Eddins, stated that Mr. Eddins park was far older than 1970, and predated the zoning regulations enumerated by Mr. Murray. The park has always been a mixture of less than normal sized mobile homes and RV units. In this case, Mr. Eddins' tenant pulled out an RV and replaced it with a newer one. Mr. Radakovich contended that the space in question could be deemed non-conforming and they felt the permit should be approved because it was a grandfathered use. Mr. Eddins was not adding anything, changing the space, or expanding a non-conforming use.

No one spoke in favor of or opposed to the appeal and the public hearing was closed.

Commissioner Aram asked Mr. Murray if there was anything in the 1975 code that addressed pre-existing units or parks. Mr. Murray stated that the 1975 code allowed for existing mobile home parks to be able to continue, "...but shall not be altered so as to deviate below the minimum standards..." He added that the 1975 code did not specifically address recreational vehicles in mobile home parks. It wasn't until 1984 that separate classes were defined for manufactured homes, including RVs.

Commissioner Brown stated that when the Commission sent the manufactured home park revisions to the Council, they did not include provisions for grandfathered uses. The Council remanded the draft back to the Commission to look at the regulations for parks

that had a mixture of single wides and RV's, and what would be required if one were upgraded. She stated they did not consider that one would be upgraded and still not be in compliance. She thought that the Commission needed to clarify what the intent was and added that what was different in this case was that the tenant intended to change like-for-like. Commissioner Wing stated that she thought the intent of the Commission was to not allow the replacement of a substandard unit with another one and any upgrade would have to be a Class A or Class B manufactured home. She felt the intent was to phase out the older trailers and RV's over time.

Commissioner Brown asked Mr. Eddins if any of his spaces would be big enough for a Class A or Class B manufactured home. Mr. Eddins stated that there were 35 full size spaces and 10 or 12 small spaces. These spaces were all full and existed when he purchased the park. He stated the smaller spaces would not be big enough for a 40 foot trailer. He added that if he could not use the smaller spaces, then he would be paying taxes and water, sewer, and garbage on property that he cannot use to the fullest extent possible.

Commissioner Wing felt the Community Development staff applied the code correctly in this appeal. She moved to deny AP-1-08 and Commissioner Somers seconded the motion. The motion was unanimously approved.

- C. **ZA-2-08 – DOWNTOWN PARKING** – A request to amend Lewiston City Code Sections 37-145, 37-146, and 37-149 revising regulations for the provision of off street parking in the Central Business District and providing an effective date.

Ms. Von Tersch stated that ZA-2-08, a request to amend the downtown parking regulations, was a result of the parking management plan and the Downtown Parking Committee. The Committee recommended expanding the Central Business Parking District (parking exempt area) to include properties between the Levee Bypass and the north and west borders of the existing district. A map was presented to show the new and existing boundaries. The other recommendation was to revise the requirement for residential parking in the downtown district. The Committee conducted a survey of downtown businesses and property owners to solicit their views on parking issues. The survey found that 89% of the respondents felt there should be off-street parking required for residential uses. The Downtown Committee recommended that there be 1 space per multifamily unit, 40% of the number of beds plus a manager space for a dormitory or rooming house and 1 space per hotel/motel room. Ms. Von Tersch explained that these ratios were approximately half of what is required in the rest of the City, and the required parking had to be provided within 1,320 feet from the building or use.

Commissioner Brown asked if the revisions allow for shared parking. Ms. Von Tersch stated that shared parking was looked at in the past, especially as a way to encourage development, but shared parking required a certain amount of management that would

have to be introduced, so it was not included in the request. Private lots can share parking, and there would be a lease enforced by the property owner. Currently, there are no shared parking leases in the public lots.

No one spoke in favor of or opposed to the zoning amendment. Commissioner Aram moved to approve ZA-2-08 and Commissioner Somers seconded the motion. The motion was unanimously approved.

- D. **ZA-3-08 – CITY OF LEWISTON - C5 Zone-** An ordinance amending Lewiston City Code Section 37-77 Permitted Uses and 37-78 Conditional Uses to add commercial entertainment, convention center and hotel as permitted uses; to add automobile sales and service, printing establishments, processing facilities, recycling center, service station, warehousing and welding fabrication as conditional uses.
- E. **ZC-3-08 – CITY OF LEWISTON -** A rezone from M-1 Industrial to C-5 Central Commercial for all properties located north of "C" Street, west of First Street, south and east of the Levee Bypass Road.

Ms. Von Tersch gave a brief staff report and stated that she had concerns about proceeding because the property owners within the subject area to be rezoned had not been properly noticed for the meeting. She added that she had indicated to the property owners that the public hearing would be tabled to the April 9, 2008 meeting.

Commissioner Wing moved to table ZA-3-08 and ZC-3-08 to the April 9, 2008 public hearing. Commissioner Aram seconded the motion and it was unanimously approved.

IV. ACTIVE AGENDA

- A. **REQUEST FOR EXTENSION – CU-9-07 – HOWELL – 734 BRYDEN AVENUE –**
A request for a 6 month extension of a conditional use permit located at 734 Bryden Avenue, approved by the Planning and Zoning Commission on September 12, 2007.

Mr. Murray stated that the applicants had requested a 6 month extension of CU-9-07, which allowed for a carwash at 734 Bryden Avenue. Mr. Murray indicated that he had seen the preliminary plans and the house on the property was being moved. Commissioner Aram moved to grant a 6-month extension of CU-9-08 and Commissioner Somers seconded the motion. The motion was approved with three ayes.

Roll call vote:

Voting aye: Brown, Somers, Aram

Voting nay: Wing

IV. STAFF COMMUNICATIONS

Mr. Murray stated that the Commission would be discussing accessory buildings at their next worksession along with a text amendment that would allow outdoor entertainment, including wedding chapels, in the Area of City Impact.

V. FUTURE WORKSHOP AND AGENDA ITEMS

A. ZONING FOR OUTDOOR CHAPELS

Commissioner Brown wanted the Commission to look at which zoning districts would appropriate for outdoor wedding chapels.

V. COMMISSIONERS ANNOUNCEMENTS AND DIRECTION TO STAFF – None.

VII. ADJOURN

There being no further business, by consensus, the Commission adjourned 7:10 p.m.

RESPECTFULLY SUBMITTED,



SHANNON GROW, RECORDING SECRETARY

ATTEST:


PLANNING & ZONING COMMISSION

**BEFORE THE PLANNING AND ZONING COMMISSION
OF THE CITY OF LEWISTON**

IN RE:)	
)	
AP-1-08,	)	FINDINGS OF FACT
	)	CONCLUSIONS OF LAW
LEE EDDINS,	)	AND DECISION
)	
)	
Appellant.)	
_____)	

This matter having come before the Planning and Zoning Commission of the City of Lewiston, Idaho, on March 12, 2008, for public hearing pursuant to public notice as required by law, on an appeal of an administrative determination that additional recreational vehicles may not be located within the existing manufactured home park at 719, 727, 803 and 805 28th Street North, Lewiston, pursuant to Lewiston City Codes 23-2, 23-12, 23-14, and 23-17 and the Commission having heard the staff report and having heard testimony from the appellant and their being no other person speaking either in support or opposition to the appeal, and the Commission being fully advised in the matter, issues the following:

FINDINGS OF FACT

1. The appellant owns a manufactured home park at 719, 727, 803 and 805 28th Street North, Lewiston, Idaho.
2. On January 22, 2008, Community Development staff denied the appellant's request for a permit to place a recreational vehicle within an established manufactured home park.
3. One of the appellant's renters wishes to replace an existing recreational vehicle with another recreational vehicle.
4. Recent revisions of the code only allow for the placement of Class A and Class B manufactured homes when an existing unit is replaced.

5. The City Code has differentiated between manufactured home parks and recreational vehicle parks (formerly "tourist facilities") since 1972.
6. Recreational vehicle parks and manufactured home parks are defined differently by the City Code and have different code provisions governing those different uses.
7. The appellant has operated a manufactured home park(s) at the subject addresses since 2000.
8. It is the duty of the Community Development Department to enforce the provisions of the code sections which are relevant to this appeal.
9. All new or replacement units placed within the manufactured home park must also meet the safety and construction requirements of the Department of Housing and Urban Development.

Based on the foregoing **FINDINGS OF FACT**, the Lewiston Planning and Zoning Commission hereby make the following:

CONCLUSIONS OF LAW

1. Lewiston City Code Section 23-14(b) only permits Class A and Class B manufactured homes in a manufactured home park. Class C manufactured homes are specifically prohibited.
2. Lewiston City Code Section 23-17 exempts manufactured home parks existing prior to 2006 from the new regulations with the specific exception that replacement units must conform to the new provisions specifying type and mix of Class A and Class B units.
3. The proposed replacement unit is not a Class A or Class B manufactured home.
4. The proposed replacement unit does not meet the safety and construction requirements of the Department of Housing and Urban Development for a manufactured home

Based on the forgoing **CONCLUSIONS OF LAW**, the Lewiston Planning and Zoning Commission hereby enters the following:

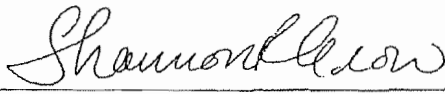
DECISION

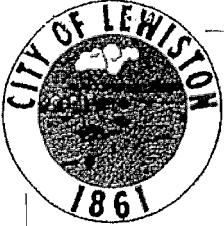
1. The decision of the Community Development denying a permit for the placement of a recreational vehicle at the appellant's manufactured home park is **UPHELD**.

DATED this 31st day of March, 2008.

**LEWISTON PLANNING AND
ZONING COMMISSION**

, Chair
Chair

ATTEST: 
Secretary



NOTICE

Action # AP-1-08

Hearing Date: 3/12/08

EDDINS

Applicant

719, 727, 803 & 805 28TH ST N

Site Address

Date of Findings of Fact, Conclusions
of Law and Decision Signed:

3/31/08

15 Day Appeal Period
Ends at 5:00 p.m. on:

4/15/08

APPEAL UPHELD

There is a fifteen (15) day waiting period from the time that the Findings of Fact, Conclusions of Law and Decision are signed by the Commission; during which time the decision may be appealed to the City Council or County Board of Commissioners. A building permit or business license cannot be issued until after the appeal period ends given there are no appeals filed.

X APPEAL DENIED (STAFF DECISION UPHELD)

If you wish to appeal the decision, you may do so within fifteen (15) days of the signing of the Findings of Fact, Conclusions of Law and Decision by the Planning and Zoning Commission. If your appeal is to the City Council, your written statement listing the specific reasons for your appeal must be addressed to the City Council in care of the City Clerk, P.O. Box 617, Lewiston, ID, 83501.

If your appeal is to the Board of County Commissioners, your written appeal must be presented in person at the County Commissioners Office located at the Bramer Building, 1225 Idaho Street, Lewiston.

Should you have any questions, please call our office at (208) 746-1318.

BEFORE THE PLANNING AND ZONING COMMISSION
OF THE CITY OF LEWISTON

IN RE:)
)
 AP-1-08)
)
 LEE EDDINS)

TRANSCRIPTION OF TAPED MEETING
OF
MARCH 12, 2008

SUE BROWN: The next thing on our agenda is AP -1-08 Eddins 719, 727, 803, and 805 28th Street N. This is an appeal of the administrative decision that additional recreational vehicles may not be located within the existing manufactured home park at the subject properties. John, Staff report please.

JOHN MURRY: Ok first I am going to show where the property is and then I have a powerpoint presentation - I'm gonna run (shows pictures) -- lets go to the owner - sorry here is 29th Street, maybe I should turn it this way, - - north of that there is actually 1, 2, 3, 4, 5, 6, 7 properties in question but there is only 4 addresses, these have been - this has been a manufactured home park for a very long time and ah ah anyway that is where it is at and I am trying to run this slide show. There we go and ya (show picture AP-1-08 719, 727, 803, and 805 28th Street N) alright this is AP-1-08 and the appellant is Lee Eddins of Big Sky Lane address in Lewiston again the subject properties are 719, 727, 803 and 805 28th St N . On January 2, 2008 planning staff denied a placement permit for a recreational vehicle within an established manufactured home park at 727 28th Street North. The reason for denial stated in a letter dated Jan 23rd was that Community Development Department does not issue permits for placement of individual recreational vehicles. Rather, the department licenses recreational vehicle parks. The operations at 719 to 803 28th Street N are not licensed as recreational vehicle parks and do not meet the current requirements to be licensed as such. The letter explaining the denial further stated, the Community Development Department is writing to inform you that you may not place additional recreational vehicles within these manufactured home park . Mr. Lee Eddins, the owner of the park, has filed an appeal and states that the placement of recreational vehicles is grandfathered in his park. In 2006 the City of Lewiston adopted new regulations for manufactured home parks and recreational vehicle parks. The new regulations do not allow the placement of recreational vehicles in manufactured home parks . Recreational vehicles are defined separately and distinctly from manufactured home. Section 23-14(b) states: "Unit types permitted. Manufactured home parks shall contain Class A manufactured homes and Class B manufactured home. Class C manufactured home shall not be permitted." The rules and regulations applying to manufactured home parks provide for the grandfathering, that is the legal non-conforming status, of parks existing prior 2006. Section 23-17 provides the continuation of non-conforming manufactured home parks, exempting them from requirements of Section 23-14, except that, replacement units in manufactured home parks developed prior to the effective date, that is 2006, may be Class A or Class B units . All new unit change or any change-outs placed within parks must meet the requirements of Section 23-14(b) and the manufactured home construction and safety standards of the Department of Housing & Urban Development. Mr Edens has owned and operated the manufactured home park at the subject address since 2000. He has not renewed his business license for the park since 2002. A manufactured home park is differentiated from a recreational vehicle park in Chapter 23. Manufactured home parks and recreational vehicle parks are separate entities and have been described separately since at least 1972. The code in effect in 1972 described both a mobile home park and a tourist facility. Subsequent changes to the code appeared to intend some exclusivity to the mobile home park designation. The code in effect in 1975 states: mobile home parks in existence as of the effective date hereof , that is 1975, shall be permitted to continue but shall not be altered

so as to deviate below the minimum standards. There is no provision in the 1975 code for the placement of recreational vehicles in a mobile home park. Past code references indicate the ability to operate a combination of manufactured home parks and tourist facilities, that is the combination of two. However since 1976 a license to operate a manufactured home park has been required. A license to operate a manufactured home park is not a de facto license to operate a tourist facility or recreational vehicle park. If Mr. Eddins desires to operate a recreational vehicle park, he may apply for that license separately from the manufactured home park license. However, should he apply for the recreational vehicle park license, standards in place in the current code will apply. To the extent that each unit in the park is legally established, it may remain. It must have been legal at the time of installation. However, no unit that was illegal at the time of placement may be grandfathered. You may not grandfather an illegal use. New units must comply with code in effect at the time of placement. RVs are specifically excluded from placement in the manufactured home parks in the 2006 revision of the code. Are there any questions?

SUE BROWN: Not at this time, thank you John. Is the appellant here? Would you like to come forward and state your case please.

DANNY RADAKOVICH: Is it all right if I speak for him?

SUE BROWN: You betchya.

DANNY RADAKOVICH: Madam Chairperson let me say how lovely you look tonight before we start.

(Laughing)

SUE BROWN: We need your name and address Dan.

DANNY RADAKOVICH: Danny Radakovich, 1624 G Street, Lewiston, Idaho, that my office. The gentlemen with me is Mr Lee Eddins, the owner of the Idaho Trailer Park. I think that part of what is going on here is we have a little bit of a definitional problem. This particular park, as nearly as I can tell from speaking to the county assessor office, is far older than the 1970, it may have been here since the 40's or 50's. Probably has been. I has always been a mixture, as I understand it, of less than normal size mobile homes and RV units. Some of these RV units people have lived in for years and years on end. The question of the space we are talking about here had a unit in that would probably be deemed non-conforming. The gentleman that lived in that for a number of years pulled that out and pulled in one that was I guess was in much better shape, much more liveable, a lot nicer and Mr Eddins manager undertook to file the application for a permit to place it whether that was a mistake or not is retrospective and a different issue but what we are talking about here is a park that has for a long long time possibly I think before the 1970 or 72 ordinance exist as a mixture of small trailers or small mobile

homes and what some people might call RV units but which the people in this park are using as homes. Mr. Edins did an informal survey of town while we were waiting for this hearing and he thought it - what was it Lee 6, 7

Mr. Eddins in background – other trailer parks existing in a trailer motor home the same thing which an older established trailer parks and in my particular situation and theirs these ah ah ah the parking unit is approximately 25 foot long you can't get a motor a more more ah ah regular standard home in a 25 foot area so ah that was what they have been utilized for all the years that I have owned it and basically the majority of the units that are in there since I bought the park in 2000.

DANNY RADAKOVICH: And you know has it not been for the fact that this gentleman is living in the one that was in that space which I am told that is essentially a pull travel trailer that was what was in there -- he pulled that one out and put something a lot nicer in there but he apparently bought and finished the interior so that it was livable I think he a -- I think he is a construction worker and he comes and goes different places ah and so that is what he wanted to put in replace that . So what we are looking at is a situation that - I think is a definitional thing because we are talking about something far far predates anything that zoning staff has talked about tonight . This thing has been there ah you know since God was a baby. I mean it is a long long term park in North Lewiston and Mr. Eddins tells me that when he bought it it was quite a mess and little by little he has been cleaning it up and improving it but there is no way you just swamp everything out of there and totally revamp it that you can turn it into a modern mobile home park. It just can not be done because these existing spaces are too small. The only thing that can fit in that space that we are talking about here is what it in it now, You just cannot put something else in it. So we feel that probably the city staff cut off their inquiry too late in time, they should have gone back before that we think we were grandfathered in before that act was in place because this is very very very old establishment and as I said I talked to Dan Anderson, I went back and I liked at the designation of it , the thing goes way way back in time before they have records. So our view is number one, we really are not adding anything, he's just -- the same guy who was living in the spot before just wants a different place to live that is nicer. Ah, we are not changing the space, we are not creating a space that wasn't there, we are not adding an RV unit that wasn't there, we are not expanding a non-conforming use, this guy who lives there just wants a better dwelling. I guess I can add this, as a practical matter ah I guess it would be nice if we all have 5,000 square foot homes and ah didn't have to work for a living, that would be nice, but there are a lot of people who have to have these kind of units to live They really need to have a place they can afford , I mean, that is why we have 12,000 apartments over a lot of the buildings in down town, I mean if those weren't there some people would not have a place to live. What we are saying is we are changing anything , probably shouldn't have even applied for a permit, I think the girl made a mistake when she did it. We are not changing anything, not adding anything, we are not deviating any more than it was to start with and so we think that this should not be a problem. Do you have questions, Mr. Eddins and I would be happy to answer them.

SUE BROWN: Thank you, any questions for them? Commission Aram

TOM ARAM: Staff mentioned that you have not renewed the license.

DANNY RADAKOVICH: He has a business license. He said they cashed his check.

TOM ARAM: So subsequent to this you

JOHN MURRY in background -- cannot hear what he is saying) "apparently it was overlooked by the manager and inaudible)

LEE EDDINS: Since then we've been licensed.

TOM ARAM: I see - thank you

DANNY RADAKOVICH: He's legal licensed now.

SUE BROWN: Thank you.

DANNY RADAKOVICH: Thank you.

SUE BROWN: Is there anyone in the audience that wishes to speak in favor. Anyone that wishes to comment in opposition? Seeing none -- we do not have a recommendation from staff because this is an administrative ruling, therefore, Commissioners comments, questions.

SUE BROWN: Absent of any --

TOM ARAM: I was waiting for you to say absent and then

SUE BROWN: Then jump right in -- testing

SUE BROWN: Commissioner Aram

TOM ARAM: Ah, there was a reference to the 1975 code, John made that and Mr, Radakovich made that, and I am trying to remember what the provision was in the '75 code for pre-existing -- was there anything in the '75 code that addressed pre-existing and what that was --

JOHN MURRY: yes,

TOM ARAM: To the effect of grandfathering -

JOHN MURRY: The Code in effect in 1975 states that mobile home parks in existence as of the effective date hereof, 1975, are permitted to continue but shall not be altered so as to deviate for the minimum standards of manufactured home parks. There is absent in the 1975 code any mention of allowing recreations vehicles.

TOM ARAM: And the '75 code refers to the Class A?

JOHN MURRY: Well we

TOM ABRAM: Class A, Class B standards or (rest inaudible people talking over each other)

JOHN MURRY: We didn't get the reference to Class A and Class B until about '84

TOM ABRAM: So is there a reference to size of ?

JOHN MURRY: Yes, yes, originally the 1975 code does define a recreational vehicle and a mobile home differently - and just give me a minute. No, I am sorry we have to go back to '72 to get the definition of a mobile home versus a recreational vehicle . A mobile home single- wide is a transportable structure for human habitation which is at least 10 feet wide and 40 feet in length and is built on a chassie and designated to be need the use of a building without a permanent foundation . It goes on to define a mobile home double- wide similarly, however it consists of 2 or 3 factory design sections . It addresses a modular home and then it goes on to describe a recreational vehicle as a wheeled vehicle either powered or not intended for leisure and not intended for use as a permanent dwelling and then it goes further and it defines a tourist facility as a tract of land designed or constructed to accommodate tourists for the parking of motor homes, trailers, pickup campers or any camping equipment for vacation stay.

SUE BROWN: Did that answer your question?

TOM ABRAM: Yes it did.

SUE BROWN: Anyone else? I am going to make a comment saying that I was on this commission when we came up with these new standards in 2002 and again for the mobile home - ah or the RV parks and originally we passed an ordinance that basically did not have any grandfather provision of which the existing mobile home parks out at North Lewiston in particular, went to Council and said wait a minute and ah so it came back to us and we put in grandfathering types of provisions. My recollection of the discussion at that time was basically if you have an existing park that has a mixture the intent was that if one leaves then you need to put in a qualified Class A or Class B. No where did anyone anticipate that the same occupant - you know we haven't changed a tenant within the park but that the tenant would actually upgrade but it still would not be within compliance of the Class A or Class B so we are kind of out in limbo land. No one really thought about that happening. So I think from a Commission standpoint we have to help

clarify what our intent was, and the Councils intent, when this new provision was put into place.

JOHN MURRY: If I might Madam Chair I have on the screen the upgrade. That is what he upgraded to.

SUE BROWN: Ah uh which is definitely an RV and not a trailer ah all the owners of the RV parks out in North Lewiston are going to be under similar situation, I don't think this is going to be a one-time thing. I think this can happen a lot. So, you know, in my decision making we have the same tenant, we haven't swapped tenants, to me that would be crucial in my decision making. Did the tenant leave and now are bringing in something new or is it the same tenant that is just up-grading? To me that makes a pivotal difference in my mind. They still have the same tenant, the tenant up-graded, which the owner really has no control over as the fact that they would upgrade as opposed to as somebody leaves, moves on and here comes somebody else in my mind. Susan you were on the Commission at that time and you know you are like me trying to reflect that, What was the intent at the time of law change?

SUSAN WING: I think the intent was not to allow -- allow I don't think it has anything to do with the tenant as much as the park.

SUE BROWN: In order to ---

SUSAN WING: (inaudible) you know (inaudible)

SUE BROWN: So your recollection is different obviously which would be expected

SUSAN WING: You are trying to recollect the intention.

SUE BROWN: Yes , the intent. So your recollection was the intent was if there was any upgrade regardless of who the tenant was that it would have to go to a Class A or Class B in order to do that

SUSAN WING: Yes they would --- (rest is inaudible)

SUE BROWN: Now in this particular park it sounds like none of the spaces would ever qualify to ah handle a Class A or Class B mobile home. Is that

LEE EDDINS: Class A would be 10 by

somebody says 10 by 40

SUE BROWN: 10 by 40

LEE EDDINS: Oh ya , I've got mdels in there that 10 by 7 that are 12 by 14 seven deep but they've got their steady spots and they have been there for years and shorter

spots, smaller RV's there since I bought the park and that is going to take and that is why if you try to put in a 40 footer the tongue would stick out into the street And that's why they were apparently designed like that years ago so an RV would fit into it.

SUE BROWN: Could you come back up to the podium for just a moment please. In your particular park on a percentage of spots, spaces available, how many of them would you actually be able to put a Class A or B mobile home – manufactured home in versus RVs in the short spaces.

LEE EDDINS: Each and everyone of those – the long ones for Class A, B are full and been there, existing homes basically since I bought the trailer park and there is probably 10-12 the shorter spaces and he has pictures basically with all the units in them either motor homes or pull trailers.

SUE BROWN: How many full size spaces do you have?

LEE EDDINS: ah – 35

SUE BROWN: 35 – so the majority – the substantial majority of it is for the larger

LEE EDDINS – yes

SUE BROWN: Huh, any other questions to pose?

SUSAN WING: No we need to cover intent.

SUE BROWN: Ya we need to go back to the intent.

SUSAN WING: Well, if the intent was to phase these out in time

SUE BROWN: I think that was the overall point.

SUSAN WING: The big intent was to gradually move them out.

SUE BROWN: Well that is what we have to go back to is intent. Thank you very much. Did you want to add anything?

LEE EDDENS: Well what's your intent to do with that piece of land, you know I can't utilize it as as – in the event I couldn't use it for a trailer park and I am paying taxes on that and water and sewer and garbage on that. Something moved out and ah ah and that piece of land is just vacated and worth nothing.

DANNY RADAKOVICH: Can we have a picture the overhead picture, can you bring that up again? No the overhead picture of the park itself.

SUE BROWN: Of the park itself

DANNY RADAKOVICH: You can't do that on the (inaudible)

JOHN MURRY: No

DANNY RADAKOVICH: Ok . Why don't you come over here Lee and kind of show these folks where the full sized are and where the small ones are.

LEE EDDENS: Ok in the -- this is 29th Street N, it is actually 20 -- north and south here is actually 28 street north. All the frontage trailers from 7th through this area -- that is 727 those are all, including a duplex at 725 28th Street N, ah ah on down at 803 there is two short trailers in existence when I bought the mobile home park . On 803 28th street north there is two long trailers ah and one short space , one short space trailer and

SUE BROWN: You have to point at those for us. I don't know the address well enough yet

LEE EDDENS: Here is 803 28th Street N. All the trailers except the 2 facing ah 28th Street N and 821 28th Street N are large mobile homes. Coming back to ah 719 28th street north there is ah 2 mobile homes spaces ah, 28th Street N there behind them there is 3 spaces for short RVs ah in this area another one at number 8 I can't remember the -- ya number 8 on 719 28th Street N. Also the units straight across from them on unit 5, 7 and 9 are all longer trailers . Also down the alley on 719 28th Street N all the trailers there are in excess of 40 feet.

DANNY RADAKOVICH: Lee, I guess the point I am making is these short spaces are mixed in with the others --

LEE EDDENS: Right

DANNY RADAKOVICH: -- so that when a short one empties out you can't conveniently make it into a bigger space. There is no room to do that.

LEE EDDENS: That is correct.

DANNY RADAKOVICH: So that if these get vacated unless you just realign the whole park you just stuck with a whole lot of empty ground. Is that fair?

LEE EDDENS: That is how it was designed originally.

DANNY RADAKOVICH: So if that helps any understanding of what's going on

SUE BROWN: Yes it does. Thank you. Hum this is a toughfy . I have to agree with Commissioner Wing, that you know the general intent of the law to begin with, the change, was to basically move out RV's and what are not considered Class A and Class B mobile homes out of these parks. That was the long term goal. Ah, the main reason was safety . Was long term living in something that does not have the proper ingress and egress for fire and those type of things was why the main purpose was why the Class A and Class B are being required. Commissioners we have a decision to make. Commissioner Wing.

SUSAN WING: We have to determine whether the Community Development Department applied the code correctly.

SUE BROWN: Correct.

SUSAN WING: It appears to me they did. They applied the code correctly, whether or not the code, in the big skeam, is correct is a different issue, but we are not here to determine that. But they did apply it correctly the way it is written I think we should deny the appeal.

SUE BROWN: Do we have a second?

SUE SOMERS: I seconded

SUE BROWN: We have a second. Commissioner Wing is correct, our job here is to determine whether or not the Community Development Department followed the rules, ah and their interpretation of the rules. Ah, any other comments? Any other suggestions from Commissioners. Very well. We have a motion on the table to deny the appeal, Al those in favor say ay.

EVERYONE says ay

SUE BROWN: Opposed? Abstention. The appeal is unfortunately denied. Ah, Jamie can they appeal to City Council on an administrative decision.

JAMIE SHROPSHIRE: Sure

SUE BROWN: Yes you can, so you can appeal to the City Council

DANNY RADAKOVICH: Does the fifteen days start today or are you going to issue something in writing?

SUE BROWN: No those are in writing. Ah, the findings of fact and conclusions of law they are reviewed by the Commission and then sent back to Jamie and then when those

are signed she will get a copy to you so that you know what the date is because when I sign them I date them so –

DANNY RADAKOVICH: The reason I ask is I will be in China from the 21st through the 31st of March so do you think I'll see it before I leave?

SUE BROWN: I can't say.

DANNY RADAKOVICH: I am not saying I want - I'm just saying, I'm just trying to do some planning.

SUE BROWN: Ah, I believe you can go ahead and start the appeal process now before you leave town so that it's taken care of prior to your leaving town.

DANNY RADAKOVICH: Alright, ok, thanks.

Addtl. info. for 04/15/08 Cncl. agenda

CITY OF LEWISTON
04/15/08 K. Kuchmak

LAW OFFICES OF

Danny J. Radakovich

Danny J. Radakovich
Attorney at Law

1624 G Street
Lewiston, ID 83501
(208) 746-8162
FAX: (208) 746-4672

April 15, 2008

City of Lewiston
Attn: Kari Kuchmak, Acting City Clerk
P.O. Box 617
Lewiston, ID 83501

RE: LEE EDDINS APPEAL

Dear Ms. Kuchmak:

Enclosed please find the original of Lee Eddins' appeal to the Lewiston City Council of the denial of his appeal relative to his property in North Lewiston. I believe this matter bears Action #AP-1-08. Also enclosed please find my check number 10811 in the amount of \$60.00 representing payment of what I am told is the necessary appeal fee.

Please advise when this will come on for hearing before the council. I would prefer that the hearing be at least one (1) month hence for the simple reason that I will need to do considerable research before that time.

Please contact me immediately if you believe there is anything further I need to do to perfect Mr. Eddins' appeal to the City Council.

Thank you for your courtesy.

Sincerely,


Danny J. Radakovich

DJR:me
cc: Lee Eddins



Case number: AP- 1-08
Hearing Date: 03/12/08

NOTICE OF APPEAL TO LEWISTON CITY COUNCIL

By submitting this appeal to the City of Lewiston, you are entering a quasi-judicial process. At such, you must not discuss the application with any member of the Lewiston City Council outside of the public hearing at which this matter will be heard.

APPELLANT INFORMATION

Name of Appellant: LEE EDDINS

Mailing Address: C/O DANNY J. RADAKOVICH, 1624 G STREET, LEWISTON, ID
83501

Daytime Telephone Number: (208) 746-8162

Site of Appeal: 719, 727, 803, & 805 28TH STREET N., LEWISTON, IDAHO

This appeal is filed with the City Clerk on the Decision and/or Ruling of the Lewiston Planning and Zoning Commission on the following case: AP-1-08

The Findings of Fact, Conclusions of Law and Decision was approved on: 03/31/08

REASON FOR APPEAL. MR. EDDINS USE IN QUESTION IS GRANDFATHERED AND OF LONG STANDING. EITHER IT MUST BE ALLOWED TO CONTINUE OR HE MUST BE COMPENSATED FOR LOSS OF VALUE AS A RESULT OF THE ZONING LAW CHANGES.

[Signature] (date) 04/15/08
Signature of Appellant or Appellant's Attorney

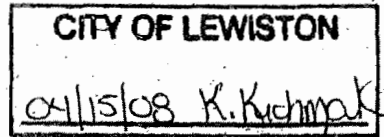
[Signature] (date) 04/15/08
Received by City Clerk

____ (date) _____
Received by City Council

____ (date) _____
City Council Public Hearing

____ (date) _____
City Council Decision

Addtl. info. for 04/15/08 Cncl. agenda



LAW OFFICES OF

Danny J. Radakovich

Danny J. Radakovich
Attorney at Law

1624 G Street
Lewiston, ID 83501
(208) 746-8162
FAX: (208) 746-4672

April 15, 2008

City of Lewiston
Attn: Kari Kuchmak, Acting City Clerk
P.O. Box 617
Lewiston, ID 83501

RE: LEE EDDINS APPEAL

Dear Ms. Kuchmak:

Enclosed please find the original of Lee Eddins' appeal to the Lewiston City Council of the denial of his appeal relative to his property in North Lewiston. I believe this matter bears Action #AP-1-08. Also enclosed please find my check number 10811 in the amount of \$60.00 representing payment of what I am told is the necessary appeal fee.

Please advise when this will come on for hearing before the council. I would prefer that the hearing be at least one (1) month hence for the simple reason that I will need to do considerable research before that time.

Please contact me immediately if you believe there is anything further I need to do to perfect Mr. Eddins' appeal to the City Council.

Thank you for your courtesy.

Sincerely,


Danny J. Radakovich

DJR:me
cc: Lee Eddins



Case number: AP- 1-08
Hearing Date: 03/12/08

NOTICE OF APPEAL TO LEWISTON CITY COUNCIL

By submitting this appeal to the City of Lewiston, you are entering a quasi-judicial process. As such, you must not discuss the application with any member of the Lewiston City Council outside of the public hearing at which this matter will be heard.

APPELLANT INFORMATION

Name of Appellant: LEE EDDINS

Mailing Address: C/O DANNY J. RADAKOVICH, 1624 G STREET, LEWISTON, ID 83501

Daytime Telephone Number: (208) 746-8162

Site of Appeal: 719, 727, 803, & 805 28TH STREET N., LEWISTON, IDAHO

This appeal is filed with the City Clerk on the Decision and/or Ruling of the Lewiston Planning and Zoning Commission on the following case: AP-1-08

The Findings of Fact, Conclusions of Law and Decision was approved on: 03/31/08

REASON FOR APPEAL. MR. EDDINS USE IN QUESTION IS GRANDFATHERED AND OF LONG STANDING. EITHER IT MUST BE ALLOWED TO CONTINUE OR HE MUST BE COMPENSATED FOR LOSS OF VALUE AS A RESULT OF THE ZONING LAW CHANGES.

[Signature] (date) 04/15/08
Signature of Appellant or Appellant's Attorney

[Signature: Kay Q. Kuchmak] (date) 04/15/08
Received by City Clerk

____ (date) _____
Received by City Council

____ (date) _____
City Council Public Hearing

____ (date) _____
City Council Decision

AP-1-08

EDDINS
719, 727, 803, AND 805 28TH STREET N

 **DRAFT**

No one spoke in favor of or opposed to the variance request. The public hearing was closed. Mr. Murray gave the staff recommendation to deny V-3-08 because there was no hardship and the second home may remain as non-conforming.

Commissioner Somers moved to deny V-3-08 and Commissioner Aram seconded the motion. The motion was unanimously approved.

- B. AP-1-08 – EDDINS – 719, 727, 803, AND 805 28TH STREET N-** An appeal of an administrative decision that additional recreational vehicles may not be located within the existing manufactured home park at the subject properties.

Mr. Murray gave the staff report stating that the appellant, Mr. Eddins, was requesting that the Commission reverse a decision by the Community Development department to not allow the placement of a recreational vehicle (RV) in his manufactured home park located on 28th Street North. Mr. Murray stated that the staff denied the permit to place a RV in the park because Section 23-14(b) of the recently adopted manufactured home park regulations specifically prohibits them. Mr. Murray gave a historical account of manufactured home park regulations, including historical revisions to the code, as they relate to RVs. The historical account spanned the years 1970 to the present. Mr. Murray also stated that Eddins did not have an active business license from 2003 to the present.

Danny Radakovich, 1624 G Street, an attorney representing the appellant, Lee Eddins, stated that Mr. Eddins park was far older than 1970, and predated the zoning regulations enumerated by Mr. Murray. The park has always been a mixture of less than normal sized mobile homes and RV units. In this case, Mr. Eddins' tenant pulled out an RV and replaced it with a newer one. Mr. Radakovich contended that the space in question could be deemed non-conforming and they felt the permit should be approved because it was a grandfathered use. Mr. Eddins was not adding anything, changing the space, or expanding a non-conforming use.

No one spoke in favor of or opposed to the appeal and the public hearing was closed.

Commissioner Aram asked Mr. Murray if there was anything in the 1975 code that addressed pre-existing units or parks. Mr. Murray stated that the 1975 code allowed for existing mobile home parks to be able to continue, "...but shall not be altered so as to deviate below the minimum standards..." He added that the 1975 code did not specifically address recreational vehicles in mobile home parks. It wasn't until 1984 that separate classes were defined for manufactured homes, including RVs.

Commissioner Brown stated that when the Commission sent the manufactured home park revisions to the Council, they did not include provisions for grandfathered uses. The Council remanded the draft back to the Commission to look at the regulations for parks

that had a mixture of single wides and RV's, and what would be required if one were upgraded. She stated they did not consider that one would be upgraded and still not be in compliance. She thought that the Commission needed to clarify what the intent was. She thought that what was different in this case was that the tenant intended to change like-for-like. Commissioner Wing stated that she thought the intent of the Commission was to not allow the replacement of a substandard unit with another one and any upgrade would have to be a Class A or Class B manufactured home. She felt the intent was to phase the older trailers and RV's out over time.

Commissioner Brown asked Mr. Eddins if any of his spaces would be big enough for a Class A or Class B manufactured home. Mr. Eddins stated that there were 35 full size spaces and 10 or 12 small spaces. These spaces were all full and existed when he purchased the park. He stated the smaller spaces would not be big enough for a 40 foot trailer. He added that if he could not use the smaller spaces, then he would be paying taxes and water, sewer, and garbage on property that he cannot use to the fullest extent possible.

Commissioner Wing stated that she felt the Community Development staff applied the code correctly in this appeal. She moved to deny AP-1-08 and Commissioner Somers seconded the motion. The motion was unanimously approved.

- C. ZA-2-08 – DOWNTOWN PARKING** – A request to amend Lewiston City Code Sections 37-145, 37-146, and 37-149 revising regulations for the provision of off street parking in the Central Business District and providing an effective date.

Ms. Von Tersch stated that, ZA-2-08, a request to amend the downtown parking regulations, was a result of the parking management plan and the Downtown Parking Committee. The Committee recommended expanding the Central Business Parking District (parking exempt area) to include properties between the Levee Bypass and the north and west borders of the existing district. A map was presented to show the new and existing boundaries. The other recommendation was to revise the requirement for residential parking in the downtown district. The Committee conducted a survey of downtown businesses and property owners to solicit their views on parking issues. The survey found that 89% of the respondents felt there should be off-street parking required for residential uses. The Downtown Committee recommended that there be 1 space per multifamily unit, 40% of the number of beds plus a manager space for a dormitory or rooming house and 1-space per hotel/motel room. Ms. Von Tersch explained that these ratios were approximately half of what is required in the rest of the City, and the required parking had to be provided within 1,320 feet from the building or use.

Commissioner Brown asked if the revisions allow for shared parking. Ms. Von Tersch stated that shared parking was looked at in the past, especially as a way to encourage development, but shared parking required a certain amount of management that would

February 26, 2008

STAFF REPORT

AP-1-08

 **COPY**

Appellant: Lee Eddins
23586 Big Sky Lane
PO Box 2072
Lewiston, ID 83501

Subject Property: 719 28th Street N, Tax Parcel RPL15400030110 and
RPL1540003008A
727 28th Street N, Tax Parcel RPL1540003008B and
RPL15400030100
803 28th Street N, Tax Parcel RPL15400020130 and
RPL15400020140
805 28th Street N, Tax Parcel RPL15400020120

Background:

On January 22, 2008 planning staff denied a "placement" permit for a recreational vehicle within an established manufactured home park at 727 28th Street N. The reason for denial stated in a letter dated January 23 was:

"The Community Development Department does not issue permits for placement of individual recreational vehicles. Rather, the department licenses recreational vehicle parks. (The) operations at 719 to 803 28th Street N are not licensed as recreational vehicle parks, and do not meet the current requirements to be licensed as such."

The letter explaining the denial further stated, "(The Community Development Department is) writing to inform you that you may not place additional recreational vehicles within these manufactured home parks."

Mr. Lee Eddins, owner of the park, has filed an appeal, and states that the placement of recreational vehicles is "grandfathered" into his park.

Nature of the Appeal:

The appellant is appealing an administrative decision of the Community Development Department to deny a permit. Lewiston Municipal Code, Section

37-192, provides for appeals of administrative decisions of the Community Development Department:

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

(a) It shall be the duty of the community development department to enforce the provisions of this chapter...

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

Discussion and Code References

In 2006, the City of Lewiston adopted new regulations for manufactured home parks and recreational vehicle parks. Those regulations can be found in Chapter 23 of the Lewiston Municipal Code. Chapter 23 is administered by the Community Development Department (Section 23-3) and the Planning and Zoning Commission (Section 23-9).

The new regulations do not allow the placement of recreational vehicles in manufactured home parks (Section 23-14(b)). Recreational vehicles are defined in Section 23-2 as, "A vehicular type unit primarily designed as temporary living quarters for recreational, camping or travel use, which either has its own motive power or is mounted on or drawn by another vehicle. The basic entities are travel trailer, camping trailer, fifth-wheel camper and motor home." Recreational vehicles are defined separately and distinctly from manufactured homes. Section 23-14(b) states:

"Unit types permitted. Manufactured home parks shall contain a minimum of seventy-five (75) percent Class A manufactured homes. Up to twenty-five (25) percent of a park's total units may be Class B manufactured homes. A conditional use permit must be obtained in order to increase the ratio of Class B manufactured homes. Class C manufactured homes shall not be permitted."

The rules and regulations applying to manufactured home parks provide for the "grandfathering" of parks existing prior to 2006. Section 23-17 provides for the continuation of non-conforming manufactured home parks, exempting them from requirements of Section 23-14, *except that*:

"(d)...Replacement units in manufactured home parks developed prior to the effective date may be Class A or Class B units, except that the mix of Class A and B units existing as of the effective date may not move further from compliance with section 23-14(b)."

All new units or any unit change-outs placed within parks must meet the requirements of Section 23-14(b) and the manufactured home construction and safety standards of the Department of Housing and Urban Development.

Section 23-4 states:

"(a) No person shall operate or maintain upon any property owned or controlled by him a manufactured home park within the city without having first secured a city business license. Such city business license shall not be granted without the annual approval of the community development department."

Mr. Eddins has owned and operated the manufactured home park(s) at the subject addresses since 2000. He has not renewed his business license since 2002.

A manufactured home park is differentiated from a recreational vehicle park in Chapter 23. Section 23-2 states that a manufactured home park is, "A tract of land under unified ownership developed for the purpose of providing individual rental spaces for the placement of manufactured homes within its boundaries." Section 23-2 states that a recreational vehicle park is, "A tract of land under unified ownership upon which two (2) or more recreational vehicle sites are located, established, or maintained for occupancy as temporary living quarters."

Manufactured home parks and recreational vehicle parks are separate entities and have been described separately since at least 1972. The code in effect in 1972 described both a "mobile home park" and a "tourist facility", and stated, "Not more than 10 percent of the lots or spaces in a mobile home park may be utilized for tourist facilities." Subsequent changes to the code appear to intend some exclusivity to the mobile home park designation. The 1974 code states, "Tourist facility, mobile home, mobile home park, ... and recreational vehicle shall have the definitions set forth in Section 34-1 of this code."¹ The code in effect in 1975 states, "Mobile home parks in existence as of the effective date hereof shall be permitted to continue...but shall not be altered so as to deviate below the minimum standards...". There is no provision in the 1975 code for the placement of recreational vehicles in a mobile home park.

Past code references indicate the ability to operate a combination of manufactured home park and "tourist facility". However, since 1976 a license to operate a manufactured home park has been required. As shown above, codes have differentiated between manufactured home parks and tourist facilities (now, recreational vehicle parks) since 1972. A license to operate a manufactured home park is not a *de facto* license to operate a tourist facility/recreational vehicle park. If Mr. Eddins desires to operate a recreational vehicle park, he may

¹ Lewiston Municipal Code, 1972, Section 34-1 defines a "Mobile Home - single wide", a "Mobile Home - double wide", a "Mobile Home Park", a "Recreational Vehicle", and a "Tourist Facility".

apply for that license separately from the manufactured home park license. However, should he apply for the recreational vehicle park license, standards in place in the current code will apply.

To the extent each unit in the park was legally established, it may remain. However, no unit that was illegal at the time of placement may be "grandfathered". New units must comply with code in effect at the time of placement.

Recommendation:

Staff does not normally make recommendations on appeals. The Planning and Zoning Commission should use the following criteria to evaluate the appeal:

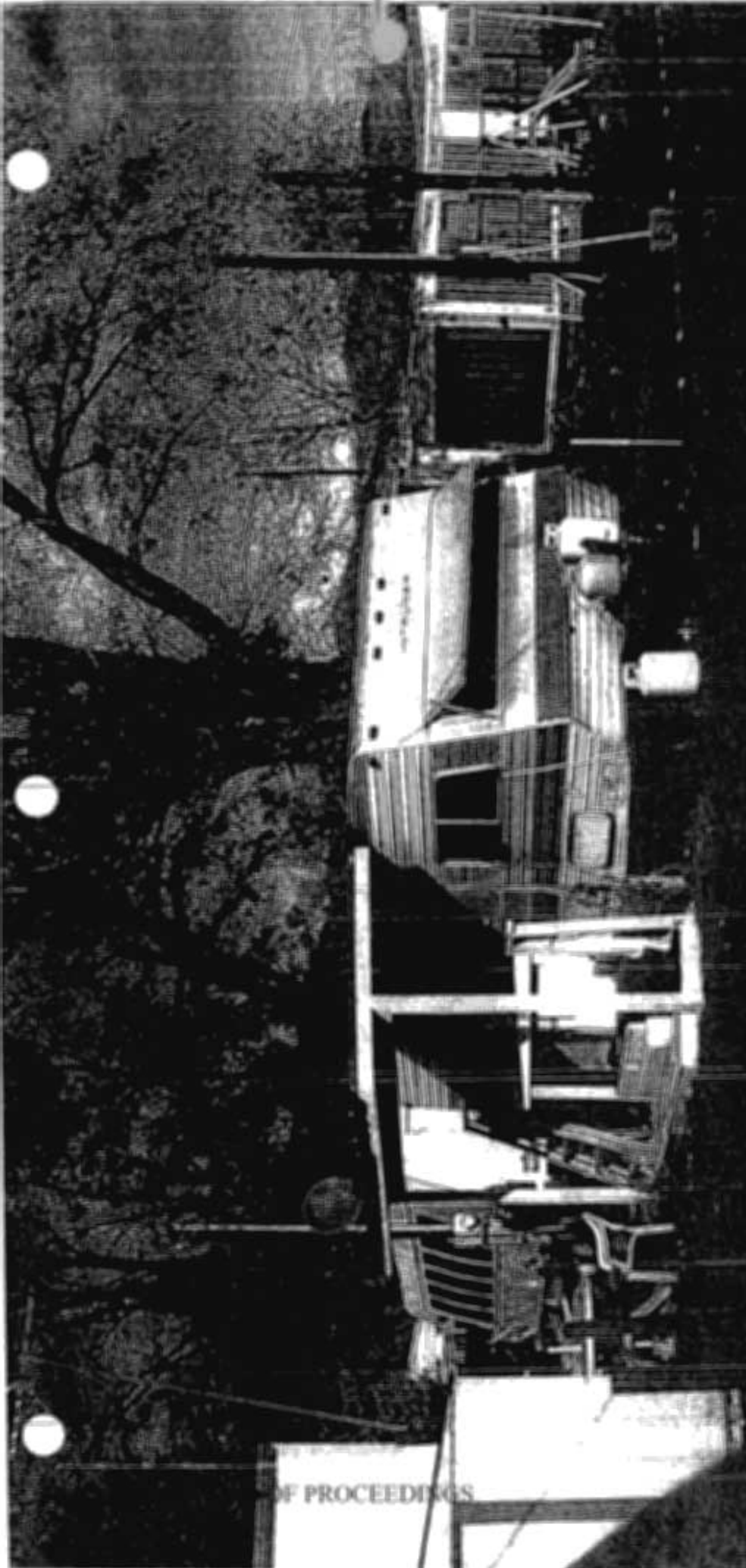
1. Did the Community Development Department have the authority to make the determination?
2. Was the determination correct?

Contact

John Murray
Planner, Community Development
746-1318, x250
jmurray@cityoflewiston.org

“Grandfathered” Units

- Must have been legal at the time of installation.
- May not “grandfather” an illegal use.
- All new units must meet the code in effect at the time of placement.
- RVs excluded from placement in MFH parks.

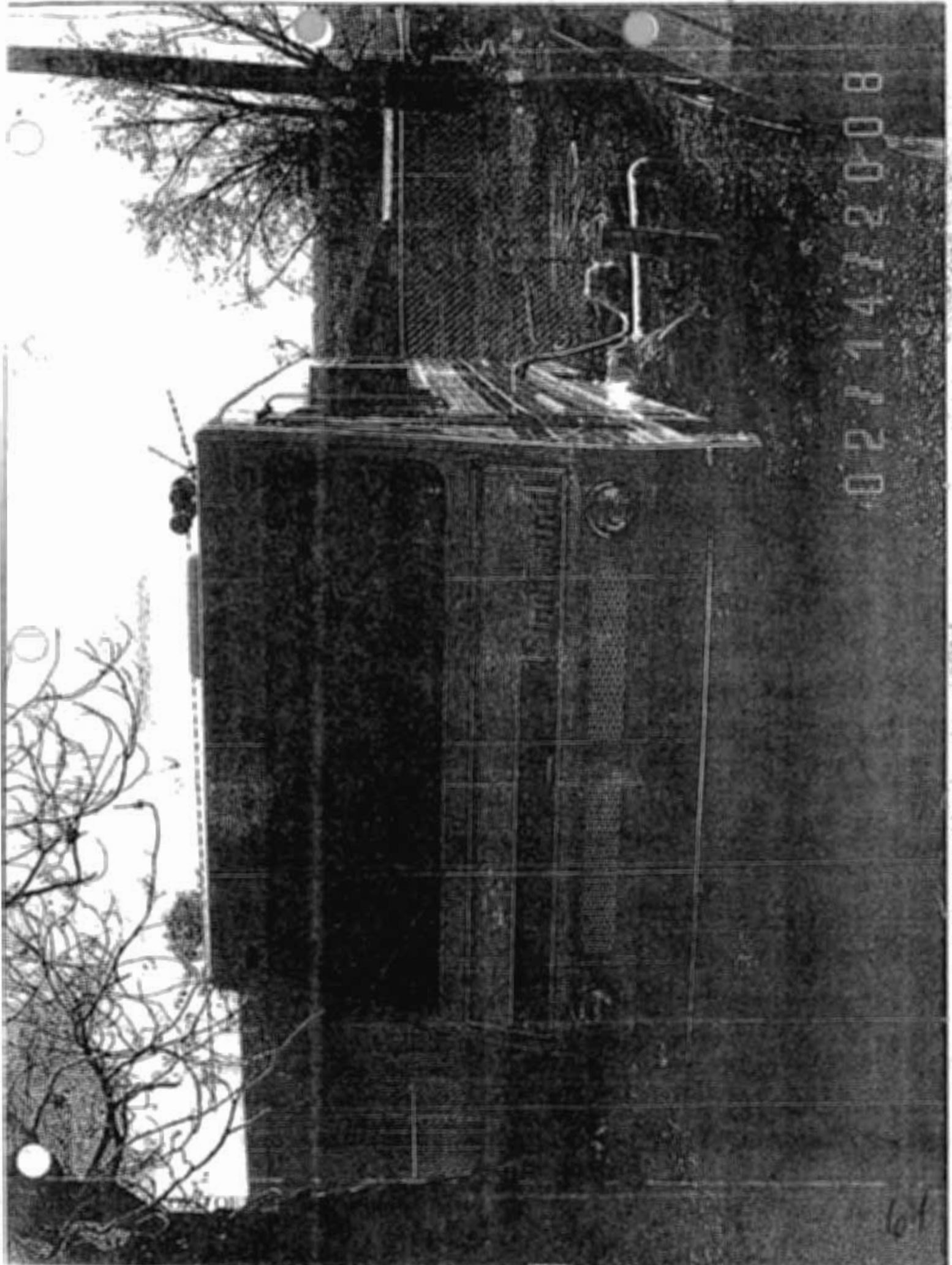


02/14/2008

OF PROCEEDINGS

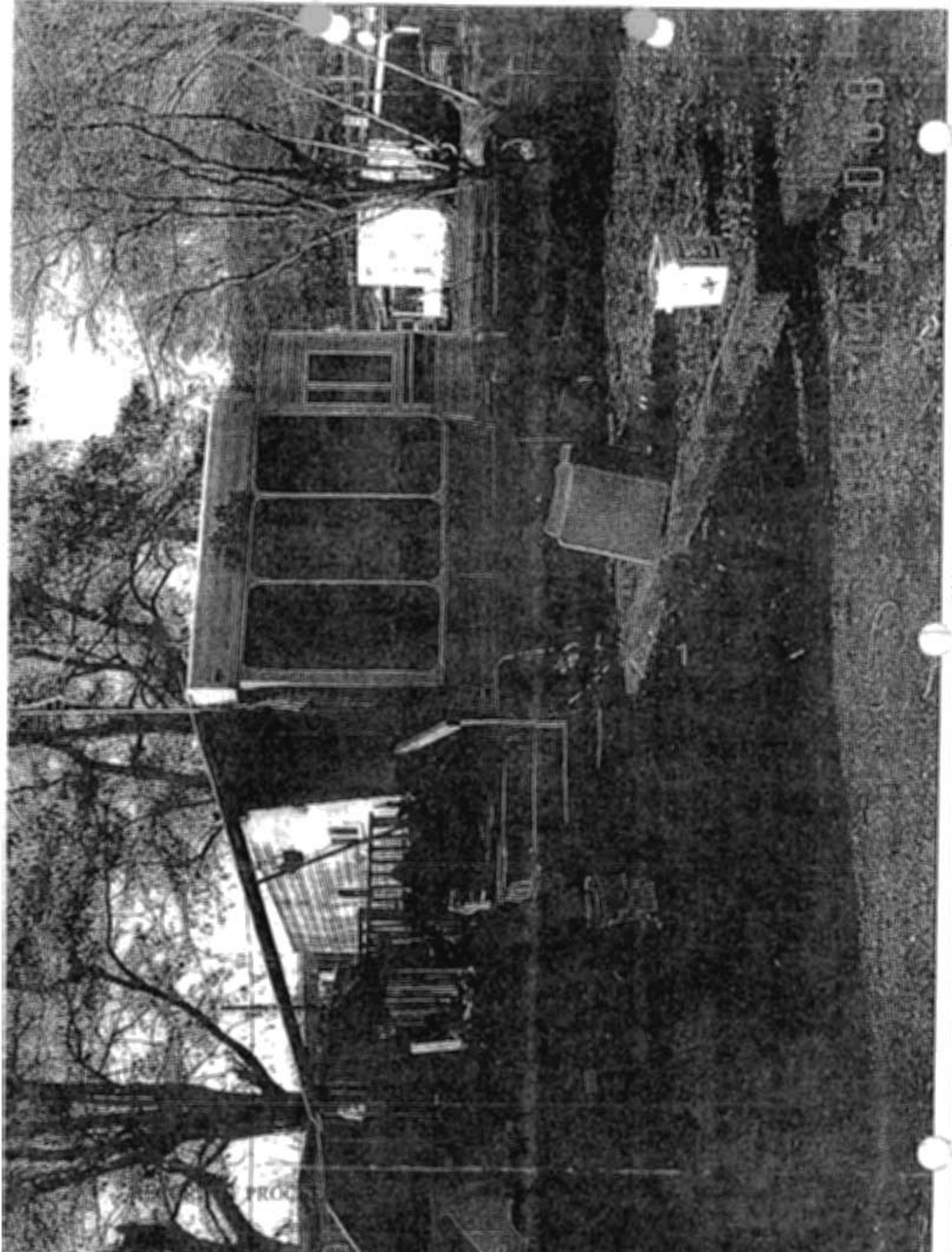
02742008





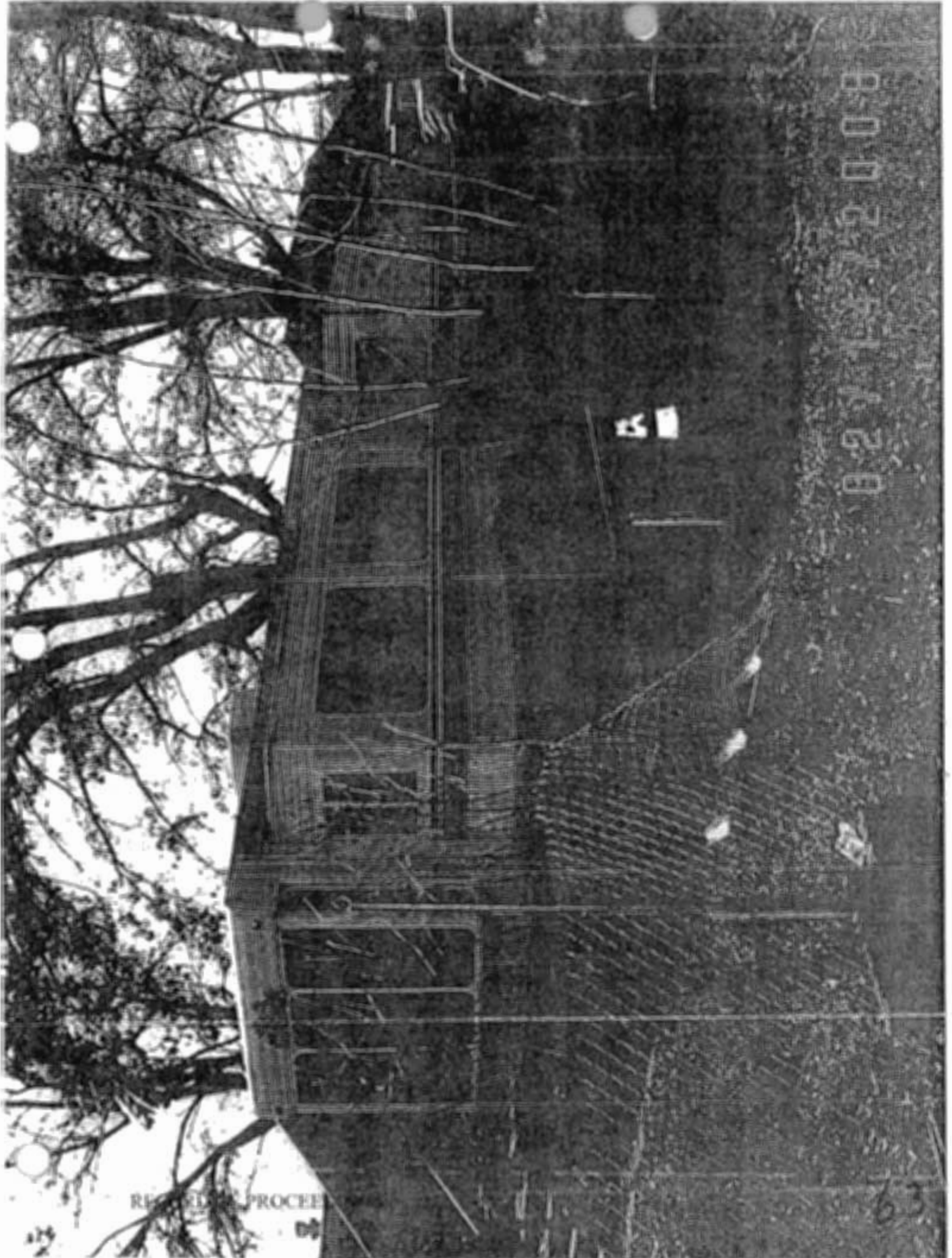
0211412008

61



1980 FEB 11 12:00 PM

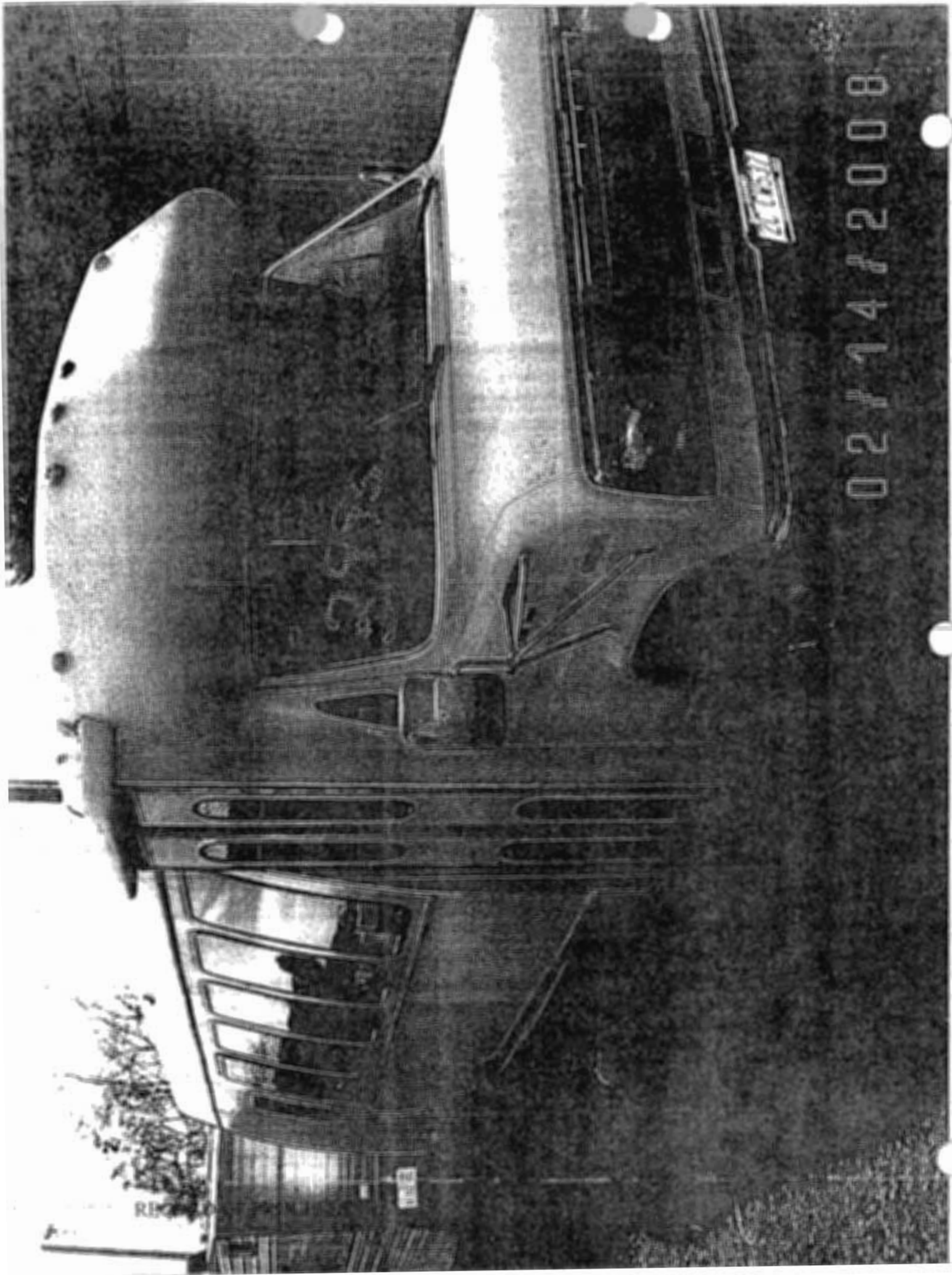
PROG



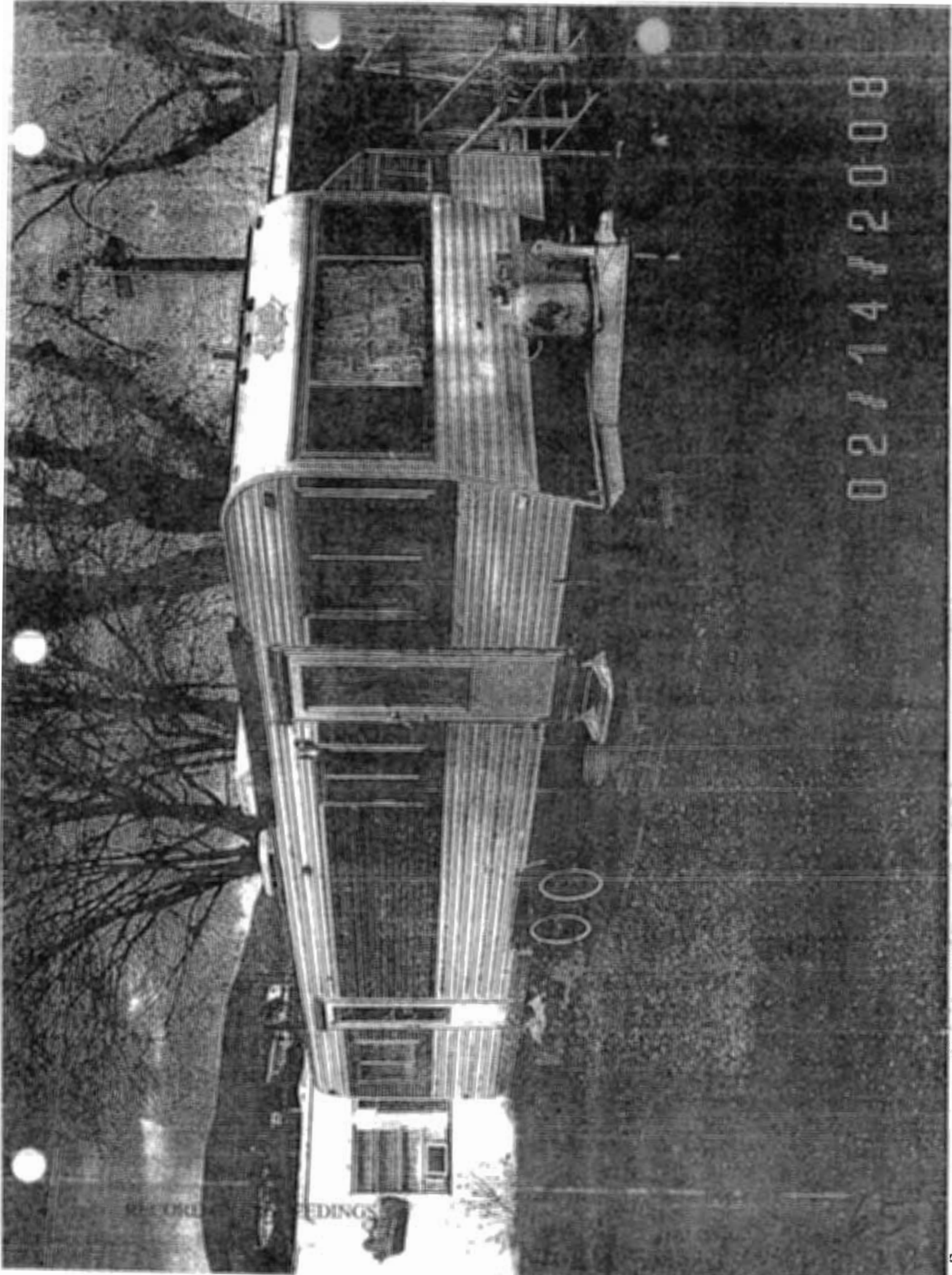
02/14/2008

RECEIVED PROCEED

63



02#14#2008



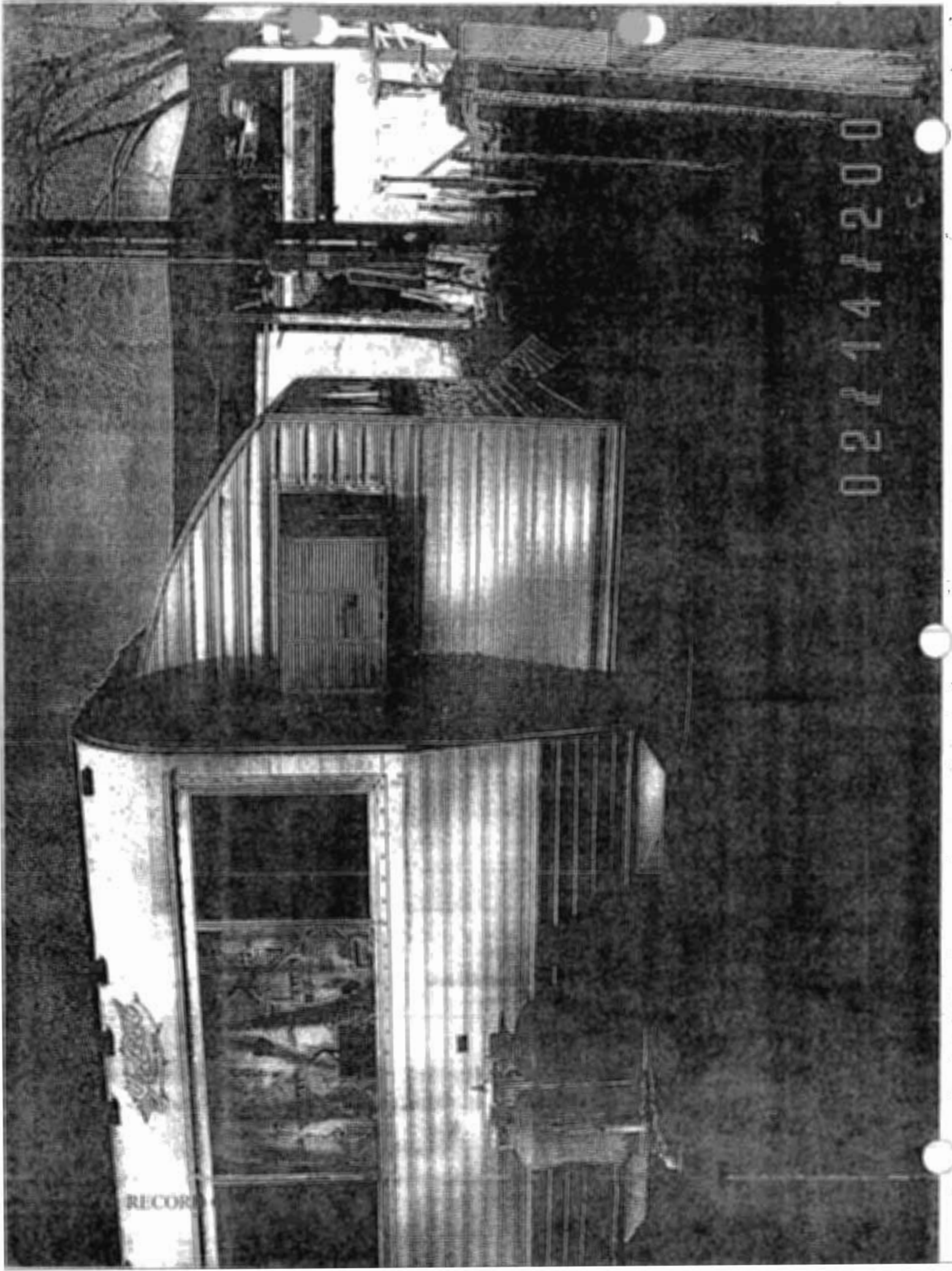
0211412008

00

RECORD

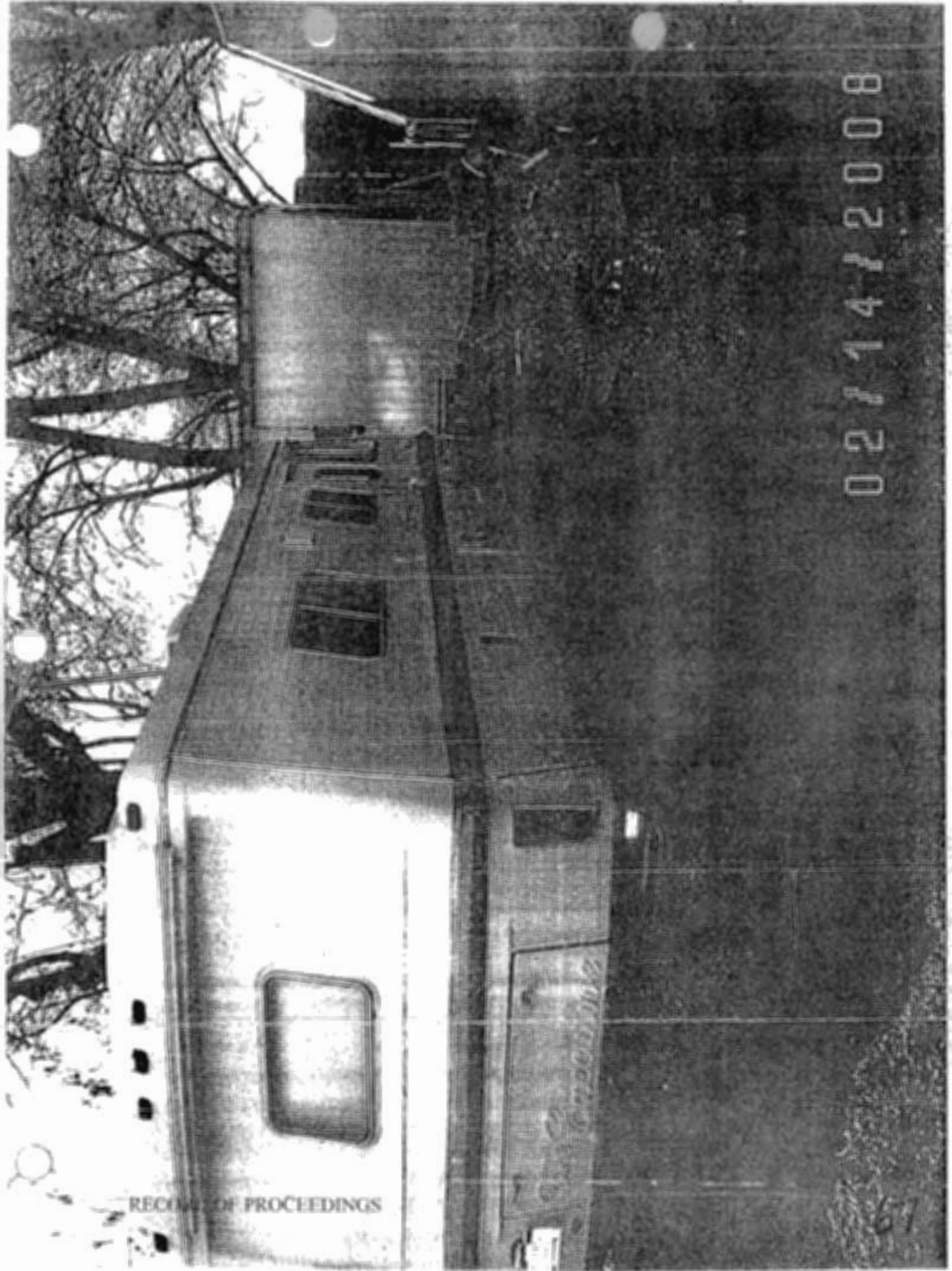
EDINGS

65



022147200

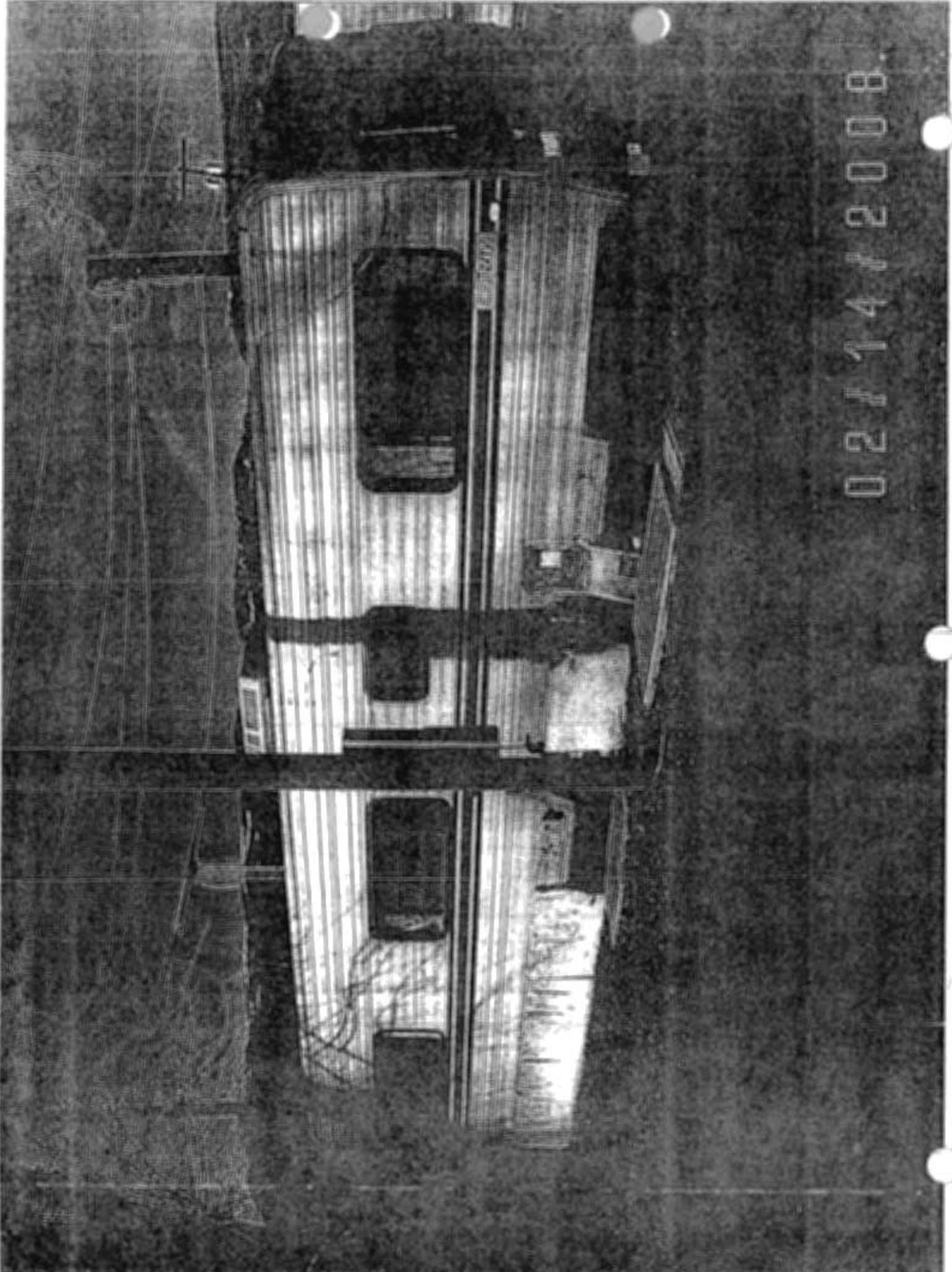
RECORD



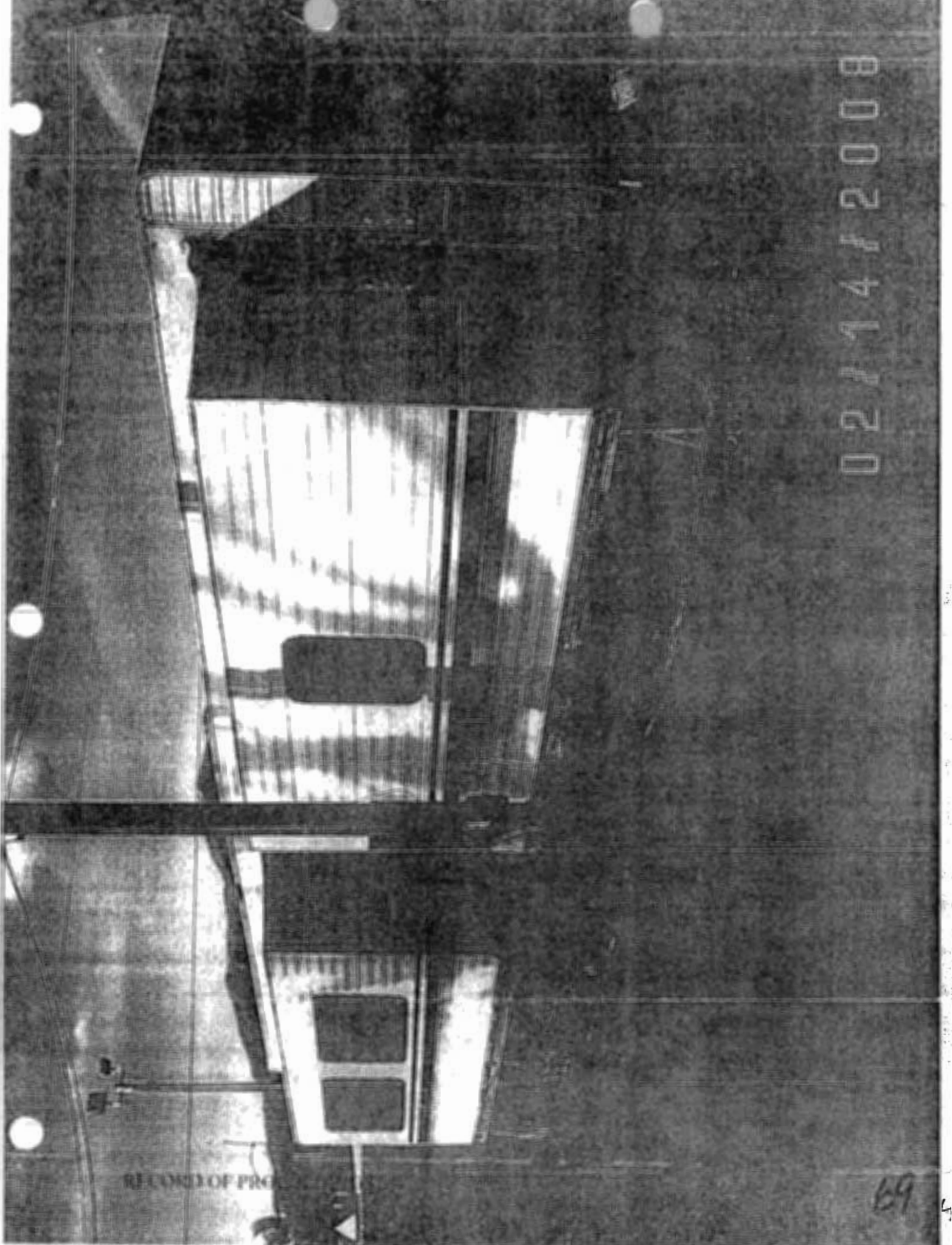
0281472008

RECORD OF PROCEEDINGS

67



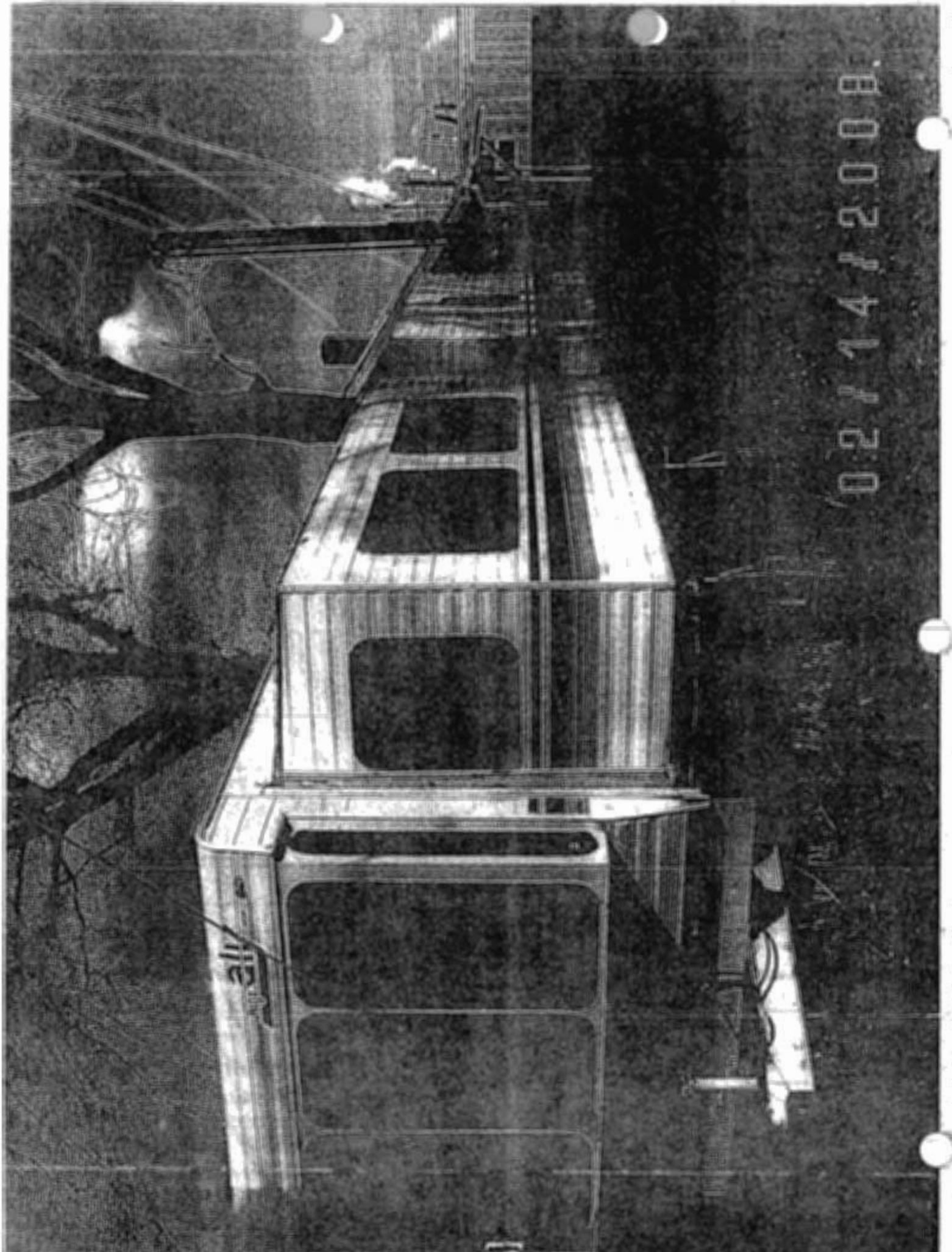
0271472008



0271472008

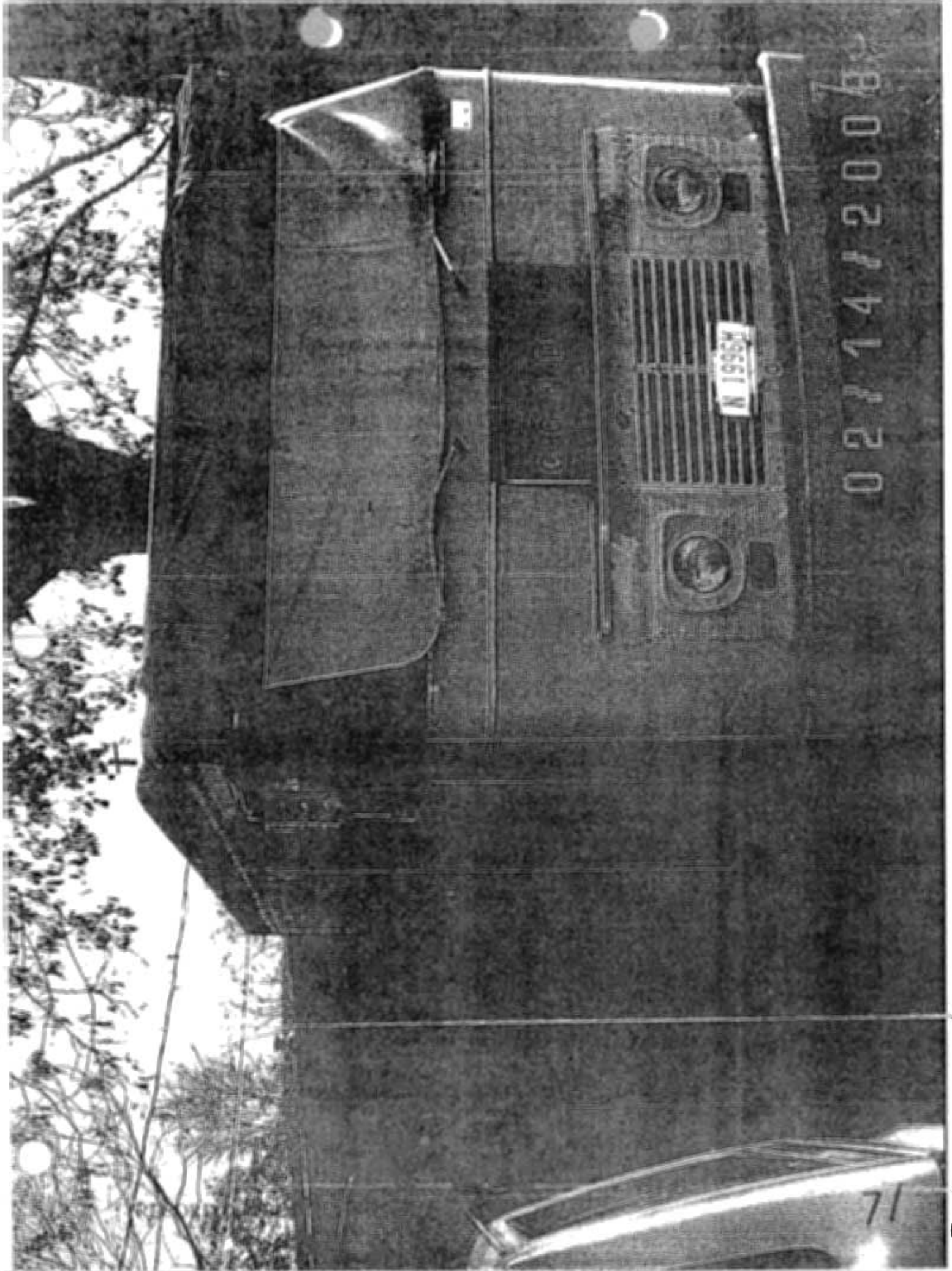
RECORD OF PRO

69



0271472008

all



027147200A

N 19984

CHEVROLET

71

4

**BEFORE THE PLANNING AND ZONING COMMISSION
OF THE CITY OF LEWISTON**

IN RE:)	
)	
AP-1-08,	)	FINDINGS OF FACT
	)	CONCLUSIONS OF LAW
LEE EDDINS,	)	AND DECISION
)	
Appellant.)	
_____)	

This matter having come before the Planning and Zoning Commission of the City of Lewiston, Idaho, on March 12, 2008, for public hearing pursuant to public notice as required by law, on an appeal of an administrative determination that additional recreational vehicles may not be located within the existing manufactured home park at 719, 727, 803 and 805 28th Street North, Lewiston, pursuant to Lewiston City Codes 23-2, 23-12, 23-14, and 23-17 and the Commission having heard the staff report and having heard testimony from the appellant and their being no other person speaking either in support or opposition to the appeal, and the Commission being fully advised in the matter, issues the following:

FINDINGS OF FACT

1. The appellant owns a manufactured home park at 719, 727, 803 and 805 28th Street North, Lewiston, Idaho.
2. On January 22, 2008, Community Development staff denied the appellant's request for a permit to place a recreational vehicle within an established manufactured home park.
3. One of the appellant's renters wishes to replace an existing recreational vehicle with another recreational vehicle.
4. Recent revisions of the code only allow for the placement of Class A and Class B manufactured homes when an existing unit is replaced.

5. The City Code has differentiated between manufactured home parks and recreational vehicle parks (formerly "tourist facilities") since 1972.

6. Recreational vehicle parks and manufactured home parks are defined differently by the City Code and have different code provisions governing those different uses.

7. The appellant has operated a manufactured home park(s) at the subject addresses since 2000.

8. It is the duty of the Community Development Department to enforce the provisions of the code sections which are relevant to this appeal.

9. All new or replacement units placed within the manufactured home park must also meet the safety and construction requirements of the Department of Housing and Urban Development.

Based on the foregoing **FINDINGS OF FACT**, the Lewiston Planning and Zoning Commission hereby make the following:

CONCLUSIONS OF LAW

1. Lewiston City Code Section 23-14(b) only permits Class A and Class B manufactured homes in a manufactured home park. Class C manufactured homes are specifically prohibited.

2. Lewiston City Code Section 23-17 exempts manufactured home parks existing prior to 2006 from the new regulations with the specific exception that replacement units must conform to the new provisions specifying type and mix of Class A and Class B units.

3. The proposed replacement unit is not a Class A or Class B manufactured home.

4. The proposed replacement unit does not meet the safety and construction requirements of the Department of Housing and Urban Development for a manufactured home

Based on the forgoing **CONCLUSIONS OF LAW**, the Lewiston Planning and Zoning Commission hereby enters the following:

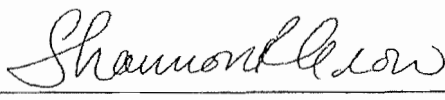
DECISION

1. The decision of the Community Development denying a permit for the placement of a recreational vehicle at the appellant's manufactured home park is **UPHELD**.

DATED this 31st day of March, 2008.

**LEWISTON PLANNING AND
ZONING COMMISSION**


Chair

ATTEST: 
Secretary

April 28, 2008

THE CITY COUNCIL OF THE CITY OF LEWISTON, IDAHO, met in Regular Session Monday, April 28, 2008, on the Lewis Clark State College Campus, in the Library Building, Telecommunications Classroom. Mayor Havens called the meeting to order at 6:00 p.m.

I. CALL TO ORDER & ROLL CALL

Councilmembers Present: Havens; Bush; Carlson; Currin; Kleeburg; Kluss.

Councilmembers Absent/Excused: Ohrtman.

II. PLEDGE OF ALLEGIANCE

Mayor Havens led the recital of the Pledge of Allegiance.

III. CITIZEN COMMENTS: *Provides an opportunity for citizens to address the Council on agenda items or other items they wish to bring to the attention of the Council. Citizens are encouraged to discuss operational issues in advance with the City Manager. In consideration of others wishing to speak, please limit your remarks to three minutes.*

Ms. Sonja Schreiber, Emergency Medical Services Advisory Board member, reported that on April 25, 2008, the EMSAB learned of a new service available from the Idaho EMS Bureau that is free of charge to cities and counties. The organization provides this service to its stakeholders in order to encourage proactive planning and EMS system development which facilitates high quality sustainable EMS services for the citizens of Idaho. Mr. Dean Neufeld will be briefing the Nez Perce County Commissioners tomorrow on a county-wide assessment. Ms. Schreiber explained that the EMSAB felt it was important for the Council to receive the information as well, as a community-wide EMS assessment will assist the Board in providing recommendations to the City Council regarding performance standards. She indicated that Mr. Newfeld was present to provide a brief overview. Mayor Havens suggested that it was probably not the appropriate time for a presentation from Mr. Newfeld as the Council has not yet had an opportunity to review the information provided. He indicated that this item will be addressed at a future meeting.

Mr. Dave Stradley, Vice President, Local 1773, on behalf of himself and Lewiston Firefighters, expressed gratitude to the Council for its willingness to lift the moratorium on new hires and assess staffing needs. Lewiston continues to grow with many new businesses and new or expanded care facilities, all of which increase the tax base, as well as traffic, within the City. As the tax base

increases and people come to Lewiston to utilize businesses, more sales tax revenue is realized. These increases in revenue, combined with the moratorium on hiring, have resulted in substantial revenue reserves. Mr. Stradley reported that a recent study showed that Lewiston's unreserved fund balance is approximately \$4.2 million, or 27.7 percent. The recommended high balance for a City the size of Lewiston is about 12 percent. He suggested that the difference be used for staffing needs.

IV. PUBLIC HEARINGS AND PRESENTATIONS

A. *PROCLAMATION: MAY 18-24, 2008 - "NATIONAL EMS WEEK"*

Mayor Havens read aloud the Proclamation for National EMS Week and presented it to Fire Chief Gordy Gregg. Mr. Gregg reported that the Lewiston Fire Department has been providing EMS service in the form of ambulance transport to valley residents since 1961. In 1980, the Department responded to 1,885 EMS calls with 17 personnel per shift, and this past fiscal year, they responded to 6,959 EMS calls with 15 personnel per shift. This represents a 359% increase in call volume. He continued by explaining that ambulance services are provided to many entities, and Lewiston is the only transport service working in those areas. Of the calls performed last year, system users were transported 5,226 times which resulted in \$1.74 million in collected revenues. As the Council is aware, that money is distributed to the General Fund rather than back into the Fire Department budget. After property taxes, ambulance revenues provide the highest monetary contribution to the General Fund. That same \$1.74 million generated has a property tax equivalency that saves the taxpayer 13% in property taxes. This is an essential service that saves taxpayer's money - a win-win for the entire community. Mr. Gregg stated that it is the Council's support of the Fire Department that keeps these essential services moving forward. It is the firefighters and paramedics responding to calls for help that saves lives. And it is the entire system that makes this community such a great place to live!

B. *PUBLIC HEARING: VA-06-07: APPLICANT - KAREN SHAUL: Request for the vacation of all of the 10th Street right-of-way lying south of the south right-of-way line of Idaho Street to its termination at the north right-of-way line on 9th Street Grade.*

Stating it was the time and place advertised for the public hearing regarding VA-06-07, Mayor Havens declared the hearing open and called for a staff report.

Assistant Engineer Macey reported that the applicant is requesting the vacation of all of 10th Street right-of-way lying south of the south right-of-way

line of Idaho Street to its termination at the north right-of-way line of 9th Street Grade. Several months ago the owners of the building and property located at 1002 Idaho Street submitted an application to the City for the improvement of the existing building. The building had sat in disrepair for years, and it was the applicant's wish to renovate. The proposed improvements to the building would require frontage improvements along the existing rights-of-way for both Idaho Street and 10th Street. Mr. Macey explained that during staff's initial review, there were several issues of concern, and therefore it was determined that as an alternative, a right-of-way vacation may be a better option. In an effort to keep the project and the vacation process moving on parallel lines, the City and developer agreed to allow the development process to move forward with the understanding that depending on the outcome from the City Council, different frontage improvements would be required. Mr. Macey noted that it was the recommendation of the Public Works Director that the right-of-way be vacated to be turned into a public easement for the use and maintenance of utilities and adjoining right-of-way of 9th Street Grade.

Mayor Havens called for testimony in support of or against the request.

Mayor Pro Tem Bush indicated that he has had some comment with regard to dust created by the project. Mr. Macey reported that he is aware of this issue and it will need to be resolved.

There being no further discussion, Mayor Havens declared the public hearing closed.

A motion was made by Councilor Currin to approve VA-06-07, reserving the right-of-way as a public utility easement. The motion was seconded by Councilor Kleeburg. *ROLL CALL VOTE: VOTING AYE: Havens; Bush; Carlson; Currin; Kleeburg; Kluss. VOTING NAY: None. Absent/Excused: Ohrtman.*

V. CONSENT AGENDA

Mayor Havens explained that items on the Consent Agenda are considered routine in nature and would be enacted with one motion, unless a Councilor wishes to have an item removed for further discussion. At the request of the applicant, Mr. Havens indicated that Item B, Resolution 2008-29, would be pulled from the Consent Agenda.

There being no further requests for removal, Mayor Pro Tem Bush moved to read the Consent Agenda by title only. The motion was seconded by Councilor Kleeburg. *ROLL CALL VOTE: VOTING AYE: Havens; Bush; Carlson; Currin; Kleeburg; Kluss. VOTING NAY: None. ABSENT/EXCUSED: Ohrtman.*

- A. MEETING MINUTES: MARCH 24 AND APRIL 14, 2008, REGULAR MEETINGS; APRIL 16, 2008, STRATEGIC PLANNING SPECIAL MEETING
- B. AIRPORT ADVISORY COMMISSION RECOMMENDATION: ACCEPTING THE GRASS ROOTS PROPOSAL AND AUTHORIZING STAFF TO NEGOTIATE AGREEMENTS FOR DEVELOPMENT, OPERATIONS AND MAINTENANCE OF A TURF LANDING AREA
- C. ORDINANCE 4506 (SECOND READING): "AN ORDINANCE OF THE CITY OF LEWISTON AMENDING LEWISTON CITY CODE SECTIONS 21-22, 31-6, 32-7, 37-146 AND 37-189; CLARIFYING RECIPIENT OF BUSINESS LICENSE APPLICATIONS, REMOVING FEES FOR SUBDIVISION ACTIVITIES, RIGHT-OF-WAY WORK, PARKING LOTS AND ZONING APPLICATIONS TO BE READOPTED BY RESOLUTION OF THE CITY COUNCIL; ENACTING A NEW SECTION TO BE CODIFIED AS LEWISTON CITY CODE SECTION 10-11.1, PROVIDING FOR LOCAL INTEREST PERMITS AND PROVIDING AN EFFECTIVE DATE"
- D. BID AWARD: LICENSED FIXED FREQUENCY RADIO COMMUNICATION SYSTEM AND OBSOLETE CONTROLLER REPLACEMENT PROJECT: CORAL SALES COMPANY, MILWAUKIE, OR: \$250,758.16

A motion was made by Councilor Currin and seconded by Mayor Pro Tem Bush to adopt the Consent Agenda as amended. ROLL CALL VOTE: VOTING AYE: *Havens; Bush; Carlson; Currin; Kleeburg; Kluss.* VOTING NAY: *None.* ABSENT/EXCUSED: *Ohrtman.*

VI. ACTIVE AGENDA

- A. PLANNING AND ZONING COMMISSION APPEAL: *Appealing the decision of the Planning & Zoning Commission in AP-1-08, Lee Eddins. (If the Council chooses to hear the appeal, set the public hearing for May 26, 2008.)*

Upon a motion made by Councilor Kluss and seconded by Councilor Currin, the Council voted to uphold the decision of the Planning and Zoning Commission. ROLL CALL VOTE: VOTING AYE: *Havens; Bush; Carlson; Currin; Kleeburg; Kluss.* VOTING NAY: *None.* ABSENT/EXCUSED: *Ohrtman.*

- B. COST ANALYSIS - EMS SERVICES: *Possible reconsideration of a system-wide cost study of EMS services utilizing a group comprised of the Emergency*

Medical Services Advisory Board, City staff, Fire Department personnel and Presnell Gage (as approved at the April 14, 2008, regular City Council meeting).

Councilor Kleeburg moved to reconsider discussion of a cost analysis for EMS services. Councilor Currin seconded the motion. ROLL CALL VOTE: VOTING AYE: *Havens; Carlson; Currin; Kleeburg; Kluss.* VOTING NAY: *Bush.* ABSENT/EXCUSED: *Ohrtman.*

Councilor Kleeburg expressed his belief that there are actually two separate issues that have been discussed by the Council. He stated he still believes that there is a need for a study of Fire Department staffing levels; however, the more immediate issue is to address the sharing of costs associated with EMS services provided outside the City limits. The motion approved at the April 14, 2008, Council meeting, was too broad and should have been broken into two segments: cost analysis and staffing needs. Mr. Kleeburg added that it is his understanding that Presnell Gage isn't really interested in providing a review for the City. City Manager Krauss reported that Presnell has not yet provided a response and is still reviewing its role in the process.

Councilor Kluss agreed that there are two separate issues, and suggested that he would like to offer a motion in order to determine a method to charge entities outside the City limits that use City of Lewiston EMS services. City Attorney Roberts clarified that currently the motion before the Council was offered by Mayor Pro Tem Bush at the meeting of April 14, 2008. That motion, to perform a system wide cost study of EMS services inside and outside the City limits utilizing a group comprised of the Emergency Medical Services Advisory Board, City staff, Fire Department personnel and Presnell Gage, would need to be disposed of prior to moving forward with an additional motion.

Mayor Pro Tem Bush reported that he made the above motion because Presnell Gage was active in the City's audit and during Mr. Nuxoll's presentation, he expressed concern about the cost of services provided beyond the City limits. Presnell Gage has not yet provided the City with any information, or even indicated if they are willing to participate in the review. Until such time, Mr. Bush expressed his desire to have his motion stand.

Councilor Kluss expressed his belief that sufficient information has already been provided that would allow the Council to make a decision, separate from staffing needs, without the use of a consultant.

Councilor Carlson explained that one of the reasons he originally rejected the motion was because no other consulting firms were considered. Presnell Gage has given no indication if they are even interested in pursuing a study and

Mr. Carlson stated that it is not his desire to pressure this organization into doing anything they are not interested in.

The motion offered by Mayor Pro Tem Bush at the April 14, 2008, regular City Council meeting was then voted upon and failed for lack of a majority. *ROLL CALL VOTE: VOTING AYE: Bush. VOTING NAY: Havens; Carlson; Currin; Kleeburg; Kluss. VOTING NAY: None. ABSENT/EXCUSED: Ohrtman.*

Councilor Kluss then moved to direct the City Manager and City staff, using information already available, to create a formula for cost allocation of EMS services provided beyond the City limits and present it to the City Council for its review. The motion was seconded by Councilor Carlson.

As a matter of clarification, Councilor Kluss explained that based on the relatively complete information that has already been provided, it should be fairly easy for staff to come back to the Council within a short time frame and offer available options. The Council can then use that information to decide what needs to be done with reference to shared costs. He stressed that any other issues are not relevant to this discussion.

Mayor Pro Tem Bush indicated that his previous motion outlined specifically the individuals who would work on developing a recommendation. He asked Mr. Kluss if he would be willing to use that same group of people. Councilor Kluss responded that it is up to the City Manager as to the resources he utilizes to formulate a recommendation.

Mayor Pro Tem Bush offered an amended motion to direct the City Manager, Emergency Medical Services Advisory Board, City staff and Fire Department personnel, using information already available, to create a formula for cost allocation of EMS services provided beyond the City limits and present it to the City Council for its review. The motion was seconded by Councilor Carlson.

Mr. Bush explained that the purpose of his motion was to ensure that the same group that has been working on this issue for several weeks is included throughout the process. Mr. Kluss responded that the memorandum dated March 14, 2008, and previously provided to the Council, included review by a number of individuals. At the time of submission, there were no arguments from the Council as to the numbers presented. The City Manager can use this undisputed information to provide options to the Council for presenting a cost allocation to other entities. The procedure is not complicated. Councilor Kluss stressed that the more the Council continues to deviate from this, the more confusing it becomes.

Mayor Pro Tem Bush stated that originally, the major point of the study was that the City Manager indicated that he was not able to make the decision on his own. He indicated that he does not want Mr. Krauss to feel uncomfortable or feel that he has to make this decision by himself. Councilor Kluss clarified that Mr. Krauss' concerns were related to additional personnel at the Fire Department and that is why he recommended that a consultant be obtained.

Mr. Bush's amended motion failed. *ROLL CALL VOTE: VOTING AYE: Bush; Carlson. VOTING NAY: Havens; Currin; Kleeburg; Kluss. VOTING NAY: None. ABSENT/EXCUSED: Ohrtman.*

To expound on remarks offered by Councilor Kluss, City Manager Krauss explained that he performs financial analysis for a living. What is being asked of him is not too complex to provide. Mr. Bush stated that his remarks were not meant to disparage the City Manager. This is a very public issue and his attempt at an amendment was merely to broaden the base so there is a complete buy in and public forum for discussion.

The main motion on the floor carried. *ROLL CALL VOTE: VOTING AYE: Havens; Bush; Carlson; Currin; Kleeburg; Kluss. VOTING NAY: None. ABSENT/EXCUSED: Ohrtman.*

VII. UNFINISHED AND NEW BUSINESS

A. CITY COUNCILOR COMMENTS

Mayor Pro Tem Bush addressed the unfortunate sewer backup realized by Ms. Kim Bramlet. He indicated that those willing to help can make donations at Zions Bank, Sterling Bank or Main Street Lighting.

Councilor Kleeburg expressed his belief that the study previously outlined by Ms. Schreiver may help the City address larger issues with the Fire Department. He stated that he will be interested to see what happens following the review with the County Commissioners and suggested that the same be provided to the Council.

Mayor Havens reported that approximately six months ago, the Council held a public forum concerning Community Development issues. At that time, it was believed that an additional meeting would be held in approximately six months. However, he reported that unless it would be determined to be beneficial for a follow-up meeting sooner, another meeting will take place at the one year time frame. City Manager Krauss noted that the Ombudsman Committee met for the first time a week ago wherein this was one of the critical

discussions. He suggested that the group "get their feet under them" prior to a meeting with the development community.

B. CITY MANAGER COMMENTS

In response to comments made earlier regarding fiscal issues, City Manager Krauss reported that the City has many departments that generate revenue which is returned to the General Fund. He explained that even when a department does not generate enough revenue to support itself, it is still tax supported. With regard to the City's fund balance, Mr. Krauss indicated that it has grown historically. Most experts say that fund balances should range anywhere from 10 to 25 percent, and in the Midwest, 25 percent is appropriate. The City Manager explained to the Council that it would be bad fiscal management to utilize fund balance for staffing purposes as this is only one-time money. He added that the Council, as well as the residents of Lewiston, are fortunate to have a fund balance at the level it is now, and urged the Council to be careful when it comes to spending this money.

Mr. Krauss reported that there appears to be ratification with the SEIU Police Union and it will be coming before the Council at a future meeting.

Finally, City Manager Krauss commented that the City received a lot of negative publicity with regard to the Bramlet sewer backup. Though this is one of the worst things that can happen to a resident, Mr. Krauss explained that regardless of public perception, he does not have the authority to pay claims. He did state, however, that he can offer suggestions with regard to maintaining the City's sanitary sewer system and will be bringing those forward during budget discussions.

C. ADVISORY BOARD AND COMMISSION APPOINTMENTS

None.

D. WORK SESSION AGENDA TOPICS

Councilor Kluss suggested that discussion on the legal aspects surrounding decisions made by the City's insurance company be scheduled. Although this doesn't mean that the decisions are always the best outcome, it may assist the Council to understand the legalities and where the insurance company is coming from. Further, he suggested that alternative mechanisms to assist residents also be reviewed. Mayor Pro Tem Bush concurred.

82
R-60

IX. ADJOURNMENT

There being no further business to come before the Lewiston City Council, Mayor Havens adjourned the April 28, 2008, Regular Council Meeting at 6:55 p.m.

Kari Kuchmak, Executive Assistant
Recording Secretary

1. COURSE OF PRIOR PROCEEDINGS.

In setting forth this rendition of the course of prior proceedings, reference will be made to the "Record of Proceedings" before the agency. References will be made with the symbol "R", followed by a page number. Part of the Record of Proceedings consists of a transcript of the administrative hearing before the Planning and Zoning Commission which, unfortunately, is not line-numbered, so references to specific testimony will be awkward.

This matter began when, unfortunately, an employee of Mr. Eddins applied for a permit to replace a recreational vehicle which had been occupying an existing recreational vehicle space at Mr. Eddins' property. The situation was one where a long-standing recreational vehicle space was vacated by the tenant and the intent of Mr. Eddins was simply desiring to rent the existing space to a different tenant. A person working for Mr. Eddins submitted an application for a permit to replace the recreational vehicle unit with another one. Whether an application for a permit was actually appropriate, however, is problematic, because it appears that the City of Lewiston does not issue permits for placement of individual recreational vehicles. In the January 23, 2008, letter from John Murray to Mr. Eddins, (R., p. 1), Mr. Murray stated:

"The Community Development Department does not issue permits for placement of individual recreational vehicles."

Thus, it is certainly possible that the application made to the City by Mr. Eddins representative was a nullity and, since no permits are issued by the City of Lewiston for individual recreational vehicles, the denial of the permit in Mr. Murray's letter may have been a nullity as well. It is certainly possible that the position which the City is asserting through Mr. Murray, i.e., that recreational vehicle spaces may not be re-rented once the existing tenant moves out, may need to be approached

in the context of an enforcement action when Mr. Eddins re-rents the vacant recreational vehicle space in question and the City of Lewiston acts legally to prevent that. Alternatively, the question could also be determined in the context of an action seeking a declaratory judgement. If that is an appropriate vehicle to determine the question, then the parties could, by stipulation, agree to convert this appeal into a declaratory judgement proceeding.

Nonetheless, whether an application was needed or not or wise or not, the process moved forward and, as noted above, John Murray, a Planner in the Community Development Department of the City of Lewiston, issued a letter on January 23, 2008, denying the application for the apparently non-existent permit. More importantly, however, this letter also contained a number of assertions by Mr. Murray as to the impropriety of placing recreational vehicles in a “manufactured home park”. (R., p. 1-3) In the context of what we have set forth above, there is considerable question as to whether anything in Mr. Murray’s January 23, 2008, letter after the first two 92) sentences thereof, was anything other than a series of gratuitous comments. Of particular concern is the second to the last paragraph of Mr. Murray’s letter, wherein he stated:

“You may not replace any of the above-referenced recreational vehicles with new RV units. You may only decrease the number of recreational vehicles in lieu of placement of manufactured homes meeting the construction and safety standards of Housing and Urban Development, and the development standards of the City of Lewiston.”

Of course, as can easily be seen, the paragraph of Mr. Murray’s letter quoted above does not relate in any way to the application placed before him, which was an application for a permit which was not, in fact, a permit which Mr. Murray could issue in the first place. In other words, this language is mere surplusage.

in the context of an enforcement action when Mr. Eddins re-rents the vacant recreational vehicle space in question and the City of Lewiston acts legally to prevent that. Alternatively, the question could also be determined in the context of an action seeking a declaratory judgement. If that is an appropriate vehicle to determine the question, then the parties could, by stipulation, agree to convert this appeal into a declaratory judgement proceeding.

Nonetheless, whether an application was needed or not or wise or not, the process moved forward and, as noted above, John Murray, a Planner in the Community Development Department of the City of Lewiston, issued a letter on January 23, 2008, denying the application for the apparently non-existent permit. More importantly, however, this letter also contained a number of assertions by Mr. Murray as to the impropriety of placing recreational vehicles in a “manufactured home park”. (R., p. 1-3) In the context of what we have set forth above, there is considerable question as to whether anything in Mr. Murray’s January 23, 2008, letter after the first two 92) sentences thereof, was anything other than a series of gratuitous comments. Of particular concern is the second to the last paragraph of Mr. Murray’s letter, wherein he stated:

“You may not replace any of the above-referenced recreational vehicles with new RV units. You may only decrease the number of recreational vehicles in lieu of placement of manufactured homes meeting the construction and safety standards of Housing and Urban Development, and the development standards of the City of Lewiston.”

Of course, as can easily be seen, the paragraph of Mr. Murray’s letter quoted above does not relate in any way to the application placed before him, which was an application for a permit which was not, in fact, a permit which Mr. Murray could issue in the first place. In other words, this language is mere surplusage.

From looking at Mr. Murray's January 23, 2008, letter to Mr. Eddins, it seems clear that Mr. Murray mistakenly believes that the enactment of a *subsequent* zoning ordinance can render a pre-existing use, which becomes a non-conforming use under the new law, illegal. As we will note below, Mr. Murray is mistaken.

However, because Mr. Murray's letter did contain those assertions as to the propriety of placing recreational vehicles in a mobile home park, it was deemed necessary to respond by appealing the decision to the Planning and Zoning Commission. On February 7, 2008, Mr. Eddins submitted a letter-form appeal of the decision outlined in Mr. Murray's January 23, 2008, letter. (R., p. 3)

The appeal was set for hearing before the Lewiston City Planning and Zoning commission on March 12, 2008. (R., p. 4) A hearing, rather informal in nature, was held that evening. No witnesses were sworn. A great deal of the "testimony" was anecdotal.

The Lewiston City Planning and Zoning Commission issued its Findings of fact, Conclusions of Law, and Decision on March 31, 2008, upholding the decision by the Community Development staff. (R., pp. 20-22)

Mr. Eddins timely filed a letter-form notice with the City of Lewiston appealing the decision of the Lewiston City Planning and Zoning Commission. (R., pp. 35-36) the Lewiston City Council, without holding any sort of hearing or giving Mr. Eddins any notice, elected to uphold the decision of the Lewiston City Planning and Zoning Commission. (R., p. 56)

Mr. Eddins then timely filed his petition for judicial review with this court.

In closing out this rendition of the Course of Prior Proceedings, we note that there is not now,

and has never been, any contention that: (1) any of Mr. Eddins' appeals/protests were not timely made or that (2) the form of the documents containing his appeals/protests were not correct.

2. STATEMENT OF THE FACTS.

As noted above, this sort of hearing is an unusual one because there is no sworn testimony and the taking of evidence is not remotely conducted like in a court of law. Thus, a fair amount of the testimony provided on behalf of Mr. Eddins was provided by the undersigned, with the permission of the Chairperson of the Planning and Zoning Commission. (R., p. 26)

The facts in this matter are relatively simple. Mr. Lee Eddins is the owner of a housing rental facility located at 719, 727, 803, and 805 28th Street North, Lewiston, Idaho. We refer to it as a "housing rental facility" because Mr. Murray's characterization of this property as "mobile home park", while convenient for the position he seeks to assert, is not at all accurate. In point of fact, the evidence will show, or does show, that the property in question contains three (3) varieties of habitations, i.e.: (a) permanent structures consisting of a duplex, a studio-size house, and two (2) brick house; (b) mobile homes (trailers); and (c) spaces rented by persons in which they can park a recreational vehicle in which they reside, at least for periods of time. It appears that the proportion of recreational vehicle spaces versus mobile home spaces is around 25%/75%.

There appears to be no dispute that Mr. Eddins has owned that property since 2000. (R., p. 9) This particular park which Mr. Eddins owns is fairly old. According to information received by the undersigned from the Nez Perce County Assessor, the park is far older than 1970 and, in fact, may have been in existence since the 1940's or 1950's. (R., p. 26) According to the Assessor, this park goes back before the County even kept records on that sort of thing. (R., p. 27) This park has

always been a mixture of normal-size mobile home and RV units. (R., p. 26) Some of the people who reside in these RV units have lived there for years and years on end. The space in question in this case is being rented by a tenant who pulled out his RV unit and pulled on in that was in better shape and more liveable, but still an RV unit. (R., p. 26)

The simple fact is that this property is a built-up facility and there is just no way to put anything in these RV spaces other than another RV. (R., p. 27; p. 32)

Based on what is in the record before the court, therefore, this real property belonging to Mr. Eddins has contained both regular mobile home spaces and RV rental spaces for a long time now and probably back prior to 1970-1972. Nothing which Mr. Eddins is trying to do is changing the use or character of that property from what is has been for 48 years or more. That is an important point, as we will see below.

3. ARGUMENT.

The first question the court must reach in moving forward with this matter is whether or not the issue which the parties seem to want to have decided, i.e., whether recreational vehicles parked in *existing* recreational vehicle spaces located on Mr. Eddins property may be replaced by other recreational vehicles, can even properly be approached in the present context of this litigation. We have already set forth our concerns in that regard above, so we will not repeat them here. We do believe, however, that the court needs to determine exactly what it can, and cannot, decide in this matter. If the court decides that it can consider the question immediately set forth above in this case, given its procedural posture, then we can move ahead. If not, then the parties either need to change the procedural posture of the case or pursue the question in another proceeding. For now, however,

until the court weighs in on this issue, we will proceed as if the court can, and will determine the main issue, i.e., can a recreational vehicle unit be replaced by another in the same space on this property.

As is noted in the Staff Report which is part of the record, the City of Lewiston Community Development staff appears to be of the impression that the enactment of a zoning ordinance will sweep away prior uses which the zoning ordinance makes non-conforming, unless the zoning ordinance in question makes specific provision for “grandfathering” such non-conforming uses. Mr. Eddins’ position is far simpler, and far more Constitutional. His position is that, when a zoning ordinance is enacted, existing uses which become non-conforming due to the new zoning ordinance may continue as non-conforming uses, so long as they are not enlarged or expanded. The reason Mr. Eddins’ position is the correct position is because of a concept we refer to as “due process”, which forms the backbone of our Constitutional rights as citizens of our great country.

The Constitution of the United States specifically provides in the Fifth Amendment thereto, as follows:

“No person shall . . . be deprived of life, liberty, or property, without due process of law . . .”

This provision for due process is mirrored in Article I, §13 of the Constitution of the State of Idaho, wherein it is identically stated:

“No person shall . . . be deprived of life, liberty, or property, without due process of law.”

Given the fact that zoning actions of municipal entities make changes in permissible uses of real property, it is no great wonder that such zoning actions have spawned litigation as to how the

enactment of zoning ordinances will affect prior uses of real property which suddenly become *verboten* as a result of the enactment of those ordinances. Even the most cursory review of the case law of the State of Idaho makes it clear that our courts have established a very strong set of protections for existing uses of real property in the face of zoning legislation.

One of the earliest of these case which we have located is **O'Connor v. City of Moscow**, 69 Idaho 37, 202 P.2d 401 (1949). This case notes, as page 41 thereof:

“An ordinance which prohibits the continuation of existing lawful businesses within a zoned area is unconstitutional as taking property without due process of law and being an unreasonable exercise of th police power.”

This case goes on to note, at page 42 and 43 thereof, the following:

“The right to use one’s property in a lawful manner is within the protection of subdivision (1) of the 14th Amendment of the Constitution of the United States and Article I, Sec. 13 of the Idaho Constitution providing that no person shall be deprived of life, liberty, or property without due process of law.”

Finally, the case notes, later on page 43:

“Since lawful existing uses, although non-conforming, cannot be constitutionally eradicated because by so doing, the due process clauses are violated, it naturally follows in one logical step that the prevention of the sale of a business by such an ordinance has the same result, particularly since zoning ordinances are designed to deal with the use to which property may be put.”

The later case of **Cole-Collister Fire Protection Dist. V. City of Boise**, 93 Idaho 558, 468 P.2d 290 (1970) picked up the ruling in **O'Connor**, supra, and noted, at page 561, in footnote 3:

“The continuation of non-conforming uses is permitted because to not allow them would be a violation of the due process clauses.”

This rather basic principle has continued unabated through the Idaho case law ever since. For example, the case of **Boise City v. Blaser**, 98 Idaho 789, 572 P.2d 892 (1977), which noted at page

92

791 thereof:

“When a zoning ordinance is enacted, it cannot outlaw previously existing non-conforming uses. *Cole-Collister Fire Protection Dist. v. City of Boise*, 93 Idaho 558, 468 P.2d 290 (1970); *O’Connor v. City of Moscow*, 69 Idaho 37, 202 P.2d 401 (1949).

* * *

Such is the balance which is struck between private property rights, on the one hand, and, on the other, the right of a municipality to exercise its police power by enacting a zoning ordinance on behalf of the general welfare.”

The case of **Glengary-Gamlin Protective Ass’n v. Bird**, 106 Idaho 84, 675 P.2d 344 (Ct. App., 1984) looked at the concept from a slightly different perspective. In that case, the landowners apparently had an existing, non-conforming use but submitted a request for a conditional use permit to expand that use. In that case, the court noted, at page 89 thereof:

“When land is lawfully used or improved in a way that conflicts with requirements of a subsequently enacted zoning ordinance, the property is said to be non-conforming. From this status flows a limited protection against zoning requirements. The owner of a lawful non-conforming use has a right to continue that use despite the conflicting provisions of the subsequently enacted zoning ordinance.”

In quoting from the decision in **Bastian v. City of Twin Fall**, 104 Idaho 307, 658 P.2d 978 (Ct. App., 1983), the court in **Glengary-Gamlin**, supra noted, at page 89:

“The right to continue a non-conforming use or improvement of property derives from the due process clauses of the state and federal constitutions. [Citations omitted.] This right (often termed a “grandfather right” in lay parlance) simply protects the owner from abrupt termination of what had been a lawful condition or activity on the property. The protection does not extend beyond that purpose.”

The court dealt with the question or whether, by applying for a conditional use permit, the landowner could lose that “grandfather right” and noted, at page 90:

“Because the limited right to continue a non-conforming use is constitutionally protected, it is axiomatic that this right cannot be destroyed by

regulatory action under the subsequently enacted zoning ordinance. The Idaho Supreme Court has developed a corollary to this axiom, holding that if a proposed activity comes within the scope of protection afforded a non-conforming use, it will not lose that protection merely because it is the subject of a variance or permit submitted by the owner who mistakenly has assumed that his activity is not protected.” (Emphasis ours)

The Glengary-Gamlin, supra, went on to note, at page 91 of the decision, that a landowner will only waive his “grandfather rights” if he “affirmatively agrees” to do so.

We mention the Glengary-Gamlin, supra, decision to put to rest any thought that, just because Mr. Eddins representative mistakenly applied for a permit, which couldn’t be granted in the first place, that does not mean that he was giving up his “grandfather rights” relative to the property in question.

Now, to be sure, the holder of “grandfather rights” may lose those rights if the use in question is enlarged or expanded in violation of a valid zoning ordinance. Baxter v. City of Preston, 115 Idaho 607, 609, 768 P.2d 1340 (1989) In determining whether there was an enlargement or expansion of a “grandfathered” use, the court must look at the character of the particular use, not its general classification. Baxter, supra. The court goes on to note that even “intensification” of a non-conforming use does not render it unlawful. Baxter, supra.

If we wrap the foregoing legal authorities into a bundle and apply them to the present situation, it seems pretty clear that the actions of the City in attempting to say that Mr. Eddins may not continue to rent out his existing recreational vehicle spaces to various persons is improper. Clearly, Mr. Eddins is not attempting to “expand” his use by adding more recreational vehicle spaces. Rather, he is just trying to allow one (1) recreational vehicle to be removed from an existing space and another put in its place. This is clearly a constitutionally protected non-conforming use,

it is clearly “grandfathered”, and the City is acting improperly in attempting to stop it.

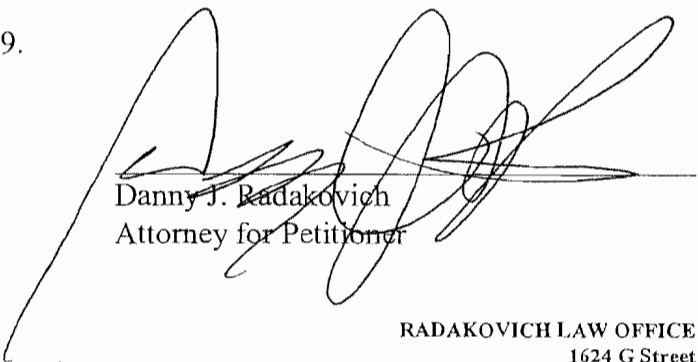
The problem may be more definitional than anything else. The Community Development staff report (R., pp. 7-10) notes, on page 10, as follows:

“To the extent each unit in the park was legally established, it may remain. However, no unit that was illegal at the time of placement may be grandfathered. New units must comply with code in effect at the time of placement.”

It seems clear that the City staff is focused on the recreational vehicles themselves but that is in error. Mr. Eddins does not own the recreational vehicles. He owns the spaces, which he rents to the recreational vehicle owners. As noted above, the Baxter, supra, decision makes it clear that the focus must be on the character of the use. Mr. Eddins’ use of at least a portion of his property is for RV space rentals. Eddins use does not change merely because the tenant of a particular space chooses to change the RV unit which the tenant chooses to occupy in that space that he is renting. This is not like a situation where there is a permanent improvement such as a building, where the owner seeks, for example, to upgrade the electrical service and is forced to comply with current Code. Mr. Eddins is changing nothing. His rental spaces are the same.

If the court thinks it has jurisdiction to act here on this point, then it should issue an order determining that Mr. Eddins has the constitutional right to continue renting out his recreational vehicle spaces, as he has since he acquired the property, so long as he does not improperly expand his use.

DATED this 14th day of April, 2009.


Danny J. Radakovich
Attorney for Petitioner

PETITIONER’S INITIAL BRIEF
ON JUDICIAL REVIEW

I hereby certify that a true and correct
copy of the foregoing was hand-
delivered to:

*Lewiston City Attorney
Attn: Don Roberts
P.O. Box 1267
Lewiston, ID 83501*

on this 14th day of April, 2009.



Danny J. Radakovich

ala

FILED

2009 MAY 15 AM 9 11

PATTY O'WEEKS
CLERK OF THE DIST. COURT

Henry Rogan
DEPUTY

Don L. Roberts
Lewiston City Attorney
P.O. Box 617
1422 Main Street
Lewiston, Idaho 83501
Telephone: (208)746-7948
Facsimile: (208)746-7952
Idaho State Bar No. 1984

Attorney for Respondent

**IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE**

STEVEN LEE EDDINS, a single man,)
)
Petitioner,)
)
v.)
)
CITY OF LEWISTON, IDAHO, an)
Idaho Municipal Corporation,)
)
Respondent.)
_____)

Case No. CV 08-01093

RESPONDENT'S BRIEF

FACTS

On January 9, 2006, the Respondent, City of Lewiston passed Ordinance 4398 which provided for new regulations for manufactured home parks. A copy of Ordinance 4398 is attached hereto for the Court's consideration. Section 32-14 of that ordinance provides for standards for manufactured home parks. Recreational vehicles are no longer allowed in manufactured home parks within the city. Recreational vehicles placed in manufactured home parks as of January 9, 2006, are allowed to continue. No recreational vehicles are allowed to be placed in manufactured home parks after the effective date of the ordinance.

Also, when a pre-existing recreational vehicle is removed from a manufactured home park it must be replaced with a unit conforming to the standards of Ordinance 4398.

The Petitioner, Steven Lee Eddins, owns a manufactured home park at 727 28th Street, Lewiston, Idaho. As of January 9, 2006, the park had a mix of manufactured homes and recreational vehicles. Sometime prior to January 22, 2008, the Petitioner applied for a City of Lewiston permit to place a recreational vehicle in the park located at 727 8th Street, Lewiston, Idaho. The city issues permits for placement of manufactured homes to insure utility hookups are done properly and to insure compliance with zoning ordinances.

On January 23, 2008, John Murray of the Lewiston Community Development Department, wrote a letter (*Record*, pp 1 and 2) to the Petitioner, informing him of the city's decision to deny the permit stating:

“New regulations no longer allow the placement of recreational vehicles in manufactured home parks. All new units or any unit change-outs placed within your park(s) must meet the manufactured home construction and safety standards of the Department of Housing and Urban Development . . .”
(Record, p 1).

The Petitioner appealed the decision of the Community Development Department to the Lewiston Planning and Zoning Commission. The Planning and Zoning Commission heard the appeal on March 12, 2008, and issued Findings of Fact, Conclusions of Law and Decision dated March 31, 2008 (*Record*, pp 20-22). The Petitioner then appealed to the Lewiston City Council. On April 28, 2008, the Lewiston City Council upheld the decision of the Lewiston Planning and Zoning Commission (*Record*, p 56). The Petitioner then filed with this court his Petition for Judicial Review of the city's decision denying a permit for the re-placement of the recreational vehicle in his manufactured home park.

STANDARD OF REVIEW

Pursuant to a long line of Idaho Supreme Court cases articulated in *Evans v. Teton County*, 139 Idaho 71, 73 P.3d 84 (2003) and *Urrutia, et al v. Blaine County*, 134 Idaho 353, 2 P.3d 738, (2000) dealing with the review of local agency decisions in local land use planning issues, the reviewing court is limited to the authority granted in The Idaho Administrative Procedures Act, Chapter 52, Title 67, *Idaho Code*. See also *Comer v. County of Twin Falls*, 130 Idaho 433, 437, 942 P.2d 557, 561 (1997). The reviewing court does not substitute its judgment for that of the agency as to the weight of the evidence presented. *Idaho Code 67-5279(1)*. The reviewing court defers to the local agency's findings of fact unless they are clearly erroneous. See also *South Fork Coalition v. Board of Commissioner of Bonneville County*, 117 Idaho 857, 860, 792 P.2d 882, 885 (1990). The City of Lewiston's decision is binding on the reviewing court, even where there is conflicting evidence, as long as the decision is supported by competent evidence in the record. This Court may overturn the decision of the city only if it (a) violates statutory or constitutional provisions; (b) exceeds the city's statutory authority; (c) is made upon an unlawful procedure; (d) is not supported by substantial evidence in the record; or (e) is arbitrary, capricious, or an abuse of discretion. *Idaho Code 67-5279(3)*. Cities are authorized by Idaho Code to enact all such ordinances, bylaws, rules, regulations and resolutions not inconsistent with the laws of the state of Idaho as may be expedient, in addition to the special powers in this act granted, to maintain the peace, good government and welfare of the corporation, *Idaho Code 50-302*. The Local Land Use Planning Act also authorizes cities in Idaho to adopt ordinances and regulations that promote the health, safety, and general welfare of its citizens, *Idaho Code 67-6502*. Further, there is a presumption of the validity of city

ordinances and city actions interpreting its ordinances. *Lamar Corp v. City of Twin Falls*, 133 Idaho 36, 981 P.2d 1146 (1999) and Young *Electric Sign Co. v. State*, 135 Idaho 804, 25 P.3d 117 (2001). The burden of proof is on the party attacking the city's decision. The Petitioner in this case must show the city erred in one of the enumerated areas listed in *Idaho Code 67-5279(3)* and that a substantial right of the Petitioner has been prejudiced. See also *Price v. Payette County*, 131 Idaho 426, 429, 958 P.2d 583, 587 (1998).

ARGUMENT

In 2006 the city adopted Ordinance 4398. This ordinance does not allow the placement of recreational vehicles in manufactured home parks. Prior to the ordinance's passage, the Petitioner has a number of recreational vehicles in his manufactured home park. The Petitioner asserts he has a "grandfathered" right to continue to have those recreational vehicles in his manufactured home park even though a 2006 city ordinance prohibits the placement of recreational vehicles in a manufactured home park. The Respondent does not deny this "grandfathered" right. All recreational vehicles actually in the manufactured home park on the effective date of the ordinance may continue to remain in the park. The Petitioner further asserts his "grandfathered" right includes the right to replace old, abandoned, or moved recreational vehicles with other recreational vehicles. It is the Respondent's position that the Petitioner's "grandfathered" right does not give him that right. All placements or re-placements of units in the park after the effective date of the 2006 ordinance must comply with the standards of the 2006 ordinance.

The Petitioner has cited a number of Idaho appellate cases that protect a non-conforming, pre-existing use. One of these cases is *O'Connor v. City of Moscow*, 69 Idaho 37, 202 P.2d 401 (1949). It is the first case in Idaho to recognize the protected right to

continue a non-conforming, pre-existing use. It is clear from this language the right is not absolute, but a limited one.

We are not unmindful that zoning ordinances contemplate the gradual elimination of non-conforming uses within the zoned area and such elimination may be accomplished as speedily as possible with due regard to the special interests of those concerned; . . . the accepted method of accomplishing the result has been said to be that the non-conformity, in no case, will be allowed to increase *but will be permitted to continue until some change in the premises* or in the use thereof is contemplated by the owner. . . (emphasis added) **O'Connor**, page 42.

Other cases, cited by the Petitioner, contain the following language that further clarify the limited nature of “grandfather” protection.

This “grandfather right” simply protects the owner from the *abrupt termination* of what had been a lawful condition or activity on the property. The protection does not extend beyond this purpose. (emphasis added) **Baxter v. City of Preston**, 115 Idaho 607 at 609, 768 P.2d 1340 (1989); **Glengary-Gamlin Protective Ass’n v. Bird**, 106 Idaho 84 at 90, 675 P.2d 344 (App. 1983); **Bastian v. City of Twin Falls**, 104 Idaho 307 at 309, 658 P.2d 978 (App. 1983)

The **Bastian** court further held:

Thus, nonconforming status is not a talisman from which all zoning controls must retreat. Rather, public policy embodied in zoning laws dictates the firm regulation of nonconforming uses with a view to their eventual elimination. **Bastian**, supra, at 309

All these cases anticipate the elimination of non-conforming, pre-existing uses if the local zoning ordinance provides for such elimination. The City of Lewiston considers permanent living in a recreational vehicle a matter of safety; see **Record**, page 33, for discussion by Planning and Zoning Commissioner Sue Brown on safety. The Findings of Fact, Conclusions of Law and Decision of the Planning and Zoning Commission also specifically cite safety as the reason for the gradual elimination of recreation vehicles from manufactured home parks; see **Record**, page 21, Findings number 9 and Conclusions number

4. Chapter 3 of Title 50 and Chapter 65 of Title 67 of the *Idaho Code* expressly authorize cities to adopt ordinances for public safety and welfare. In reviewing this case the Court does not substitute its judgment for that of the agency as to the weight of the evidence presented. The reviewing court defers to the local agency's findings of fact unless they are clearly erroneous. The Respondent City has determined long term living in a recreational vehicle is something to be discouraged and eventually eliminated. Nothing in the record suggests that this decision is not a reasonable conclusion or a valid exercise of the city's police power.

Consistent with *O'Connor* the Respondent's Ordinance 4398 recognizes the Petitioner's non-conforming, pre-existing use. Following the standard of *Baxter, Glengary-Gamlin* and *Bastian* Ordinance 4398 does not require the "abrupt termination" of a non-conforming, pre-existing use. Also consistent with *O'Connor* and *Bastian*, Ordinance 4398 allows the owner, not the city, to trigger the elimination of the owner's non-conforming, pre-existing use. When the owner or the owner's tenant initiates a change in the premises and chooses to remove a recreational vehicle for reasons of age, non-use, tenant preference, or relocation of a tenant, the "grandfathered" right is terminated and any placement of a new unit must conform with the standards of the 2006 ordinance.

Lastly, Petitioner's brief raises the possibility of a "takings" issue. If the Petitioner is not allow to continue his non-conforming, pre-existing use it might be construed as a violation of due process and inverse condemnation of the Petitioner's use of his property. The Respondent recognizes an inverse condemnation claim has not been made nor is it appropriate in this proceeding, however, *Covington v. Jefferson County*, 137 Idaho 777, 53 P.3d 828 (2002) is instructive on how the Idaho Supreme Court views zoning regulations,

property values and due process. In *Covington*, the owners of real property near a landfill, operating pursuant to a conditional use permit granted by Jefferson County, claimed the landfill diminished the value of their property. The owners estimated a 25% diminishment in value. The Idaho Supreme Court said:

The Covingtons also claim a taking has occurred due to the diminution in value of approximately one-fourth the appraised value of their property, as a result of the zoning ordinance authorizing the operation of the landfill. This does not constitute a taking where residual value remains. “A zoning ordinance that downgrades the economic value of private property does not necessarily constitute a taking by the government, especially if some residual value remains after the enactment of the ordinance.” (*Quoting McCuskey v. Canyon County Comm’rs*, 128 Idaho 213, at 216, 912 P.2d 100 (1996)). *Covington*, supra, at 781.

. . . .

The circumstances in this case indicate the property retained residual value despite any reduction in value that may have been caused by Jefferson County’s action and, therefore, no compensable taking has occurred. *Covington*, supra, at 781.

In the matter before the Court, the Petitioner is asking that he be allowed to continue to rent recreational vehicle spaces after a “grandfathered” recreational vehicle is moved out because the space will not accommodate a Class A or Class B manufactured home. This argument fails to consider a future reconfiguration of the manufactured home park, but, nevertheless, and diminution in rental income is not a due process problem in Idaho since the other manufactured home sites remain available and the property retains income producing potential.

CONCLUSION

This Court may overturn the decision of the city only if it (a) violates statutory or constitutional provisions; (b) exceeds the city’s statutory authority; (c) is made upon an unlawful procedure; (d) is not supported by substantial evidence in the record; or (e) is

arbitrary, capricious, or an abuse of discretion. *Idaho Code 67-5279(3)*. There is no evidence in the record that would show the Petitioner has met his burden in this case. City of Lewiston Ordinance 4398 is a valid exercise of police power and zoning authority. The ordinance follows all the guidelines pronounced by the Idaho Appellate Courts. The Respondent's decision to deny a permit for placement of the recreational vehicle in a manufacture home park should be affirmed.

DATED this _____ day of May, 2009.

Don L. Roberts
Attorney for Respondent
City of Lewiston

CERTIFICATE OF MAILING

I hereby certify that on May ____, 2009, a true and correct copy of the foregoing **Respondent's Brief** was mailed, postage prepaid, through the United States Postal Service to the following:

Danny J. Radakovich
Attorney for the Petitioner
1624 G Street
Lewiston, Idaho 83501

DATED this _____ day of May, 2009.

Don L. Roberts
Attorney for the Respondent
City of Lewiston

ORDINANCE 4398

KT 12/12/05
2d 1/9/06
3d 1/9/06

AN ORDINANCE REPEALING LEWISTON CITY CODE SECTIONS 23-01 THROUGH 23-24; ENACTING NEW SECTIONS TO BE CODIFIED AS LEWISTON CITY CODE SECTIONS 23-1 THROUGH 23-36 PROVIDING FOR THE COMPREHENSIVE REGULATION OF MANUFACTURED HOME PARKS AND RECREATIONAL VEHICLE PARKS WITHIN THE CITY; PROVIDING FOR DEFINITIONS; PROVIDING FOR MANUFACTURED HOME PARK AND RECREATIONAL VEHICLE PARK LICENSE, APPLICATION, REVIEW AND APPEAL PROCESS; PROVIDING FOR MANUFACTURED HOME PARK AND RECREATIONAL VEHICLE PARK DEVELOPMENT STANDARDS; PROVIDING STANDARDS FOR DEVELOPMENT IN PRE-EXISTING MANUFACTURED HOME PARKS; AMENDING LEWISTON CITY CODE SECTIONS 37-3, 37-19, 37-20, 37-35, 37-36, 37-57.2 AND 37-57.3 PROVIDING FOR MANUFACTURED HOME PARKS AND RECREATIONAL VEHICLE PARKS AS OUTRIGHT AND CONDITIONAL USES IN R-1, R-2A AND MXD-NL ZONES; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1: That Lewiston City Code Sections 23-01 through 23-24 be and the same are hereby repealed.

SECTION 2: That new sections to be codified as Lewiston City Code Sections 23-1 through 23-20 be and the same are hereby enacted to provide as follows:

Chapter 23
MANUFACTURED HOME PARKS

AND RECREATIONAL VEHICLE PARKS

ARTICLE I. MANUFACTURED HOME PARKS

Sec. 23-1. Purpose.

The intent of this chapter is to provide standards for the development of manufactured home parks which are consistent with State of Idaho law and which provide quality developments suitable for manufactured housing placement. This chapter applies to manufactured home parks as defined herein and shall not apply to the placement of manufactured homes on individual lots in residential zones where such placement is regulated by Chapter 37 of this code.

Sec. 23-2. Definitions.

For the purposes of this chapter, the following words and phrases shall have the ascribed meanings:

1 **Manufactured home** means a structure, constructed after June 15, 1976, in accordance
2 with the HUD manufactured home construction and safety standards, and is transportable
3 in one (1) or more sections, which, in the traveling mode, is eight (8) body feet or more in
4 width or is forty (40) body feet or more in length, or when erected on site, is three
5 hundred twenty (320) or more square feet, and which is built on a permanent chassis and
6 designed to be used as a dwelling with or without a permanent foundation when
7 connected to the required utilities, and includes the plumbing, heating, air conditioning,
8 and electrical systems contained therein, except that such term shall include any structure
9 which meets all the requirements of this paragraph except the size requirements and with
10 respect to which the manufacturer voluntarily files a certification required by the
11 secretary of housing and urban development and complies with the standards established
12 under 42 U.S.C. section 5401 et seq. For the purposes of this section, the following
13 classifications of manufactured homes shall apply:

14 **Class A manufactured home:** A manufactured home meeting the following standards:

15 (1) Constructed after June 15, 1976, and certified as meeting the manufactured home
16 construction and safety standards of the Department of Housing and Urban Development;

17 (2) Shall be multisectional and enclose a space of not less than one thousand (1,000)
18 square feet;

19 (3) Roof pitch shall be not less than a three-foot rise for each twelve (12) feet of
20 horizontal run (3:12) and roof shall have minimum six-inch eave or eave and gutter;

21 (4) Has roofing materials which are generally acceptable for site-built housing. Any
22 roofing material may be used provided it has the appearance of a nonmetallic shingle,
23 shake or tile roof;

24 (5) Has siding material which has the appearance of wood, masonry or horizontal metal
25 siding. Reflection from horizontal metal siding shall be no greater than that from siding
26 coated with white gloss enamel;

27 **Class B manufactured home:** A manufactured home meeting the manufactured home
28 construction and safety standards of the Department of Housing and Urban Development
29 but not meeting all the criteria (2) through (5) for Class A manufactured homes. Also
30 includes certified rehabilitated mobile homes as provided in Title 44, Chapter 25 of Idaho
31 Code.

32 **Class C manufactured home:** A manufactured home which does not meet the
33 manufactured home construction and safety standards of the Department of Housing and
34 Urban Development but which is at least eight (8) feet wide and forty (40) feet in length.

35 **Manufactured home park:** A tract of land under unified ownership developed for the
36 purpose of providing individual rental spaces for the placement of manufactured homes
37 within its boundaries.

38 **Accessory parking area:** A common area set aside for the parking and storage of
39 vehicles, recreational vehicles, boats, motorcycles and other similar items accessory to
40 everyday life owned by residents of the park.

41 **Recreation area:** A parcel of ground having recreational equipment and open space to be
42 used for leisure activities of park residents.

43 **Recreational vehicle:** A vehicular type unit primarily designed as temporary living
44 quarters for recreational, camping or travel use, which either has its own motive power or
45 is mounted on or drawn by another vehicle. The basic entities are travel trailer, camping
46 trailer, fifth-wheel camper and motor home.

1 **Sec. 23-3. Powers, duties, responsibilities of the Community Development**
2 **Department.**

3 It is hereby made the duty of the Community Development Department to enforce all
4 provisions of this chapter. For the purpose of securing such enforcement, authorized
5 representatives of the Department shall have the right and are hereby empowered to enter
6 upon any manufactured home park property, existing or proposed, and inspect the same
7 and all accommodations connected therewith at any reasonable time. The Department is
8 further empowered to issue orders granting, renewing and revoking such permits and
9 licenses as are provided for in accordance with the provisions of this chapter. For the
10 purposes of carrying out this provision, technical reports from duly authorized
11 representatives of the city sanitation office, the fire department, the police department,
12 the public works department and the community development department shall be
13 obtained. Such reports shall contain findings of fact and reference to the Lewiston City
14 Code when standards are not being met or violations have been found.

15 **Sec. 23-4. License – Required; approval of Community Development Department.**

16 (a) No person shall operate or maintain upon any property owned or controlled by him a
17 manufactured home park within the city without having first secured a city business
18 license. Such city business license shall not be granted without the annual approval of the
19 community development department.

20 (b) For the purposes of carrying out this provision, the department shall obtain technical
21 reports from city departments as specified in Section 23-3.

22 **Sec. 23-5. Same - Application.**

23 Application for the license required by the preceding section or for the renewal thereof
24 shall be filed with the Community Development Department on forms furnished by the
25 Department and shall include the name and address of the owner and/or an authorized
26 operator and a legal description of the premises upon which the manufactured home park
27 is or is proposed to be located. The application shall be accompanied by two copies of a
28 scaled site plan showing the following, either existing or as proposed:

- 29 (1) The extent and area used for park purposes;
30 (2) Roadways and driveways;
31 (3) Location of spaces for manufactured homes;
32 (4) Location and number of sanitary conveniences, including restrooms, laundries and
33 utility rooms to be used by occupants of manufactured homes;
34 (5) Method and plan of sewage disposal;
35 (6) Method and plan of garbage removal;
36 (7) Plan for water supply;
37 (8) Plan for electrical lighting of lots and spaces;
38 (9) Provision of parking spaces and accessory vehicle area;
39 (10) Location and size of recreation area;
40 (11) Grading and drainage of the property;
41 (12) Location of fire hydrants within or adjacent to the park.

42 **Sec. 23-6. Same – No rights to build or do plumbing or electrical work granted.**

43 Licenses issued under the terms of this chapter shall convey no right to erect any
44 building, to do any plumbing work or to do any electrical work.

1 **Sec. 23-7. Same – Nontransferable; notice upon sale or transfer of manufactured**
2 **home park; plot plan.**

3 No manufactured home park license shall be transferable. Every person holding such a
4 license shall give notice in writing to the Community Development Department within
5 five (5) working days after having sold, transferred, given away or otherwise disposed of
6 interest in or control of any manufactured home park. Every license holder shall cause an
7 up-to-date site plan as described in Section 23-5 of each existing manufactured home
8 park for which he holds a license to be kept on file at the community development
9 department.

10 **Sec. 23-8. Same – Revocation.**

11 The Community Development Director is hereby authorized [after giving 30 days notice]
12 to revoke any license pursuant to the terms of this chapter if, after due investigation, it is
13 determined that the holder thereof has violated any of the provisions of this chapter or
14 that any manufactured home park is being maintained in an unsanitary or unsafe manner
15 or is a nuisance.

16 **Sec. 23-9. Same – Hearing.**

17 Any person aggrieved by an order of the Community Development Director granting,
18 denying, renewing or revoking a license for a manufactured home park may file a written
19 request for an appeal before the planning and zoning commission within fifteen (15) days
20 after issuance of such order. Notices of the appeal shall be sent to all adjacent property
21 owners, giving the date and time the commission will hear the appeal. At such hearing,
22 the planning and zoning commission shall determine whether the granting, denial,
23 renewal, or revocation of the license was in accordance with the provisions of this
24 chapter and shall issue a written finding of fact, conclusions of law and an order to carry
25 out its findings and conclusions.

26 **Sec. 23-10. Same – Appeal to council.**

27 Any order either granting, denying, renewing or revoking any license under the
28 provisions of this chapter following public hearing as provided in section 23-9 may be
29 appealed to the city council in the same manner as appeals from any action or ruling by
30 the Planning and Zoning Commission.

31 **Sec. 23-11. Inspection of premises.**

32 Before a business license for a manufactured home park may be issued, the premises
33 shall be inspected and approved by each of the city departments as provided in section
34 23-3 as complying with all the provisions of this chapter and all other applicable
35 ordinances of the city. Such investigation shall be conducted annually and in such a
36 manner as to provide minimum inconvenience to occupants of manufactured home parks.
37 The owner or licensed operator of the manufactured home park shall be contacted in
38 advance of inspection.

39 **Sec. 23-12 Manufactured home park development application.**

40 (a) Application submission. When any person desires to develop a manufactured home
41 park, that person shall file an application for the same with the community development
42 department on forms furnished by the department. A preapplication conference between
43 the developer and city staff as provided in 23-3 shall be held to discuss the site design,
44 location, public service needs, and related areas of concern for the proposed
45 development.

1 (b) Contents of application. Each application for development of a manufactured park
2 shall include at a minimum, the following:

3 (1) The name and address of the owner or an authorized agent and a legal
4 description of the premises upon which the manufactured home park is proposed to
5 be located;

6 (2) Four copies of a scaled site plan showing the following:

7 (A) The extent and area used for park purposes;

8 (B) Roadways and driveways;

9 (C) Location of spaces for manufactured homes;

10 (D) Location and number of sanitary conveniences, including restrooms,
11 laundries and utility rooms to be used by occupants of manufactured homes;

12 (E) Method and plan of sewage disposal;

13 (F) Method and plan of garbage removal;

14 (G) Plan for water supply;

15 (H) Plan for electrical lighting of lots and spaces;

16 (I) Provision of parking spaces and accessory vehicle area;

17 (J) Location and size of recreation area;

18 (K) Grading and drainage of the property;

19 (L) Location of fire hydrants within or adjacent to the park.

20 **Sec. 23-13 Same – Review Process**

21 The review of each manufactured home park shall be made in the following manner:

22 (1) Following the initial preapplication conference additional preapplication
23 conferences with the developer shall be scheduled as necessary to properly inform the
24 developer of all the requirements for development and to obtain from the developer
25 any and all information, site plans, descriptions, and data necessary for approval by
26 the director of community development.

27 (2) For manufactured home parks requiring a conditional use permit, the community
28 development director shall schedule the application for the first available public
29 hearing after determining that all the necessary information has been made available
30 to the department. The hearing procedures found in Chapter 37, Article IX shall be
31 used for these applications.

32 **Sec. 23-14. Development standards.**

33 (a) Density

34 (1) The minimum area for a manufactured home park is two acres.

35 (2) R-1 Zone: The maximum density permitted outright is 5.8 units per acre. A
36 density greater than 5.8 units per acre may be approved with a Conditional Use
37 Permit.

38 (3) R-2A and MXD-NL Zones: The maximum density permitted outright is 8.7
39 units per acre. A density greater than 8.7 units per acre may be approved with a
40 Conditional Use Permit.

41 (b) Unit types permitted:

42 Manufactured home parks shall contain a minimum of seventy five (75) percent Class A
43 Manufactured Homes. Up to twenty five (25) percent of a parks total units may be Class
44 B Manufactured Homes. A Conditional Use Permit must be obtained in order to increase
45 the ratio of Class B Manufactured Homes. Class C Manufactured Homes shall not be
46 permitted.

47 (c) Setbacks and unit spacing

1 (1) A minimum front yard setback for a manufactured home park shall be twenty
2 (20) feet from the property line.

3 (2) No unit within a manufactured home park shall be closer than ten (10) feet to
4 the outer property line of that manufactured home park and shall comply with the
5 setback requirements of that zone if more restrictive.

6 (3) Each individual unit shall be setback a minimum of 10 feet from the interior
7 roadway.

8 (4) Each individual unit shall have yards on each side of a minimum five (5) feet.

9 (5) Each individual unit shall have a rear yard of 10 feet.

10 (6) No unit shall be closer than 15 feet to another unit.

11 (d) Accessory Structures: Accessory Structures on individual spaces shall be permitted in
12 accordance with the following provisions:

13 (1) Accessory structures such as carports or decks which are attached to a
14 manufactured home shall be no closer than ten (10) feet to another unit or
15 accessory structure or outer property line.

16 (2) One detached accessory structure for the purposes of storage and not to
17 exceed 200 square feet is permitted. Said structure shall be located a minimum of
18 five (5) feet from the associated manufactured home or outer property line and ten
19 (10) feet from other units or accessory structures.

20 (3) Approval for the placement of accessory structures shall be obtained from the
21 Community Development Department.

22 (e) Parking within manufactured home parks shall conform to the following minimum
23 standards:

24 (1) A minimum of two (2) spaces shall be provided adjacent to each manufactured
25 home plus one additional space per bedroom when over two up to a maximum of
26 four spaces. One common guest space shall be provided for every three (3) units.

27 (2) A minimum of one space per two (2) manufactured home lots shall be
28 required for parking of recreational vehicles, boats, trailers and related items. The
29 parking spaces for recreation vehicles shall be sized appropriately for recreational
30 vehicles and screened from view both within and without of the manufactured
31 home development by a site-obscuring fence. Recreational vehicles shall not be
32 kept on individual lots in manufactured home parks.

33 (f) Fencing. Fencing is not required around the perimeter of the manufactured home park.

34 (g) Landscaped areas. A minimum of one and one-half-inch caliper shade tree and five
35 one-gallon shrubs shall be placed every thirty-five (35) feet on the perimeter of the
36 manufactured home park. Additional landscaping may be required as specified by the
37 community development director. All required landscaping shall be maintained by the
38 developer on a continual basis.

39 (h) Recreation area. A recreation area shall be required in each manufactured home park.
40 The recreation area shall be five (5) percent of the total park or a minimum of 7200
41 square feet, whichever is larger. The recreation area shall be clearly designated on the
42 site plan, shall be accessible to all units, and shall not be reduced below the minimum
43 size or developed into lease spaces.

44 (i) Streets, lighting and utility design. All streets, drives, lighting and utility plans shall be
45 subject to the approval of the city's director of public works, who shall approve them on
46 the basis of their ability to serve the proposed development. In all manufactured home
47 parks all utilities shall be installed underground.

1 (j)Public Access

2 (1) Parks must have frontage on at least one public street with a fifty (50) foot or
3 wider right-of-way. Secondary access may be provided to public streets with
4 narrower rights-of-way if approved by the Public Works Department.

5 (2) Interior roadways shall be designed so as to provide access to each individual
6 unit.

7 (3) Access and circulation shall meet standards set forth by the Public Works
8 Department.

9 **Sec. 23-15. Installation Standards.**

10 Installation of manufactured homes shall be in conformance with the current adopted
11 version of the Idaho Manufactured Home Installation Standards, published under the
12 authority of the State of Idaho Division of Building Safety in coordination with the Idaho
13 Manufactured Housing Association. All installations of new manufactured housing units
14 in a park shall obtain a placement permit issued by the Community Development
15 Department.

16 **Sec. 23-16. Skirting.**

17 All manufactured homes within manufactured home parks in the city shall be provided
18 with, at a minimum, a compatible prefinished metal skirting or a solid, opaque skirting
19 compatible with the home's siding which shall extend from the grade of the ground to the
20 base of the manufactured home. The skirting shall be rodent-proof and shall be
21 maintained in good repair at all times. The skirting shall extend around the entire
22 perimeter without gaps or holes, other than required for ventilation, which shall be
23 screened.

24 **Sec. 23-17. Manufactured home parks existing prior to effective date; additions;
25 filing of site plan.**

26 (a) Manufactured home parks in existence or under development as of the effective date
27 of this ordinance shall be permitted to continue as an established land use regardless of
28 zone but shall be exempt from the standards of Section 23-14, except as stated in this
29 section.

30 (b) Any addition of land area for the purposes of providing additional lease spaces to an
31 existing manufactured home park shall meet the development standards required by this
32 chapter.

33 (c) Additional lease spaces created within an existing park from undeveloped property or
34 by the rearrangement of manufactured home units shall meet the development standards
35 required by this chapter.

36 (d) Only manufactured homes meeting the requirements of Section 23-14(b) shall be
37 permitted as replacement units in parks developed after the effective date of this
38 ordinance. Replacement units in manufactured home parks developed prior to the
39 effective date may be Class A or Class B units, except that the mix of Class A and B units
40 existing as of the effective date may not move further from compliance with Section 23-
41 14(b).

42 (e) Placement of manufactured homes on developed, but previously unleased, spaces
43 shall conform to the spacing requirements of Ordinance 3725, adopted April 2, 1984.

44 (f) Replacement of existing manufactured homes on previously leased spaces shall
45 conform to the spacing requirements of Ordinance 3725, adopted April 2, 1984.
46 Where the previous unit does not meet the spacing requirements of Ordinance 3725,

1 adopted April 2, 1984, the spacing shall not deviate below the spacing provided to,
2 by, or for the previous unit prior to the replacement.

3 (g) A placement permit obtained from the Community Development Department is
4 required.

5 (h) Private drive access presently provided to manufactured home units in existing parks
6 shall not be altered so as to decrease the vehicular access area presently provided,
7 unless approved by the Public Works Department, in consultation with the Fire
8 Department.

9 (i) The operator of any manufactured home park in existence as of the effective date
10 hereof shall, within ninety (90) days from said effective date, file with the
11 community development department an accurately drawn site plan of the park
12 containing the information required by section 23-5 of this code. Such plan shall
13 clearly show all spaces provided for manufactured homes and the dimensions of all
14 manufactured home units located therein.

15 **Sec. 23-18. Proximity of liquefied petroleum gas tanks.**

16 Liquefied petroleum (LP) gas tanks shall not be located closer to any manufactured home
17 unit than five (5) feet for tanks of less than one hundred twenty-five (125) gallons nor ten
18 (10) feet for tanks of one hundred twenty five (125) gallons or more. Vehicular
19 protection shall be provided as required by the fire department. Each manufactured home
20 unit may have not more than two (2) factory-installed propane tanks of not more than ten-
21 gallon capacity each notwithstanding the foregoing provision. All LP tank installations
22 are required to meet the current adopted fire code and NFPA standards.

23 **Sec. 23-19. Storage beneath a manufactured home prohibited.**

24 The storage of personal property beneath manufactured home units shall not be
25 permitted.

26 **Sec. 23-20. Structural modifications in compliance with manufacturer's**
27 **specifications.**

28 Manufactured homes may be modified, structurally altered or have exterior additions
29 added only in accordance with the manufacturer's specifications.

30
31 **SECTION 3: That new sections to be codified as Lewiston City Code Sections**

32 **23-21 through 23-35 be and the same are hereby enacted to provide as follows:**

33 **ARTICLE II. RECREATIONAL VEHICLE PARKS**

34 **Sec. 23-21. Purpose.**

35 The intent of this chapter is to provide standards for the development of commercial
36 recreational vehicle (RV) parks which are designed and located for a temporary length of
37 stay and consisting of the appropriate amenities for the health, safety, and welfare of the park
38 guests and surrounding property.

39 **Sec. 23-22. Definitions.**

40 For the purposes of this chapter, the following words and phrases shall have the ascribed
41 meanings:

1 **Recreational vehicle park:** A tract of land under unified ownership upon which two or
2 more recreational vehicle sites are located, established, or maintained for occupancy as
3 temporary living quarters.

4 **Accessory parking area:** A common area set aside for the parking and storage of
5 vehicles, boats, motorcycles and other similar items accessory to everyday life owned by
6 guests of the park.

7 **Recreation area:** A parcel of ground having recreational equipment and open space to be
8 used for leisure activities of park guests.

9 **Recreational vehicle (RV):** A vehicular type unit primarily designed as temporary living
10 quarters for recreational, camping or travel use, which either has its own motive power or is
11 mounted on or drawn by another vehicle. The basic entities are travel trailer, camping trailer,
12 fifth-wheel camper and motor home. For the purposes of this chapter, RVs shall be classified
13 as either *dependent*, meaning a RV that does not contain toilet and/or bathing facilities, or
14 *independent*, a RV that contains toilet and/or bathing facilities.

15 **Recreational vehicle sites:** An area within a recreational vehicle park designated for the
16 parking of one recreational vehicle. Each site shall incorporate a paved pad for parking the
17 RV, a paved area for parking of motor vehicles, and an area surrounding the RV for the use
18 of the occupants.

19 **Sanitary dumping station** means a facility used for removing and disposing of wastes
20 from recreational vehicle sewage holding tanks.

21 **Sec. 23-23. Powers, duties, responsibilities of the Community Development**
22 **Department.**

23 It is hereby made the duty of the Community Development Department to enforce all
24 provisions of this chapter. For the purpose of securing such enforcement, authorized
25 representatives of the Department shall have the right and are hereby empowered to enter
26 upon any recreational vehicle park property, existing or proposed, and inspect the same and
27 all accommodations connected therewith at any reasonable time. The Department is further
28 empowered to issue orders granting, renewing and revoking such permits and licenses as are
29 provided for in accordance with the provisions of this chapter. For the purposes of carrying
30 out this provision, technical reports from duly authorized representatives of the city
31 sanitation office, the fire department, the police department, the public works department and
32 the community development department shall be obtained. Such reports shall contain
33 findings of fact and reference to the Lewiston Code when city standards are not being met or
34 violations have been found.

35 **Sec. 23-24. License – Required; approval of Community Development Department**

36 (a) No person shall operate or maintain upon any property owned or controlled by him a
37 recreational vehicle park within the city without having first secured a city business
38 license. Such city business license shall not be granted with the annual approval of
39 the community development department.

40 (b) For the purposes of carrying out this provision, the department shall obtain technical
41 reports from city departments as specified in Section 3.

42 **Sec. 23-25. Same - Application.**

43 Application for the license required by the preceding section or for the renewal thereof
44 shall be filed with the Community Development Department on forms furnished by the
45 Department and shall include the name and address of the owner and/or an authorized
46 operator and a legal description of the premises upon which the recreational vehicle park is

1 or is proposed to be located. New applications for license shall be accompanied by three
2 copies of a scaled site plan showing the following, either existing or as proposed:

- 3 (1) The extent and area used for park purposes;
- 4 (2) Roadways and driveways;
- 5 (3) Location of pads for recreational vehicle;
- 6 (4) Location and number of sanitary conveniences, including restrooms, laundries and
7 utility rooms to be used by guests of the park;
- 8 (5) Method and plan of sewage disposal;
- 9 (6) Method and plan of garbage removal;
- 10 (7) Plan for water supply;
- 11 (8) Plan for electrical lighting of lots and spaces;
- 12 (9) Provision of parking spaces and accessory vehicle area;
- 13 (10) Location and size of recreation area;
- 14 (11) Grading and drainage of the property;
- 15 (12) Location of fire hydrants within or adjacent to the park.

16 **Sec. 23-26. Same – Nontransferable; notice upon sale, or transfer of recreational vehicle**
17 **park; site plan.**

18 No recreational vehicle park license shall be transferable. Every person holding such a
19 license shall give notice in writing to the Community Development Department within five
20 (5) working days after having sold, transferred, given away or otherwise disposed of interest
21 in or control of any recreational vehicle park. Every license holder shall cause an up-to-date
22 site plan as described in Section 7 of each existing recreational vehicle park for which he
23 holds a license to be kept on file at the community development department.

24 **Sec. 23-27. Same – Revocation.**

25 The Community Development Director is hereby authorized to revoke any license
26 pursuant to the terms of this chapter if, after due investigation, it is determined that the holder
27 thereof has violated any of the provisions of this chapter or that any recreational vehicle park
28 is being maintained in an unsanitary or unsafe manner or is a nuisance.

29 **Sec. 23-28. Same – Hearing.**

30 Any person aggrieved by an order of the Community Development Director granting,
31 denying, renewing or revoking a license for a recreational vehicle park may file a written
32 request for an appeal before the planning and zoning commission within fifteen (15) days
33 after issuance of such order. Notices of the appeal shall be sent to all adjacent property
34 owners, giving the date and time the commission will hear the appeal. At such hearing, the
35 planning and zoning commission shall determine whether the granting, denial, renewal, or
36 revocation of the license was in accordance with the provisions of this chapter and shall issue
37 a written finding of fact, conclusions of law and an order to carry out its findings and
38 conclusions.

39 **Sec. 23-29. Same – Appeal to council.**

40 Any order either granting, denying, renewing or revoking any license under the
41 provisions of this chapter following public hearing as provided in section 10 may be appealed
42 to the city council in the same manner as appeals from any action or ruling by the Planning
43 and Zoning Commission.

44 **Sec. 23-30. Inspection of premises**

45 Before a business license for a recreational vehicle park may be issued, the premises shall
46 be inspected and approved by each of the city staff as provided in section 3 or their duly

1 authorized representatives, as complying with all the provisions of this chapter and all other
2 applicable ordinances of the city. Such investigation shall be conducted annually and in such
3 a manner as to provide minimum inconvenience to guests of the recreational vehicle park. The
4 owner or licensed operator of the recreational vehicle park shall be contacted in advance of
5 inspection.

6 **Sec. 23-31. Recreational park development application**

7 (A) Application submission. When any person desires to develop a recreational vehicle
8 park that person shall file an application for the same with the community
9 development department on forms furnished by the department. A preapplication
10 conference between the developer and city staff as provided in section 3 shall be held
11 to discuss the site design, location, public service needs, and related areas of concern
12 for the proposed development.

13 (B) Contents of application. Each application for development of a recreational vehicle
14 park shall include at a minimum, the following:

- 15 (1) The name and address of the owner or an authorized agent and a legal description of
16 the premises upon which the recreational vehicle park is proposed to be located;
- 17 (2) Three copies of a scaled site plan showing the following:
 - 18 (1) The extent and area used for park purposes;
 - 19 (2) Roadways and driveways;
 - 20 (3) Location of pads for recreational vehicles;
 - 21 (4) Location and number of sanitary conveniences, including restrooms, laundries and
22 utility rooms to be used by guests of the park;
 - 23 (5) Method and plan of sewage disposal;
 - 24 (6) Method and plan of garbage removal;
 - 25 (7) Plan for water supply;
 - 26 (8) Plan for electrical lighting of lots and spaces;
 - 27 (9) Provision of parking spaces and accessory vehicle area;
 - 28 (10) Location and size of recreation area;
 - 29 (11) Grading and drainage of the property;
 - 30 (12) Location of fire hydrants within or adjacent to the park.

31 **Section 23-32. Same – Review Process**

32 Following the initial preapplication conference additional preapplication conferences with
33 the developer shall be scheduled as necessary to properly inform the developer of all the
34 requirements for development and to obtain from the developer any and all information, site
35 plans, descriptions, and data necessary for approval by the director of community
36 development.

37 **Sec. 23-33. Criteria for locating a recreational vehicle park.**

- 38 (1) Recreational vehicle parks shall be permitted in zones as established in
39 Chapter 37 – Zoning
- 40 (2) The minimum area for a recreational vehicle park is two acres.
- 41 (3) Parks shall be located with direct access to an arterial or collector street with a
42 right-of-way width of at least 50 feet.

43 **Sec. 23-34. Development standards for a recreational vehicle park.**

44 (a) Recreational vehicle sites shall incorporate a paved pad for parking the RV, paved area
45 for parking of motor vehicles, and area surrounding the RV set aside for the use of the
46 occupants. Spaces shall be designed with the following minimum spacing requirements.

- 1 1) A minimum front yard setback at the main entrance of the park of 20 feet
- 2 from the property line, or greater if required by the underlying zone
- 3 2) No RV shall be closer than ten (10) feet to the outer property line of the
- 4 recreational vehicle park and shall comply with the setback requirements of
- 5 that zone if more restrictive.
- 6 3) Each RV shall have a clearance a minimum of five (5) feet from the interior
- 7 roadway so as to not block the interior roadway.
- 8 4) Each RV shall be no closer than 15 feet to another RV. Slide-outs and tip-
- 9 outs shall not encroach upon the required separation.
- 10 5) No permanent structures, such as carports or decks may be attached to any
- 11 recreational vehicle while it is in a park.

12 (b) Vehicle Parking within recreational vehicle parks shall conform to the following
13 minimum standards:

14 (1) A minimum of one (1) space shall be provided as part of each recreational vehicle
15 site. One common guest space shall be provided for every three (3) RV sites.

16 (2) A minimum of one space per two (2) RV sites shall be required for parking of boats,
17 trailers and related items.

18 (c) Fencing. A site obscuring fence or wall six feet in height is required around the
19 perimeter of the recreational vehicle park. The individual fencing of RV sites is prohibited.

20 (d) Landscaped areas. A minimum of one (1) one and one-half-inch caliper shade tree
21 and five one-gallon shrubs shall be placed every thirty-five (35) feet on the perimeter of the
22 recreational vehicle park. Areas within and between RV sites not required to be paved shall
23 also be landscaped and include a minimum of one (1) one and one half-inch caliper shade
24 tree per RV site. All required landscaping shall be maintained by the developer on a
25 continual basis.

26 (e) Recreation area. A recreation area shall be required in each recreational vehicle park.
27 The recreation area shall be a minimum of five (5) percent of the total park or 4800 square
28 feet, whichever is larger. The recreation area shall be clearly designated on the site plan, shall
29 be accessible to all units, and shall not be reduced below the minimum size or developed into
30 rental spaces.

31 (f) Restroom, shower, and laundry facilities shall be provided and located for the benefit
32 of all guests in accordance with industry standards. The location of these facilities shall not
33 reduce the required amount of recreation area described above.

34 (g) A sanitary dumping station appropriately sized for the number of sites shall be
35 required. Individual hookups to sites designed for independent RVs shall be permitted when
36 connected to a centralized sewer system. All sewage disposal methods must meet federal,
37 state, and local health regulations.

38 (h) Accessory uses within a park for the benefit of the guests, such as fuel stops,
39 canteens, pools and clubhouses shall be permitted upon review. Structures containing said
40 uses shall be located in conformance with the required setbacks of the underlying zone.

41 (i) Streets, lighting and utility design. All streets, drives, lighting and utility plans shall be
42 subject to standards developed by the Public Works Department and are to be approved by
43 the director of public works, who shall approve them on the basis of their ability to serve the
44 proposed development. All utilities shall be installed underground.

45 (j)Public Access

46 (1) Parks must have frontage on at least one public street with a fifty (50) foot or wider
47 right-of-way. Secondary access may be provided to public streets with narrower rights-
48 of-way if approved by the Public Works Department.

- 1 (2) Interior roadways shall be designed so as to provide access to each individual unit.
2 (3) Access and circulation shall meet standards set forth by the Public Works
3 Department.

4 **Sec. 23-35. Storage beneath a recreational vehicle prohibited.**

5 The storage of personal property beneath recreational vehicles shall not be permitted.

6 **SECTION 4: That a new section to be codified as Lewiston City Code Section**

7 **23- 36 be and the same are hereby enacted to provide as follows:**

8 ARTICLE III. MISCELLANEOUS PROVISIONS
9

10 **Sec. 23-36. Miscellaneous provisions.**

11 (a) No person shall park any manufactured home or recreational vehicle on any street, alley,
12 highway, public place or on any tract of land owned by any person, occupied or unoccupied,
13 within the city, except as provided in this chapter.

14 (b) No person shall park any manufactured home or recreational vehicle on the premises of
15 any occupied dwelling or on any lot which is not a part of the premises of any occupied
16 dwelling, either of which is situated outside an approved manufactured home park,
17 manufactured home subdivision, or manufactured home planned unit development; provided,
18 that the parking of only one unoccupied manufactured home or recreational vehicle in an
19 accessory private garage building or in a rear or side yard in any zone is permitted; provided
20 further, that no living quarters shall be maintained, or business practiced in such
21 manufactured home or recreational vehicle, while such manufactured home or recreational
22 vehicle is so parked or stored, and so long as such manufactured home or recreational vehicle
23 does not become a nuisance because of fire hazard or dilapidation.

24 (c) Temporary parking of unoccupied manufactured homes or recreational vehicles shall be
25 permitted on streets, alleys, or highways within the city for not more than seventy-two (72)
26 hours subject to any other and further prohibitions, regulations or ordinances for that street,
27 alley or highway; provided, however, that no water or sanitary facilities are used in any
28 manufactured home or recreational vehicle so parked.

29 (d) The provisions of this chapter notwithstanding, no manufactured home or recreational
30 vehicle shall be parked on any street, alley or highway within the city in violation of any
31 other ordinance, regulation or restriction affecting the use of such upon any particular street,
32 alley or highway.

33 **SECTION 5:** That Lewiston City Code Section 37-3 be amended by amending the
34 definition for manufactured home, adding a definition for manufactured home park and
35 deleting the definition for tourist facility.

36 **Sec. 37-3. Definitions.**

37 ~~**Manufactured home** means housing built on a chassis designed and constructed for~~
38 ~~transportation to a site for installation and use when connected to required utilities. May~~
39 ~~also be commonly referred to as "mobile home" or "modular home."~~
40

1 Manufactured home means a structure, constructed after June 15, 1976, in accordance
2 with the HUD manufactured home construction and safety standards, and is transportable
3 in one (1) or more sections, which, in the traveling mode, is eight (8) body feet or more in
4 width or is forty (40) body feet or more in length, or when erected on site, is three
5 hundred twenty (320) or more square feet, and which is built on a permanent chassis and
6 designed to be used as a dwelling with or without a permanent foundation when
7 connected to the required utilities, and includes the plumbing, heating, air conditioning,
8 and electrical systems contained therein, except that such term shall include any structure
9 which meets all the requirements of this paragraph except the size requirements and with
10 respect to which the manufacturer voluntarily files a certification required by the
11 secretary of housing and urban development and complies with the standards established
12 under 42 U.S.C. section 5401 et seq.

13
14 ***Class A manufactured home:*** A manufactured home meeting the following standards:

- 15 (1) Constructed after ~~June 15, 1975~~, June 15, 1976, and certified as meeting the mobile
16 manufactured home construction and safety standards of the Department of Housing and
17 Urban Development;
18 (2) Shall be multisectional and enclose a space of not less than one thousand (1,000)
19 square feet;
20 (3) Roof pitch shall be not less than a three-foot rise for each twelve (12) feet of
21 horizontal run (3:12) and roof shall have minimum six-inch eave or eave and gutter;
22 (4) Has roofing materials which are generally acceptable for site-built housing. Any
23 roofing material may be used provided it has the appearance of a nonmetallic shingle,
24 shake or tile roof;
25 (5) Has siding material which has the appearance of wood, masonry or horizontal metal
26 siding. Reflection from horizontal metal siding shall be no greater than that from siding
27 coated with white gloss enamel;
28 (6) The manufactured home shall be placed on an excavated and backfilled foundation
29 and enclosed at the perimeter such that the home is located not more than twelve (12)
30 inches above grade;
31 (7) Hitch or tongue of manufactured home shall be removed.

32
33 ***Class B manufactured home:*** A manufactured home meeting the mobile manufactured
34 home construction and safety standards of the Department of Housing and Urban
35 Development but not meeting all the criteria ~~(1) (2)~~ through ~~(7) (5)~~ for Class A
36 manufactured homes. Also includes certified rehabilitated mobile homes as provided in
37 Title 44, Chapter 25 of Idaho Code.

38
39 ***Class C manufactured home:*** A manufactured home which does not meet the mobile
40 manufactured home construction and safety standards of the Department of Housing and
41 Urban Development but which is at least ~~ten (10)~~ eight (8) feet wide and forty (40) feet in
42 length.

43
44 ***Manufactured home park*** means a tract of land under unified ownership developed for
45 the purpose of providing individual rental spaces for the placement of manufactured
46 homes within its boundaries.

1 Tourist facility, manufactured home park, manufactured home subdivision, and modular
2 home shall have the definitions set forth in section 23-1 of this code.
3

4 SECTION 6: That Lewiston City Code Section 37-19 be and the same is hereby
5 amended to provide as follows:

6 **Sec 37-19. Uses permitted outright.**

7 In an R-1 Zone, the following uses and their accessory uses are permitted outright,
8 subject to the provisions of Article IV:

- 9 (1) Bed and breakfast facilities, subject to the special conditions of section 37-13.1(1) of
10 this code;
- 11 (2) Church, subject to the special conditions of section 37-20.1(2) of this code;
- 12 (3) Class A manufactured home;
- 13 (4) Commercial uses legally established as of December 31, 2004, and which have
14 maintained a valid business and occupation permit;
- 15 (5) Family day care, subject to the special conditions of section 37-13.1(2) of this code;
- 16 (6) General farming, except feedlots;
- 17 (7) Manufactured home park, subject to the requirements of Chapter 23 of this code and
18 with a minimum area of ~~four and one-half (4-1/2)~~ two (2) acres and a maximum
19 density of 5.8 units per acre;
- 20 (8) Mortuary, subject to the special conditions of section 37-20.1(1) of this code;
- 21 (9) Park, subject to the special conditions of section 37-20.1(4) of this code;
- 22 (10) School, subject to the special conditions of section 37-20.1(3) of this code;
- 23 (11) Single-family dwelling;
- 24 (12) Two-family dwelling unit with a minimum lot area of fifteen thousand (15,000)
25 square feet unless the county sanitarian determines additional land is required to meet
26 the minimum standards of the Idaho Department of Health and Welfare;

27 SECTION 7: That Lewiston City Code Section 37-20 be and the same is hereby
28 amended to provide as follows:

29 **Sec. 37-20. Conditional uses permitted.**

30 In an R-1 Zone the following uses and their accessory uses are permitted when authorized
31 in accordance with the standards and requirements in Articles IV and IX:

- 32 (1) Alternative telecommunications towers not to exceed seventy (70) feet in height.
33 Alternative telecommunications towers shall comply with standards of section 37-
34 163(2) of this code;
- 35 (2) Class B manufactured home;
- 36 (3) Day care center, subject to the special conditions of section 37-20.1(5) of this code;
- 37 (4) Group day care, subject to the special conditions of section 37-13.1(3) of this code;
- 38 (5) Intensification, or expansion of commercial uses of ten (10) percent of the building
39 area or more which were legally established and licensed for business and occupation;
- 40 (6) Noncommercial kennel, subject to commercial kennel standards of section 37-
41 163(15) of this code;
- 42 (7) Preschool, subject to the special conditions of section 37-20.1(6) of this code;

- 1 (8) Public use;
- 2 (9) Re-establishment of a commercial use which was legally established but where the
- 3 business and occupation license has lapsed for a period not to exceed one year;
- 4 (10) Replacement of a nonconforming commercial use located abutting a principal or
- 5 minor arterial street, as identified in the Lewiston Comprehensive Transportation
- 6 Plan, subject to standards of section 37-163(17) of this code;
- 7 (11) Replacement of a nonconforming residential use not located abutting a principal or
- 8 minor arterial street, as identified in the Lewiston Comprehensive Transportation
- 9 Plan, subject to setback and yard requirements of the R-2 Zone;
- 10 (12) Semi-public use, other than church or school.
- 11 (13) Manufactured home park, subject to the requirements of Chapter 23 of this
- 12 code and a density of greater than 5.8 units per acre.
- 13

14 SECTION 8: That Lewiston City Code Section 37-35 be and the same is hereby
15 amended to provide as follows:

16 **Sec. 37-35. Uses permitted outright.**

17 In an R-2A Zone, the following uses and their accessory uses are permitted outright
18 subject to the provisions of Article IV:

- 19 (1) Bed and breakfast facilities, subject to the special conditions of section 37-13.1(1) of
- 20 this code;
- 21 (2) Church, subject to the special conditions of section 37-20.1(2) of this code;
- 22 (3) Class A manufactured home;
- 23 (4) Commercial uses legally established as of December 31, 2004, and which have
- 24 maintained a valid business and occupation permit;
- 25 (5) Family day care, subject to the special conditions of section 37-13.1(2) of this code;
- 26 (6) Manufactured home park, subject to the requirements of Chapter 23 of this code with
- 27 a minimum area of two (2) acres and a maximum density of 8.7 units per acre;
- 28 (7) Mortuary, subject to the special conditions of section 37-20.1(1) of this code;
- 29 (8) Park, subject to the special conditions of section 37-20.1(4) of this code;
- 30 (9) School, subject to the special conditions of section 37-20.1(3) of this code;
- 31 (10) Single-family dwelling;
- 32 (11) Two-family dwelling.

33 SECTION 9: That Lewiston City Code Section 37-36 be and the same is hereby
34 amended to provide as follows:

35 **Sec. 37-36. Conditional uses permitted.**

36 In an R-2A Zone, the following uses and their accessory uses are permitted when
37 authorized in accordance with the standards and requirements in Articles IV and IX:

- 38 (1) Alternative telecommunications towers not to exceed seventy (70) feet in height.
- 39 Alternative telecommunications towers shall comply with standards of section 37-
- 40 163(2) of this code;
- 41 (2) Class B manufactured home as a hardship, subject to the requirements of section 37-
- 42 163(13) of this code;
- 43 (3) Day care center, subject to the special conditions of section 37-20.1(5) of this code;
- 44 (4) Group day care, subject to the special conditions of section 37-13.1(3) of this code;
- 45 (5) Intermediate care facility;

- 1 (6) Keeping of livestock, subject to the standards of section 37-163(5) of this code;
- 2 (7) Long-term care facility;
- 3 (8) Intensification, or expansion of commercial uses of ten (10) percent of the building
- 4 area or more which were legally established and licensed for business and occupation;
- 5 (9) Multifamily dwelling, when fronting on a minimum fifty (50) foot wide, improved
- 6 right-of-way;
- 7 (10) Noncommercial kennel, subject to commercial kennel standards of section 37-
- 8 163(15) of this code;
- 9 (11) Preschool, subject to the special conditions of section 37-20.1(6) of this code;
- 10 (12) Public use;
- 11 (13) Re-establishment of a commercial use which was legally established but where the
- 12 business and occupation license has lapsed for a period not to exceed one year;
- 13 (14) Replacement of a nonconforming residential use not located abutting a principal or
- 14 minor arterial street, as identified in the Lewiston Comprehensive Transportation
- 15 Plan, subject to setback and yard requirements of the R-2 Zone;
- 16 (15) Semi-public use, other than a church or school;
- 17 (16) Manufactured home park, subject to the requirements of Chapter 23 of this code
- 18 with a density greater than 8.7 units per acre.
- 19

20 SECTION 10: That Lewiston City Code Section 37-57.2 be and the same is hereby
 21 amended to provide as follows:

22 **Sec. 37-57.2. Uses permitted outright.**

23 In the North Lewiston Mixed Use Development (MXD-NL) Zone, the following uses and
 24 their accessory uses are permitted when authorized in accordance with the provisions of
 25 Articles IV and IX:

- 26 (1) Auto, boat, truck, recreational vehicle rental, sales and service;
- 27 (2) Building supply outlet;
- 28 (3) Business or professional offices;
- 29 (4) Car wash;
- 30 (5) Class A manufactured home;
- 31 (6) Commercial or industrial laundry and dry cleaners;
- 32 (7) Concrete or concrete products manufacturing;
- 33 (8) Eating or drinking establishments;
- 34 (9) Financial institutions;
- 35 (10) Greenhouses and nurseries;
- 36 (11) Heavy equipment sales;
- 37 (12) Heavy equipment service subject to development standards;
- 38 (13) Hotels or motels;
- 39 (14) Industrial parks;
- 40 (15) Keeping of livestock on lots where the predominant use on the property is
- 41 residential, subject to the standards of section 37-163(5) of this code;
- 42 (16) Manufactured home parks subject to the standards of Chapter 23 of this code with a
- 43 minimum of two (2) acres and a maximum density of 8.7 units per acre;
- 44 (17) Manufacturing, processing, assembly and distribution, except a use specifically
- 45 listed as a conditional use in an M-1, M-2 or P Zone, subject to development standards;

- 1 (18) Office parks;
- 2 (19) Personal services;
- 3 (20) Public uses;
- 4 (21) Recreational vehicle park subject to the standards of Chapter 23 of this code;
- 5 (22) Retail sales and service;
- 6 (23) Single or multifamily residential subject to the standards of the R-4 Higher Density
- 7 Residential Zone as set forth in sections 37-50 through 37-56 of this code;
- 8 (24) Telecommunications facilities;
- 9 (25) Truck terminals;
- 10 (26) Veterinary clinic or kennel;
- 11 (27) Warehousing and mini-storage, subject to development standards.
- 12

13 SECTION 11: That Lewiston City Code Section 37-57.3 be and the same is hereby
14 amended to provide as follows:

- 15 Sec. 37-57.3. Conditional uses permitted.
16 In the MXD-NL Zone, the following uses and their accessory uses are permitted when
17 authorized in accordance with the standards and requirements of Articles IV and IX:
18 (1) Semi-public use;
19 (2) Wholesale distribution;
20 (3) Wood processing plant.
21 (4) Manufactured home park, subject to the requirements of Chapter 23 of this code with
22 a density greater than 8.7 units per acre.
23

24 SECTION 12: That Lewiston City Code Section 37-64 be and the same is hereby
25 amended to provide as follows:

- 26 **Section 37-64. Uses permitted outright.**
27 In a C-2 Zone, the following uses and their accessory uses are permitted outright subject to
28 the provisions of Article IV:
29 (1) Car wash, subject to the special conditions of section 37-60.1(1) of this code;
30 (2) Commercial Marina;
31 (3) Commercial entertainment facility;
32 (4) Day Care Center, subject to the special conditions of section 37-20.1(5) of this code;
33 (5) Eating or drinking establishment;
34 (6) Motel/hotel;
35 (7) Personal service uses;
36 (8) Preschool, subject to the special conditions of section 37-20.1(6) of this code;
37 (9) Public or governmental offices or semi-public uses which uses are similar to other
38 uses permitted outright in this zone;
39 (10) Recreational vehicle park when in conformance with Chapter 23 of this code; ~~when~~
40 ~~the duration of stay does not exceed seven (7) days~~
41 (11) Residential uses legally established as of December 31, 2004;
42 (12) Retail sales and service;
43 (13) Service station, subject to the special conditions of section 37-60.1(2) of this code;

- 1 (14) Telecommunications towers, subject to the standards of section 37-13.1(4) of this
2 code;
3 (15) Alternative telecommunications towers, subject to the standards of section 37-163(2)
4 of this code.

5 SECTION 13: That Lewiston City Code Section 37-71 be and the same is hereby amended
6 to provide as follows:

7 **Section 37-71. Uses permitted outright.**

8 In a C-4 Zone the following uses and their accessory uses are permitted outright subject to
9 standards of Article IV:

- 10 (1) Auto, boat, manufactured home, recreational vehicle, heavy equipment sales and
11 service;
12 (2) Building supply outlet;
13 (3) Business or professional offices;
14 (4) Car wash, subject to the special conditions of section 37-60.1(1) of this code;
15 (5) Commercial entertainment facility subject to the special conditions of section 37-
16 69.1(3) of this code;
17 (6) Day care center, subject to the special conditions of section 37-20.1(5) of this code;
18 (7) Eating or drinking establishment;
19 (8) Financial institutions;
20 (9) Greenhouses and nurseries;
21 (10) Laundry and dry cleaners;
22 (11) Mini-storage, subject to the special conditions of section 37-69.1(1) of this code;
23 (12) Mortuary;
24 (13) Motel / hotel;
25 (14) Multifamily residential uses not on the ground floor of a building;
26 (15) Personal services;
27 (16) Preschool, subject to the special conditions of 37-20.1(6) of this code;
28 (17) Public or governmental offices or semi-public uses which uses are similar to other
29 uses permitted outright in this zone;
30 (18) Residential uses legally established as of December 31, 2004;
31 (19) Retail sales and service;
32 (20) Service station, subject to the special conditions of section 37-60.1(2) of this code;
33 (21) Telecommunications towers, subject to the standards of section 37-13.1(4) of this
34 code;
35 (22) Alternative telecommunications towers, subject to the standards of section 37-163(2)
36 of this code;
37 (23) Temporary Vendors operating for 16 days or less;
38 (24) Veterinary clinic or kennel, subject to the special conditions of section 37-69.1(2) of
39 this code;
40 (25) Recreational vehicle park, subject to the standards of Chapter 23 of this code.

41 SECTION 14: That Lewiston City Code Section 37-81 be and the same is hereby amended
42 to provide as follows:

43 **Section 37-81. Uses permitted outright.**

44 In a C-6 Zone, the following uses and their accessory uses are permitted outright subject to
45 the provisions of Article IV:

- 46 (1) Auto, boat, manufactured home, recreational vehicle sales and service;
47 (2) Eating and drinking establishments;

- 1 (3) Financial institutions;
- 2 (4) Hotel/motel;
- 3 (5) Car wash, subject to the special conditions of section 37-60.1(1) of this code;
- 4 (6) Commercial entertainment facility subject to the special conditions of section 37-
- 5 69.1(3) of this code;
- 6 (7) Day care center, subject to the special conditions of section 37-20.1(5) of this code;
- 7 (8) Mini-storage, subject to the special conditions of section 37-69.1(1) of this code;
- 8 (9) Personal services;
- 9 (10) Preschool, subject to the special conditions of 37-20.1(6) of this code;
- 10 (11) Professional and business offices;
- 11 (12) Public or governmental offices or semi-public uses which uses are similar to other
- 12 uses permitted outright in this zone;
- 13 (13) Residential uses legally established as of December 31, 2004;
- 14 (14) Retail sales and services;
- 15 (15) Service station, subject to the special conditions of section 37-60.1(2) of this code;
- 16 (16) Small animal hospital, clinic or kennel, subject to the special conditions of section 37-
- 17 69.1(2) of this code;
- 18 (17) Telecommunications towers, subject to the standards of section 37-13.1(4) of this
- 19 code;
- 20 (18) Alternative telecommunications towers, subject to the standards of section 37-163(2)
- 21 of this code;
- 22 (19) Temporary Vendors operating for 16 days or less;
- 23 (20) Recreational Vehicle Park, subject to the standards of Chapter 23 of this code.

24 SECTION 15: This ordinance shall take effect and be in full force from and after its passage,
 25 approval and publication.

26 DATED this _____ day of _____, 200__.

27 CITY OF LEWISTON

28

29 _____
 30 Jeffrey G. Nessel, MAYOR

31
 32
 33 ATTEST _____
 34 Rebecca L. O'Connor, Clerk

35
 36
 37
 38

124

FILED
 2009 OCT 29 PM 1 44
 PATTY O. WEEKS
 CLERK OF THE DIST. COURT
 James [Signature]
 DEPUTY

**IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE**

STEVEN LEE EDDINS,	)	CASE NO. CV08-01093
)	
Petitioner,)	
	)	OPINION AND ORDER
v.	)	ON PETITION FOR
	)	JUDICIAL REVIEW
CITY OF LEWISTON, an Idaho Municipal)	
Corporation,)	
)	
Respondent.)	
_____)	

This matter is before the Court on Petition for Judicial Review of a decision of the Lewiston Planning and Zoning Commission. Plaintiff is represented by attorney John C. Mitchell. Defendant is represented by attorney Don L. Roberts. The parties stipulated to waive oral arguments, submitting the matter to the Court on the record. The Court, having read the Petition, briefs, and affidavits filed, having reviewed the underlying record, and being fully advised in the matter, hereby renders its decision.

FACTUAL AND PROCEDURAL BACKGROUND

Petitioner Steven Eddins owns a manufactured home park located on 28th Street North in Lewiston, Idaho.¹ Eddins holds a permit for a manufactured home park but does not have a permit for a tourist facility that would allow recreational vehicles.² Sometime prior to January 22, 2008, Petitioner applied with the Community Development office of the City for a permit to place a recreational vehicle within his established manufactured home park.³ The permit was denied by letter dated January 22, 2008. The letter informed Eddins that a 2006 City Code prohibits the placement of recreational vehicles in manufactured home parks.⁴ The letter further informed Eddins that he could appeal the Community Development office's decision to the Lewiston Planning and Zoning Commission on a form included in the letter. Eddins filed an appeal asserting a grandfather clause exception.⁵ The appeal was heard by the Lewiston Planning and Zoning Commission (hereinafter "P&Z") during public hearing on March 12, 2008.⁶

On March 31, 2008, the Planning and Zoning Commission entered its Findings of Fact, Conclusions of Law and Decision, wherein it upheld the decision of the Community Development Department's denial of a permit for a recreational vehicle in Eddins' manufactured home park. On April 15, 2008, Eddins appealed the decision to the Lewiston City Council.⁷ On April 28, 2008, during regular session, the Council members voted to uphold the decision of the

¹ City of Lewiston Planning and Zoning Commission, Findings of Fact, Conclusions of Law and Decision entered March 31, 2008 at page R-20 of the Record of Proceedings.

² See page R-25 of the Record of Proceedings.

³ City of Lewiston Planning and Zoning Commission, Findings of Fact, Conclusions of Law and Decision entered March 31, 2008 at page R-20 of the Record of Proceedings. See also page R-30 of the Record of Proceedings.

⁴ See page R-1 of the Record of Proceedings.

⁵ See page R-3 of the Record of Proceedings.

⁶ See page R-4 of the Record of Proceedings.

⁷ See page R-36 of the Record of Proceedings.

Planning and Zoning Commission. On May 23, 2008, following the decision of the City Council, Eddins filed the above-entitled Petition for Judicial Review.

STANDARD OF REVIEW

A review of local zoning decisions is governed by the Idaho Administrative Procedures Act. *CNC v. City of Boise*, 137 Idaho 377, 379, 48 P.3d 1266 (2002).

[T]here is a strong presumption of validity of the actions of zoning boards, which includes the application and interpretation of their own zoning ordinances. *Howard*, 128 Idaho at 480, 915 P.2d at 711. This Court does not substitute its judgment for that of the agency as to the weight of the evidence presented. I.C. § 67-5279(1). Rather, this Court defers to the agency's findings of fact unless they are clearly erroneous. *Price*, 131 Idaho at 429, 958 P.2d at 586 (citing *Castaneda v. Brighton Corp.*, 130 Idaho 923, 926, 950 P.2d 1262, 1265 (1998)) (citing *South Fork Coalition v. Board of Comm'rs of Bonneville County*, 117 Idaho 857, 860, 792 P.2d 882, 885 (1990)). "In other words, the agency's factual determinations are binding on the reviewing court, even where there is conflicting evidence before the agency, so long as the determinations are supported by substantial competent evidence in the record." *Id.*

The Board's zoning decision may only be overturned where its findings: (a) violate statutory or constitutional provisions; (b) exceed the agency's statutory authority; (c) are made upon unlawful procedure; (d) are not supported by substantial evidence in the record; or (e) are arbitrary, capricious, or an abuse of discretion. *Id.* (citing I.C. § 67-5279(3)). The party attacking the Board's decision must first show that the Board erred in a manner specified in Idaho Code § 67-5279(3), and then it must show that its substantial right has been prejudiced. *Id.* (citing *Angstman v. City of Boise*, 128 Idaho 575, 578, 917 P.2d 409, 412 (Ct.App.1996)).

CNC v. City of Boise, 137 Idaho 377, 379, 48 P.3d 1266 (2002).

A court reviewing an agency action under the Administrative Procedures Act must determine whether the agency perceived the issue in question as discretionary, acted within the outer limits of its discretion and consistently with the legal standards applicable to the available choices, and reached its own decision through an exercise of reason. *Haw v. Idaho State Board of Medicine*, 143 Idaho 51, 54, 137 P.3d 438 (2006).

ANALYSIS

A transcript of the Lewiston Planning and Zoning meeting addressing Petitioner's appeal is included in the Record of Proceedings filed with the Court on October 7, 2008.⁸ During the meeting, Lewiston City Planner John Murray provided Planning and Zoning Commissioners with a historical background of the City's codes relative to manufactured homes and recreational vehicles, beginning in 1975 to the present codes enacted in 2006. The current code sections were then discussed by Mr. Murray, who noted that Section 23-14(b) reads⁹:

Unit types permitted. Manufactured home parks shall contain a minimum of seventy-five percent Class A manufactured homes. Up to twenty-five (25) percent of a park's total units may be Class B manufactured homes. A conditional use permit must be obtained in order to increase the ratio of Class B manufactured homes. Class C manufactured homes shall not be permitted.

Lewiston City Code Section 23-14(b).

Eddins concedes his park contains recreational vehicles that do not qualify as Class A or Class B manufactured homes but contends the code provides a grandfather clause that allows a non-conforming unit to be replaced with another non-conforming unit. The facts presented by Eddins were of a tenant who, prior to 2006, had a recreational vehicle in Eddins' park. After 2006, that same tenant replaced his recreational vehicle with a different recreational vehicle. It is the position of Eddins that this exchange of a non-conforming unit for another non-conforming unit where there is no change of tenant is allowed under the grandfather clause exception in the code. City Planner Murray noted that manufactured home parks in existence before 2006 are exempt from Section 23-14, except that:

. . . Replacement units in manufactured home parks developed prior to the effective date may be Class A or Class B units, except that the mix of Class A and B units existing as of the effective date may not move further from compliance with section 23-14(b).

⁸ See pages R-24 through R-34 of the Record of Proceedings.

⁹ See page R-8 of the Record of Proceedings and page R-25.

128

Lewiston City Code Section 23-17(d).¹⁰

In addition to hearing from City Planner Murray, the P&Z heard from Petitioner Eddins and his attorney.¹¹ Eddins expressed concern that, if the code was interpreted as allowing only a Class A or Class B manufactured home to replace a grandfathered recreational vehicle, he would be left with property that could not be used because the size of the lots would not accommodate anything larger than a recreational vehicle. After reviewing the language of the applicable code sections, including past and present code definitions for recreational vehicle, mobile home and manufactured home, and after noting that the question appeared in part to be whether same tenant or different tenant was relevant to the question, the P&Z members engaged in a discussion as to the intent of the applicable 2006 code sections.

After considerable discussion, the P&Z determined the long term goal of the applicable codes was to remove recreational vehicles from manufactured home parks for a number of safety reasons. The P&Z members then noted that the issue before them was whether the Community Development office had applied the code correctly. It was the vote of every P&Z member present that the code had been applied correctly and the appeal was denied.

It is evident from the record that the members of the Lewiston Planning and Zoning Commission understood their decision involved one of discretion and required them to interpret the City codes applicable to manufactured home parks. There is substantial evidence in the record that supports a finding that the interpretation of the City code by the P&Z Commission was correct and was applied correctly. Petitioner does not contend that the City's code and application of the code violate any constitutional or statutory provisions, that the agency exceeded its authority, that its decision was made upon unlawful procedure, or that the decision was arbitrary, capricious or an abuse of discretion, nor is there any evidence in the record that

¹⁰ See page R-8 of the Record of Proceedings and page R-25.

¹¹ See Transcript of P&Z meeting, pages R-24 through R-34 of the Record of Proceedings.

would support any such allegations. Rather, Petitioner challenges the interpretation and application of the City's code by the P&Z Commission.

Given the strong presumption of validity to be given a zoning board's application and interpretation of its own zoning ordinances, there is substantial evidence in the record to support the Lewiston Planning and Zoning Commission's interpretation and application of the City's 2006 codes regarding manufactured home parks and, in particular, the code requirements applicable to the removal and replacement of a grandfathered recreational vehicle. The P&Z Commission found the code allowed any recreational vehicle already in Eddins' park at the time the 2006 codes were enacted to remain lawfully in the park. However, as determined by the Commission, when a non-conforming recreational vehicle having grandfather status is removed, it may only be replaced by a conforming manufactured home under the code.

ORDER

The decision of the Lewiston City Planning and Zoning Commission and the Lewiston City Council is hereby AFFIRMED.

Dated this 29 ^{OCTOBER} day of November 2009.


JEFF M. BRUDIE, District Judge

CERTIFICATE OF MAILING

I hereby certify that a true copy of the foregoing OPINION & ORDER was:

hand delivered via court basket, or *Messenger Service*

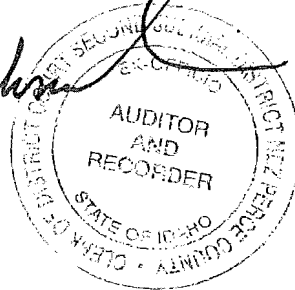
_____ mailed, postage prepaid, by the undersigned at Lewiston, Idaho, this 29th day of October 2009, to:

John C. Mitchell
PO Drawer 285
Lewiston, ID 83501

Don L. Roberts
PO Box 617
Lewiston, ID 83501

PATTY O. WEEKS, CLERK

By: *Amel Schwa*
Deputy



FILED
2009 DEC 10 AM 11 59

PATTY O. WEEKS
CLERK OF THE DIST. COURT
James
DEPUTY

1 JOHN CHARLES MITCHELL
Idaho State Bar No. 7159
2 CLARK and FEENEY
The Train Station
3 P.O. Drawer 285
Lewiston, Idaho 83501
4 Telephone: (208) 743-9516
5 Facsimile: (208) 746-9160

6 Attorneys for Petitioner/Appellant

9 IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
10 STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

11 STEVEN LEE EDDINS,)
12)
Petitioner,)
13)
v.)
14)
CITY OF LEWISTON, an Idaho)
Municipal Corporation,)

Case No. CV 08-01093

NOTICE OF APPEAL

) Fee Category:
) Fee Amount:

17 TO: CITY OF LEWISTON and to its attorney, DON L. ROBERTS, and THE CLERK OF THE ABOVE
18 ENTITLED COURT:

19 NOTICE IS HEREBY GIVEN THAT:

20 1. The above named Appellant, Steven Lee Eddins, appeals to the Idaho Supreme Court from
21 the Opinion and Order on Petition for Judicial Review entered the 29th day of October, 2009, by the
22 Honorable Jeff M. Brudie.

23 2. That Appellant has a right to appeal to the Idaho Supreme Court. The Opinion and Order
24 on Petition for Judicial Review described in paragraph 1 above is an appealable order under and pursuant
25 to Rule 11(f).

132

1 3. A preliminary state of the issue on appeal which the Appellants intend to assert in the appeal;
2 provided, any such list of issues on appeal shall not prevent the Appellant from asserting other issues on
3 appeal:

4 a. Whether the District court erred in affirming the decision of the Lewiston City Planning and
5 Zoning Commission and the Lewiston City Council.

6 4. Has an order been entered sealing all or any portion of the record? If so, what portion? N/A

7 5. (a) Is a reporter's transcript requested? No

8 6. The Appellant requests the following documents to be included in the clerk's record in
9 addition to those automatically included under Rule 28, I.A.R.:

10

<u>Date</u>	<u>Document</u>
05/23/08	Complaint (Petition for Judicial Review)
10/07/08	Record of Proceedings
04/14/09	Petitioner's Initial Brief on Judicial Review
05/15/09	Respondent's Brief
10/29/09	Opinion and Order on Petition for Judicial Review

11
12
13
14
15
16

17 7. The Appellants request the following documents, charts, or pictures offered or admitted as
18 exhibits to be copied and sent to the Supreme Court: N/A

19 8. I certify:

20 (a) That a copy of this notice of appeal has been served on each reporter of whom a transcript
21 has been requested as named below at the address set out below:

22 N/A

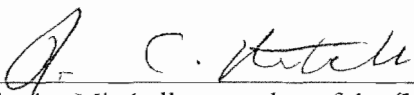
23 (b) That the clerk of the district court has been paid the estimated fee for preparation of the
24 reporter's transcript.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

- (c) That the estimated fee for preparation of the clerk's record has been paid.
- (d) That the appellate filing fee has been paid.
- (e) That service has been made upon all parties required to be served pursuant to Rule 20.

DATED this 10 day of December, 2009.

CLARK AND FEENEY

By: 
John Charles Mitchell, a member of the firm.
Attorneys for Petitioner/Appellant

134

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

I hereby certify on the 10th
day of December, 2009, a true copy
of the foregoing instrument
was: Mailed
 Faxed
 Hand delivered
 Overnight mail to:

Don L. Roberts
PO Box 617
Lewiston, ID 83501

CLARK and FEENEY

By *De C. Russell*
Attorneys for Petitioner/Appellant

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

STEVEN LEE EDDINS,)	
)	
Petitioner-Appellant,	)	SUPREME COURT NO. 37209
)	
vs.)	
	)	CLERK'S CERTIFICATE
)	
CITY OF LEWISTON, an Idaho,)	
Municipal Corporation,)	
)	
Respondent.)	

I, DeAnna P. Grimm, Deputy Clerk of the District Court of the Second Judicial District of the State of Idaho, in and for the County of Nez Perce, do hereby certify that the foregoing Clerk's Record in the above-entitled cause was compiled and bound by me and contains true and correct copies of all pleadings, documents, and papers designated to be included under Rule 28, Idaho Appellate Rules, the Notice of Appeal, any Notice of Cross-Appeal, and additional documents that were requested.

I further certify:

1. That no exhibits were marked for identification or admitted into evidence during the course of this action.

IN WITNESS WHEREOF I have hereunto set my hand and affixed
the seal of said court this 2nd day of February 2010.

PATTY O. WEEKS, Clerk

By



Deputy Clerk

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

STEVEN LEE EDDINS,)	
)	
Petitioner-Appellant,	)	SUPREME COURT NO. 37209
)	
vs.)	
	)	CERTIFICATE OF SERVICE
)	
CITY OF LEWISTON, an Idaho,)	
Municipal Corporation,)	
)	
Respondent.)	

I, DeAnna P. Grimm, Deputy Clerk of the District Court of the Second Judicial District of the State of Idaho, in and for the County of Nez Perce, do hereby certify that copies of the Clerk's Record were delivered on the 26 day of February 2010 to John C. Mitchell, Attorney for Appellant and Don L. Roberts, Attorney for Respondent by Valley Messenger Service.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 26 day of February 2010.

PATTY O. WEEKS
CLERK OF THE DISTRICT COURT

By DEANNA P. GRIMM
Deputy Clerk