

Mayor Hall and members of the Lewiston Planning Commission:
(% jeff@halldairy.com; aherrera@lewiston-ut.org)

September 19, 2024

RE: INITIAL REVIEW OF LEWISTON'S SUBDIVISION CODE

Thank you for partnering with our firm to update your subdivision code. My team has completed its initial audit of Lewiston's subdivision ordinances. While many existing provisions are well designed and relevant, others have fallen out of compliance with state law (specifically with Utah Code §10-9a-6). Still other provisions could be adjusted to enhance administrative efficiency.

The major issues and opportunities for improvement are as follows:

- **Add a new subdivision application review process for 1-2 family residential use.** SB174 (the 2023 bill requiring state-wide subdivision ordinance updates) and HB476 (the 2024 update) introduce a new review and approval process for subdivision applications involving one- or two-family residential development. The City's code will need a new section to implement this process. Key points to keep in mind are these:
 - The City Council can no longer be the subdivision land use authority for either preliminary or final applications (but it can be the appeal authority). The reason for this is that the state is trying to make reviewing and approving subdivision applications an administrative, not legislative process. For the same reason, the Planning Commission can no longer be the decision maker for final applications (but can for preliminary applications). Although these bodies are restricted from making some approval decisions, they can still be involved on the back end in the review process. The City can therefore continue to consider comments from the Mayor, City Council, and Planning Commission at all stages in the process. If it's important to the City that members of the Planning Commission still make final approval decisions, a potential workaround would be to create a "Subdivision/Development Review Committee" that includes members of the Planning Commission and other City staff. Ideally, this committee would be filled with individuals who have relevant technical backgrounds.
 - The City needs to describe an expedited timeline for review and approval. The City's current code gives the City an unlimited amount of time to review and approve preliminary and final applications. Under the new state law, the City is required to complete an initial review of 1-2 family residential applications within **30 business days** after the developer submits a "complete" application. The City can require modifications, but can take no longer than **120 business days** total to review subdivision improvement plans.

- The new law permits only one public hearing in the preliminary review process (and none in the final review process). The City's code currently requires only one meeting and does not specify when this meeting occurs. The public meetings that the City's code requires applicants to attend does not need to be changed.
- The new law restricts the City to considering subdivision improvement plans (including construction drawings) in either the preliminary or final applications. Many municipalities prefer to consider them in the preliminary phase, as that is when the Planning Commission can be involved. But it's also possible to delegate this responsibility to the City Engineer, staff, or a "Subdivision Review Committee." Another workaround would be to combine the preliminary and final applications into one application (more on this below).
- The new law gives the City a maximum of four "review cycles" when considering improvement plans for 1-2 family residential subdivisions. This means the City will need to be thorough when it asks an applicant for changes, because it can request revisions only four times.
- The new law provides potential subdivision applicants the right to an *optional* pre-application meeting with the City. The City's current optional "sketch plan" will work if it is made optional for applicants to request. Additionally, the new law requires that a this pre-application / sketch plan meeting be scheduled within 15 days after the applicant requests it.
- The new law requires the City to approve subdivision applications for 1-2 family residential use if those applications "check all the boxes" and are compliant with local ordinances. This would replace the City's discretion to approve with conditions or deny applications in some cases. The solution is to make sure that the City's land use ordinances and technical subdivision requirements are thorough and up to date.
- **Add subdivision application requirements.** The City's application requirements are relatively thorough, but a few requirements should be added to comply with state code, such as requiring plats to have a unique name, clearly specify the boundaries of all proposed parcels, be signed by the owners of the land, and be certified by a licensed surveyor.
- **Add provisions governing for improvement completion assurances.** The City's code currently mentions some, but not all the state requirements for improvement completion assurances (also called "performance guarantees"). The maximum amount of a completion assurance that the City can require is 110% of the cost of the required improvements. Currently, the City requires 125%. The City also needs to allow for the partial release of the completion assurance as portions of required improvements are completed and accepted.

- **Add exemptions for agricultural land.** The state requires some exemptions for subdividing agricultural land. Specifically, Utah Code §10-9a-605(2) says that agricultural subdivisions may be done without a plat if the use is and will always remain agricultural.
- **Add new requirements to the subdivision amendment process.** The City needs to describe a process for amending existing subdivisions. A few key points about this process are as follows:
 - Petitions for amendment must include the name and address of each property owner affected, and a signature of each of those property owners consenting to the petition. Additionally, there must be certification from the surveyor who prepared the amended plat that the surveyor has completed a survey and verified all measurements.
 - The owner must prepare a plat that depicts the portion of the subdivision to be amended, includes a plat name that distinguishes the amended plat from the original plat, describes the differences between the amended plat and original plat, includes reference to the original plat, and conforms to all requirements of Utah Code Section 10-9a-603.
 - The City must provide notice of any filed amendment petition (by mail, email, or other effective means) to all property owners in the subdivision and to each affected entity that provides a service to an owner of record of the portion of the plat that is being vacated or amended at least and wait at least 10 calendar days after noticing before approving the petition.
 - The City must hold a public hearing within 45 days after the day on which the petition is submitted unless certain exceptions are met.
 - The City has the option to vacate a subdivision or a portion of a subdivision by enacting an ordinance.
 - Petitioners may amend minor typographical or clerical errors in a recorded plat through an affidavit, without the full amendment process.
- **Consolidate requirements and standards.** The City currently has lists of standards and application requirements for lot splits, minor subdivisions, and cluster subdivisions in both 11-2 and 11-3. Combining these sections will make the code easier to understand.
- **Add provisions discussing common area parcels.** There are requirements for separately owning, conveying, or modifying parcels designated as common areas or common area facilities.
 - These common areas can be held in trust by an association (like an HOA) or the local government. Additionally, these interests in the area can be conveyed by a 67% vote of those with an interest in the association.

- When a subdivision is approved involving common space not dedicated to the public, the applicant must prove that the common areas have been transferred to an HOA or other entity that will maintain them.
- **Update application forms.** After amending the City’s code, our team will update your application forms to match.
- **Make organizational and plain language edits.** We recommend making edits throughout the code to make it easier to administer and comply with.

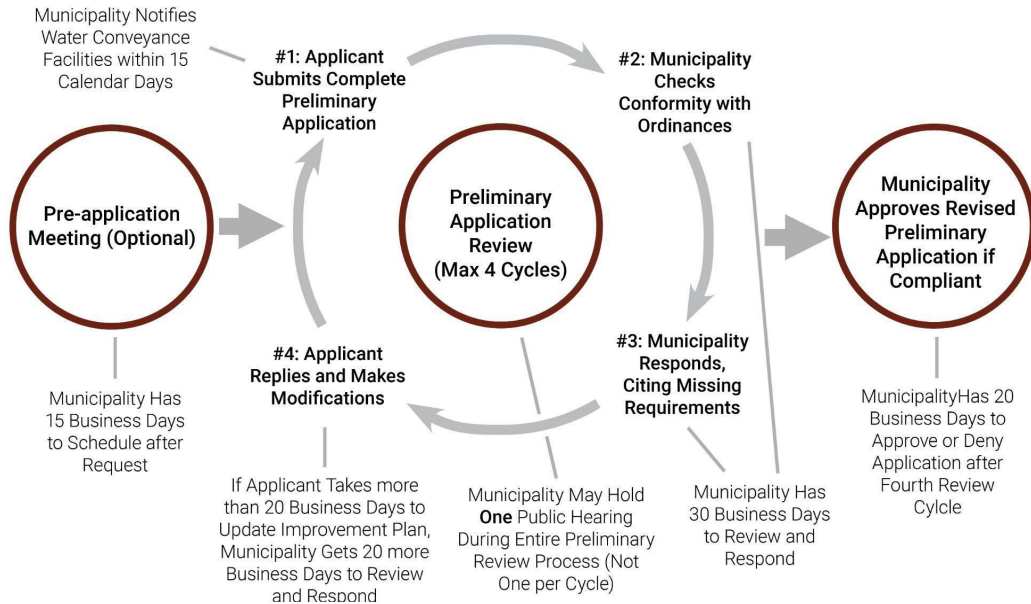
A Note on the New Review and Approval Process for 1-2 Family Residential Applications:

The Utah Legislature designed the SB174 (and the recent HB476) process to streamline residential development. The law does this by (1) limiting the City to four “review cycles” of back and forth with a developer when considering subdivision improvement plans and one public hearing in the preliminary review phase, (2) instituting review deadlines, (3) prohibiting the City from considering subdivision improvement plans in both “preliminary” and “final” application phases, (4) making subdivision decisions administrative, and (5) requiring the City to approve applications that are compliant with local ordinances.

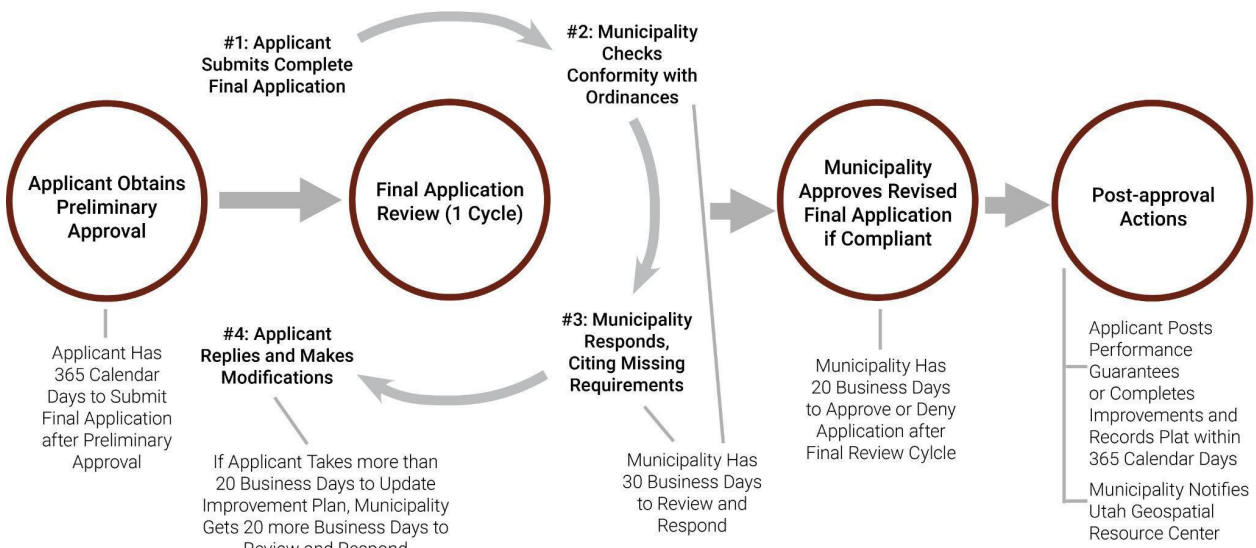
The City’s current ordinances use a two-phase review process for residential subdivisions: an applicant must get both a preliminary approval and a final approval. This is a common approach. One way the City could become compliant with the new law is to adapt its current approach to reviewing 1-2 family residential subdivision applications to match the process described in the following flowcharts.



SUBDIVISION APPLICATION FOR 1-2 FAMILY RESIDENTIAL PRELIMINARY REVIEW PROCESS

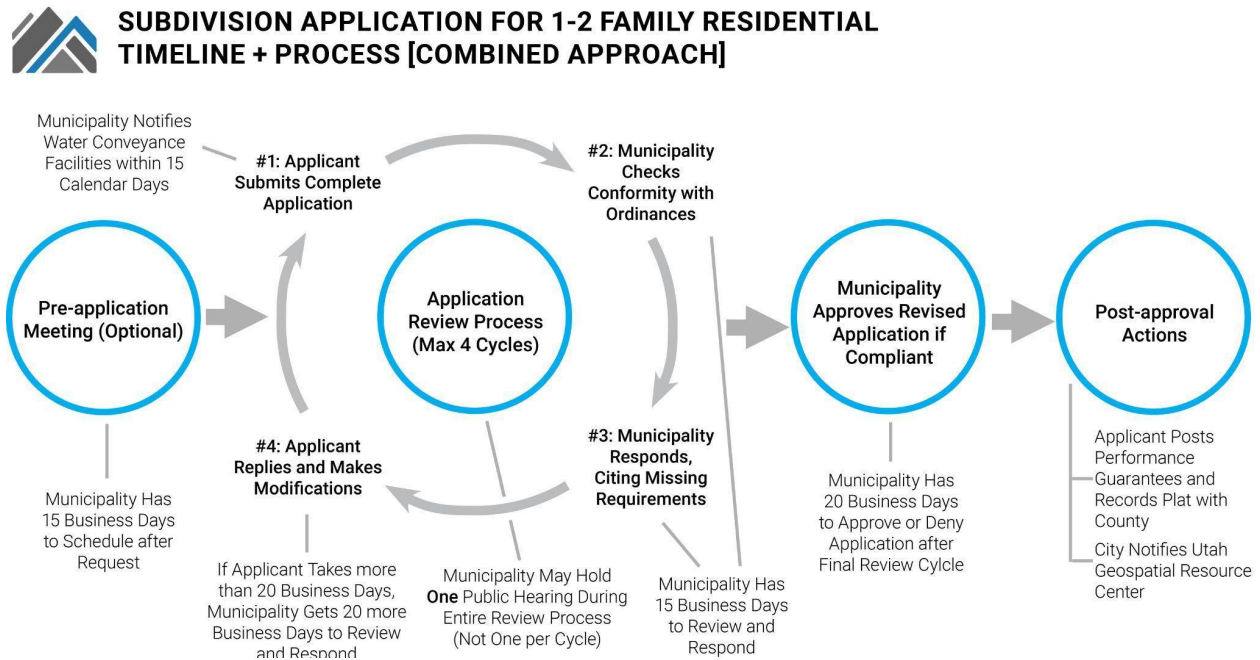


SUBDIVISION APPLICATION FOR 1-2 FAMILY RESIDENTIAL FINAL REVIEW PROCESS



Another option authorized by the new law is to combine the preliminary and final processes into one. We think this process would be beneficial for the City to consider because it simplifies the process for

everyone involved and permits the Planning Commission to retain control of the final application. The following flowchart shows an example of how this combined process could work.



Before my team and I proceed with our edits, *please let us know your preferences on the following:*

1. Whether you would like to proceed with a two-phase or a combined approach for 1-2 family residential subdivisions.
2. If you prefer to stick with the two-phase approach, please let us know whether you would like to review subdivision improvement plans in preliminary *or* final phases. Note that the Planning Commission cannot be the land use authority for the final phase. Given this, many municipalities choose to review improvement plans in the preliminary phase.
3. Whether you would like the process we develop to apply only to applications for 1-2 family residential use, or whether you would like all subdivisions in the City to follow the same process. If you prefer having one process for all applications, then we can lengthen the review timeline and allow for more review cycles and/or hearings for applications that are not for 1-2 family residential use. We can also make the Planning Commission or City Council the land use authorities for other applications not covered by SB174/HB476 (commercial, multi-family, industrial, etc.).

My team will soon begin drafting an amendment to the City's subdivision ordinances based on your feedback.

Respectfully,

A handwritten signature in black ink, appearing to read 'MH', with a stylized, flowing script.

Mike Hansen, Hansen Planning Group