



# Lewis County Prosecuting Attorney's Office

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July 21, 2022

Ron Nielson  
331 NW Park Street  
Chehalis, WA 98532  
ronnn@localaccess.com

## **Via Certified Mail and email**

Re: Formal Complaint for the YMCA Re-zone Proposal

Dear Mr. Nielson:

This letter is in response to your verbal formal complaint given after the July 12, 2022 Lewis County Planning Commission Meeting. As part of your complaint, you notified Lewis County Community Development Staff and myself of two issues:

1. You do not agree with the use of Zoom or other electronic means of public participation; and
2. You had disclosure/recusal concerns regarding two past interactions you had with Commissioner Spogen sometime between the May 24, 2022 YMCA re-zone workshop and the July 12, 2022 and June 28, 2022 hearings on the topic.

Each complaint will be addressed separately and in the order presented above.

### *Public Participation via Zoom*

Generally speaking and pursuant to Ch. 42.30 RCW (Open Public Meetings Act), meetings of the governing body of a public agency, like the Lewis County Planning Commission, must be open and public so that the public may attend and participate. RCW 42.30.030. Open to the public has had a historical meaning and obligation of having the physical location of the meeting open to the public. Until the year 2020, this had been the practice of the Lewis County Planning

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Commission. Because of the global pandemic of COVID-19 and the government measures taken to reduce transmission and contraction of COVID-19, Governor Jay Inslee suspended physical attendance requirements within Ch. 42.30 RCW via Governor's Proclamation 20-28 issued on March 24, 2020. Governor's Proclamation 20-28 remained in effect until June 1, 2022, when it was rescinded by Governor's Proclamation 20-28.16.

Between February 25, 2020 and August 8, 2020, the Lewis County Planning Commission did not meet. After the August 8, 2020 meeting, the Lewis County Planning Commission, along with public participants, had the opportunity to meet via virtual meetings on the platform of Zoom or by calling into the meeting to a Lewis County designated number. This was the appropriate method for conducting meetings while the Governor's Proclamation was in effect.

The May 24, 2022 workshop for the YMCA re-zone proposal was held virtually and in conformance with Governor's Proclamation 20-28 et seq., and the June 28, 2022 and July 12, 2022 hearings for the YMCA re-zone proposal were conducted with both in-person and virtual participation for both Planning Commissioners and the public. All meetings/workshops and hearings for the YMCA re-zone proposal were held in conformance with both Governor's Proclamations and Ch. 42.30 RCW.

The Lewis County Planning Commission and Lewis County Community Development understand the frustration and concern for public participation you have voiced, and have made good faith efforts within their control to ensure participation was possible for those meetings held telephonically and virtually. There are times when technical difficulties occur, and Lewis County appreciates assistance from participants to notify when there are issues so that they can be fixed. Telephonic and virtual participation, like in-person attendance comes with advantages and disadvantages. It is because of the advantages of these options and based on the strong encouragement of the Legislature in the updates made to Ch. 42.30 RCW this year, Lewis County Planning Commission will continue to have telephonic, virtual, and in-person options available for the public to attend meetings.

### *Disclosure and Recusal*

The YMCA re-zone proposal and subsequent hearing for recommendation from the Lewis County Planning Commission are quasi-judicial pursuant to RCW 42.36.010. As a result, Lewis County Commissioners are prohibited from ex-parte communication with individuals “with respect to the proposal which is the subject of the proceeding.” RCW 42.36.060. If such a communication occurs, then it can be remedied—for the purposed of the appearance of fairness—by the Lewis County Planning Commissioner disclosing the substance of the conversation and that the disclosure be done at a public hearing on the record for the substance of the matter to be decided. *Id.*

In this instance, it was Lewis County Community Development’s understanding that you allege two conversations you had with Chair Spogen regarding the technical issue you had hearing the May 26, 2022 workshop for the YMCA re-zone proposal. The first conversation being initiated by you and a subsequent follow up conversation being initiated by Chair Spogen. Chair Spogen notified Lewis County Community Development of the communication prior to the June 28, 2022 hearing. Because it was Lewis County Community Development’s understanding that the nature of the conversations were regarding technical difficulties with virtual participation, not on the substantive issue of the YMCA re-zone proposal, it was determined a disclosure was not necessary as the substance of the exchange was not prohibited.

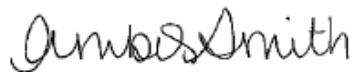
On the June 28, 2022 hearing, you testified as to the first communication with Chair Spogen and your concerns the conversation was in violation of statute. As a result of the ambiguity left on the record, Chair Spogen clarified the statement made in your testimony at the beginning of the continued hearing on July 12, 2022. Chair Spogen was not legally required to perform this disclosure because, again, the nature of the communication was not on the substantive portion of the YMCA re-zone proposal but rather regarding technical issues had at the May 26, 2022 workshop meeting. Lewis County Planning Commission and Lewis County Community Development continue to hold the position the exchange between you

and Chair Spogen did not violate the appearance of fairness doctrine and did not require disclosure pursuant to RCW 42.36.060.

To conclude, Lewis County Planning Commission and Lewis County Community Development take citizen complaints and concerns seriously. We appreciate you taking the time to let us know your concerns. Lewis County Planning Commission and Lewis County Community Development are always willing to make those changes necessary to ensure the law is met when performing their duties, and will look into ways to improve upon the processes in place.

In the future, if you are having technical difficulties participating or attending Lewis County Planning Commission meetings and hearings, please feel free to reach out to Lewis County Community Development staff so that they may assist you.

Respectfully,

A handwritten signature in black ink that reads "Amber Smith". The signature is written in a cursive, flowing style.

AMBER SMITH  
Civil Deputy Prosecuting Attorney  
Lewis County Prosecuting Attorney's Office  
Desk 360-740-2750