



AGENDA

Lincoln City Planning Commission
Tuesday, January 7, 2020, 6:00 PM
Council Chambers,
801 SW Highway 101 - 3rd Floor, Lincoln City, OR 97367

1. CALL TO ORDER, PLEDGE OF ALLEGIANCE, & ROLL CALL

2. AGENDA CHANGES OR REVISIONS

3. MINUTES

3.1. Planning Commission - Regular Meeting - Dec 17, 2019 6:00 PM

4. FINAL ORDERS, RESOLUTION, & WRITTEN COMMUNICATIONS

1. CPA ZC 2019-04 Sutton zone change

4.1.1. Final Recommendation for CPA CZ 2019-04 Sutton Rezone

2. ZOA 2019-14 ADU

4.2.1. Final Recommendation ZOA 2019-14 ADU Cleanup Ordinance

3. ZOA 2019-03 Mobile Food Units

4.3.1. Final Recommendation for ZOA 2019-03 Mobile Food Units

4. ZOA 2019-16 RCC Zone Creation

4.4.1. Final Recommendation for ZOA 2019-16 RCC Zone Creation

5. NEW BUSINESS

5.1. Election of Chair and Vice Chair

2. Training

5.2.1. Quasi-Judicial Training

3. Overview of 2019 Planning

5.3.1. Overview of 2019 Planning

5.4. 2020 Work List

6. REPORTS & COMMENTS

7. FUTURE AGENDA ITEMS & NEXT MEETINGS

8. ADJOURN

All information for this meeting is available on the City of Lincoln City website at www.lincolncity.org, and this meeting will be televised live on Charter Channel 4 Lincoln City and rebroadcast at various times. Planning Commission meetings are streamed live on the Internet through a link on the City of Lincoln City website, and can also be viewed following the meeting. The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired, for a hearing impaired device, or for other accommodations for persons with disabilities, should be made at least 48 hours in advance of the meeting to Cathy Steere, City Recorder, at 541-996-1203.

**LINCOLN CITY PLANNING COMMISSION
MINUTES
December 17, 2019**

1. CALL TO ORDER, PLEDGE OF ALLEGIANCE, & ROLL CALL

6:01

Attendee Name	Title	Status	Arrived
Lenny Nelson	Commissioner	Present	
Patti Kroen	Chair	Present	
Miles Schlesinger	Commissioner	Present	
Marie McFarland	Commissioner	Absent	
Joshua Brainerd	Commissioner	Present	
Marcella Baker	Commissioner	Present	
Steve Griffiths	Commissioner	Present	

2. AGENDA CHANGES OR REVISIONS

None

3. MINUTES

3.1. Planning Commission - Regular Meeting - Dec 3, 2019 6:00 PM

MOTION:	Chair Kroen noted that there is a section of notes on the bottom of page six of the attached minutes that needs to be cleaned up. Commissioner Steve Griffiths moved to approve the minutes with corrections.
MOVER:	Steve Griffiths, Commissioner
SECONDER:	Lenny Nelson, Commissioner
AYES:	Nelson, Kroen, Schlesinger, Brainerd, Baker, Griffiths
ABSENT:	Marie McFarland
RESULT:	Passed

4. FINAL ORDERS, RESOLUTION, & WRITTEN COMMUNICATIONS

4.1. Recommendation ZOA 2019-13 Transitional Housing

After the motion and vote, the Planning Commission noted that there is a statement in the final recommendation as presented, "With the additional recommendation of adding," that was not correct. The Commission decided by unanimous consent to revise the final order to ask City Council to "consider adding," instead.

MOTION:	Recommendation ZOA 2019-13 Transitional Housing
MOVER:	Steve Griffiths, Commissioner
SECONDER:	Marci Baker, Commissioner
AYES:	Nelson, Kroen, Schlesinger, Brainerd, Baker, Griffiths
ABSENT:	Marie McFarland
RESULT:	Passed

4.2. Final Order CUP 2019-04 Transitional Housing

MOTION:	Final Order CUP 2019-04 Transitional Housing
MOVER:	Lenny Nelson, Commissioner
SECONDER:	Marci Baker, Commissioner
AYES:	Nelson, Kroen, Schlesinger, Brainerd, Baker, Griffiths
ABSENT:	Marie McFarland
RESULT:	Passed

5. PUBLIC HEARINGS/DELIBERATIONS

1. CPA & ZC 2019-04 Sutton Rezone

Chair Kroen read the procedures for the quasi-judicial hearing. The applicant is John Sutton, and the property owner is Katherine Sutton.

Declaring ex-parte contact, Commissioner Lenny Nelson drove by the property, but couldn't see the structure through the trees. Commissioner Marci Baker toured the building previously. Both Commissioners Nelson and Baker declared that nothing about their contacts prejudiced their opinions or ability to make an objective decision.

There were no challenges from the audience for commissioners.

Lincoln City Planning and Community Development Director, Anne Marie Skinner read the substantive criteria, which include the Oregon State-wide Planning Goals, the Lincoln City Comprehensive Plan, and Title 17 of the Lincoln City Municipal Code. Testimony and evidence must be directed toward those three criteria.

Chair Kroen summarized the order of proceedings.

5.1.1. CPA & ZC 2019-04 Sutton Rezone

Ms Skinner presented the staff report for file number CPA & ZC 2019-04, Sutton Rezone. She described the site and location, and its Comprehensive Plan designation and zoning. The application proposes a comp plan amendment and zone change to General Commercial (GC). The site is currently zoned Multi-Family Residential (R-M).

Commissioner Griffiths asked whether there are, other than the church, any other surrounding uses other than residential. Ms Skinner said that she is not aware of any.

The site contains an existing structure, built in 1962, and was previously owned by an attorney, who constructed the building and used it as his law office. The property has been appraised as commercial improvement on residential since 2/2/87. Office use is not permitted in the zone, either outright or as an accessory use. The nonconforming use may continue unless discontinued for more than six months. Use as a law office had ceased more than six months prior to the application. Therefore the use had ceased. To use as any type of commercial, a zone change is required. Staff consider this to be a minor revision with local effect. Applicant statements about intended uses are not binding unless a development agreement is negotiated with City Council.

The staff report covers compliance with the statewide planning goals and comp plan goals, so Ms Skinner did not go over them verbally. The GC zone does not have a minimum lot size or width and depth unless an abutting parcel is in a residential zone. In this case the setbacks in the north, south, and east property lines are a minimum of 10 ft.

LCMC 17.88.040 states that the Planning Commission shall study the request for rezoning and recommend approval or denial of the request based on the evidence presented. Staff also note something not in written staff report: the term "spot zoning" is not used any longer by the State of Oregon. The proper term is from the page 15 of the Comprehensive Plan - The amendment needs to be consistent and compatible with other unamended portions of the comp plan. City Attorney Richard Appicello noted that the most important thing is that the proposals to amend zoning need to be internally consistent with the comp plan as well as externally consistent with the statewide planning goals. If it is a spot of commercial in the middle of residential, you can reasonably consider that it is not consistent with the surrounding area.

Commissioner Nelson asked Mr. Appicello whether that means that the Planning Commission cannot approve such a zone change, or whether it is a bad idea. Mr. Appicello answered that the Planning Commission is required to find that a zone change is consistent with the surrounding unamended area, so approving an inconsistent change not a great idea.

2. Applicant Testimony

The applicant, John Sutton, addressed the Planning Commission. He explained that his daughter purchased the property a year and a half ago. They came to the planning department to see what uses they could do to and see what they could do to keep the property as commercial rental. They were told that they just had to keep the property as a professional use. They remodeled the building, which took about a year. They had a tenant lined up, but came back to the planning department and were told that the gap in use had been longer than 6 months and that the nonconforming use was no not allowed. This was after they were told that all they had to do was rent to a like-kind business. The property was his daughter's investment she put a lot of effort and investment into it and was not able to rent out to anyone.

Roberta Tryon, the real estate agent for the purchase, was also at the table. She explained that the building was originally built by the attorney and has always been a non-conforming use in that space. Mr Sutton bought the property to use as an office with no changes. The building was in ill repair and it took more energy to bring the building up to a usable standard than they knew. The applicant did not know that he only had six months to renovate and get a renter in. They talked to the City, and they preferred that the property go through the process of a formal zone change. Ms Tryon asserted that the City did not inform Mr Sutton that he

only had six months and that such was negligence. She suggested that, in order to rectify the situation, the City should acknowledge that there was a misunderstanding, or something was misconstrued, or was not available and not part of the conversation. The property has always been a law office and has not changed it at all. Mr Sutton has not changed the outside or the inside of the building. It is always what it has been. It is next to a church that is also in a residential building. The church has been there for numerous years sitting in a residential area and this sits beside. There is commercial on the end of the street. This property was just never zoned as commercial. It had conditional use on it since 1962. The applicant is happy to put a deed restriction on it that the property will revert to residential after they are done with it. The building isn't anything other than a commercial building. To fix it to be residential would cost hundreds of thousands of dollars. The applicant is asking to rectify a mistake.

Chair Kroen asked whether, when the applicant came in to the planning department the second time, the idea of a development agreement brought up. The applicant responded that it was not. Commissioner Griffiths asked the applicant whether, when he bought the property, the real estate agent told him that it was a nonconforming use. Ms Tryon replied for the applicant, stating that she was the real estate agent, and that the City did not say anything about only having six months.

Commissioner Baker noted from the applicant's testimony that they had a tenant lined up previously, and asked what kind of business it was. The applicant answered that it was home healthcare - an office.

Commissioner Miles Schlesinger asked when the applicant bought the property and came into the planning department. The applicant answered that he bought the property in March of 2018, and that he came in before that and talked to a planner.

Ms Tryon suggested that if it is in the city's best interest for the property to be residential, the applicant could put in a deed restriction that would revert back to residential. Mr Appicello explained that we do not do conditional rezoning in a quasi-judicial hearing - if approved, all of the permitted uses in the General Commercial will be allowed.

Commissioner Nelson asked whether the city could leave the zoning as is and enter into a development agreement with the owner to allow the use. Mr Appicello answered that development agreements are not a by-right option. The property owner could propose a development agreement if they would like, which goes through the process of a recommendation from the Planning Commission and goes to City Council and has to be approved by City Council by ordinance. It is not a small thing.

Ms Tryon argued that there were errors on both sides of this particular issue - that the property owner is trying to do the right thing and it is not an inexpensive issue. They paid \$5000 for the error of not having rented the property.

The applicant thanked the commissioners and expressed hope that they will grant the rezone, because he doesn't want to tear down the structure and advertise the lot for sale.

3. Public Testimony

A. Testimony in Favor

Roberta Trion, remaining at the table, commented that if the commission moves in a different direction, there is an existing building on the property that does not meet any of the criteria to be residential. A retrofit of the building to be residential would be in excess of two to three thousand dollars. The applicant bought the property with the understanding that he was buying an office building and that it could remain that way.

Randy Rowlette provided testimony in favor of the zone change. Pointing to the property on the projected map, he argued that there is no multi-family except on the corner. He said that he would like the property to be an office building like its been for 60 years. He likes it being an office building and doesn't see it as a residential property. Mr Rowlette Looked at the meeting packet and agrees with the planner that the rezone should be approved. He was on a planning commission for 16 years until his term expired, and thinks that this would be an easy path to rezoning.

Katherine Sutton (owner of the property) provided testimony. She stated that she has always been under the assumption that she had the ability to do with the property what it was always meant to do - for it to be an office building. That is why she put all of her savings into it. The property is an office building. That's what it is. There is law office on the sign and desks in the rooms. It's not a house and it's not residential. It may be the zone, but that's not right. Ms Sutton cleaned up the property so that it can fulfill its purpose. It is hard to see why that can't be. She expressed that she wants to be hopeful, that the property is all she has. She doesn't want to bulldoze or make it into a house.

B. Neutral Testimony

No neutral testimony was offered

C. Testimony in Opposition

No testimony was given in opposition

4. Applicant Rebuttal

5.1.5.

Chair Kroen asked if there were any requests for a continuance or for the record to be left open. There were no requests.

MOTION:	Close the public hearing
MOVER:	Steve Griffiths, Commissioner
SECONDER:	Marci Baker, Commissioner
AYES:	Nelson, Kroen, Schlesinger, Brainerd, Baker, Griffiths
ABSENT:	Marie McFarland
RESULT:	Passed

6. Deliberation

Chair Kroen asked whether the applicant waives the opportunity to provide written argument? The applicant replied that they do waive the opportunity.

Chair Kroen opened deliberations and asked Mr Appicello for any legal advice or issues raised. Mr Appicello replied that at one point in the applicant testimony there was an allegation raised of negligence on the part of the city. It is clear in case law that a participant in a local land use proceeding must ascertain for itself from the local code what it is required to do to protect its rights. We often have people come up and bring up stuff like this that is irrelevant to the decision. The question before the PC is whether the zoning and map should be changed to GC from residential. The inquiry for the PC is how that matches up with the statewide planning goals, the comprehensive plan, and whether the change is internally consistent with the comprehensive plan.

Commissioner Nelson asked about the Comprehensive Plan not speaking to the commercial use of this property in the multi-family residential zone. Mr Appicello answered that just because the prior, expired use was nonconforming doesn't in itself justify extending the nonconformity. The opposite is the case - nonconformities are to be abhorred and the hope is that over time they go away. The fact that there was a nonconforming use is not a legal basis for changing the zoning.

Commissioner Josh Brainerd said that he understands both sides of the situation. The use is consistent with the zoning and even the parks, but there are some areas around it, which makes it a difficult decision. It certainly would break up a residential zoned area. We are just looking at this as a rezoning decision tonight, but wish that there was another option to allow them to continue the use.

Commissioner Griffiths said that he does not believe that the comp plan allows us the option to rezone this site as General Commercial.

Commissioner Schlesinger said that he thinks that is unfortunate that the building was used for a law office for 57 years and would support continued the use of the property.

Commissioner Baker acknowledge the complicated nature of the question. And suggested that the comp plan is quite outdated and asked about the reality of the actual neighborhood regardless of the zoning. A lot of the buildings in town are older than the zoning. Just looking at the existing buildings, you wouldn't be able to guess what the zoning of the neighborhood was. It is pretty mixed use. The Elks building was recently rezoned to GC and could have been kept as residential use for multi family, which may set a precedent for neighborhood.

Commissioner Nelson supported consistency with the Comprehensive Plan, and understands the advice that Mr Appicello gave, but that the area in question is not what you would call residential. It is a mixed bag. She said that she could support the zone change because of the way that the neighborhood is laid out.

Commissioner Baker said that the whole multi-family section is almost a triangle that doesn't have a lot of multi-family use, and that if the Planning Commission does not support the zone change, that they should look at what zoning for the whole area would be, although she acknowledged that it is not what is before us the Planning Commission to consider.

Chair Kroen said that she does not like taking a lot in the middle of the zone and changing it to something else. That it is a slippery slope. We have a comp plan for a reason.

5.1.7.

Reason why voted no:

Miles: Voted no because feel that a building that has been used for a lifetime as a law office in a mixed use area should be able to be maintained as an office facility. Especially when it was built before the city of Lincoln City existed. Especially when lax codes existed at the time.

Marci: don't feel that the use would conflict with the neighborhood. Especially when not suited or any allowed uses. Makes sense that it has been used for that long. Don't think requiring it be bulldozed because of the time limit is best for the city.

MOTION:	Recommend to city council to deny
MOVER:	Steve Griffiths, Commissioner
SECONDER:	Patti Kroen, Chair
AYES:	Lenny Nelson, Patti Kroen, Joshua Brainerd, Steve Griffiths
NAYS:	Miles Schlesinger, Marci Baker
ABSENT:	Marie McFarland
RESULT:	Passed

2. ZOA 2019-16 RCC Zone Creation

Chair Kroen read the required hearing procedures.

No abstentions or disqualifications were declared.

5.2.1. ZOA 2019-16 Resort Community Commercial (RCC) Zone Creation

Ms Skinner presented the staff report. The zone that is being created is resort community commercial zone. Per the requirements of the comp plan map designation, this zone has to be enacted with a statutory development agreement.

Chair Kroen asked for confirmation that the proposed zoning would never appear on a map unless a developer came in and initiated an agreement. Mr Appicello responded that there are a number of different ways that the zone could come into play. The underlying zone is R-1-7.5. When the City Council created the comp plan designation, it said that the zone can be implemented with a development agreement or the city can make another zone by right. Chair Kroen asked whether the zone is targeting the area formerly known as The Villages? Ms Skinner answered that it is targeting a part of that site, which is approximately 23 acres. Mr Appicello added that there are currently three ways that we can develop and that with the zoning we are creating an option. There was some discussion between the commissioners and Mr Appicello about the use and importance of development agreements.

Commissioner Griffiths said that he likes the zone in concept but is not sure that it has strong enough standards in it yet - especially the protection of environment and open space. We would like to preserve wildlife corridors. He asked how we define how wide those corridors are. Also we talk about streams and protecting wetlands. How are we going to protect them? How wide will the buffer be? We need to know what a natural history scientist would say. We need standards in here and there are none present. Mr Appicello pointed out the LCMC Section 17.29.70, that there shall be no modification of environmental protection regulations in the city code. There was discussion between the commissioners, Mr Appicello, and Ms

Skinner about what might be allowed in the zone. Mr Appicello added that most of the environmental acres are on the associated residential designation rather than in the 23 acres under discussion. Ms Skinner added that the implementing zone for the residential 300+ acres will have stronger standards because that is where the bulk of the significant wetlands, wildlife corridors, wetlands, etc, and that designation will come before the planning commission. Mr Appicello said that the areas with the environmental resources were set aside, which leaves little circles of unrestricted area, which are the ones you sell. **on**

2. Public Testimony

No public comment

5.2.3.

MOTION:	Motion
MOVER:	Joshua Brainerd, Commissioner
SECONDER:	Lenny Nelson, Commissioner
AYES:	Nelson, Kroen, Schlesinger, Brainerd, Baker, Griffiths
ABSENT:	Marie McFarland
RESULT:	Passed

4. Deliberation

5.2.5.

MOTION:	Recommend ZOA 2019-16 RCC Zone Creation to the City Council
MOVER:	Joshua Brainerd, Commissioner
SECONDER:	Lenny Nelson, Commissioner
AYES:	Nelson, Kroen, Schlesinger, Brainerd, Baker, Griffiths
ABSENT:	Marie McFarland
RESULT:	Passed

3. ZOA 2019-12 Bluff Setback Amendment

Chair Kroen read the required procedures.

No abstentions or disqualifications were declared.

5.3.1. ZOA 2019-12 Bluff Setback Amendment

Ms Skinner presented the staff report. This is a City-wide amendment initiated at the request of City Council. Ms Skinner read the proposed changes, pointing out new language.

Chair Kroen asked whether the language as proposed specified what type of licensed engineer. She suggested inserting "geotechnical or civil engineer." Ms Skinner replied that staff concurs with the suggestion.

There were no questions for Ms Skinner.

2. Public Testimony

Pam Lind, Tribal Planner for the Siletz Tribe asked that the record be left open so that the Tribe's planning department has an opportunity to provide feedback if they have it.

There were several questions from the audience that were referred to the planning counter during regular business hours.

Mr Appicello pointed out that the reason the amendment is before the Planning Commission is because the CC asked for it. There was a case where an applicant asked to measure from the altered edge based on the grading plan and the neighbor wanted it measured from the unaltered bluff edge.

5.3.3.

MOTION:	to close the public hearing for ZOA 2019-12, to leave the record open and close on 1/14, and to continue deliberations to the 1/21/2020 meeting.
MOVER:	Steve Griffiths, Commissioner
SECONDER:	Marie McFarland, Commissioner
AYES:	Nelson, Kroen, Schlesinger, McFarland, Brainerd, Baker, Griffiths
RESULT:	Passed

4. ZOA 2019-14 ADU Cleanup

Chair Kroen opened the public hearing and paraphrased the procedures.

5.4.1. ZOA 2019-14 ADU Cleanup

Ms Skinner presented the staff report. Two months ago the Planning Commission and the City Council adopted amendments to the ADU requirements for parking and owner occupancy to comply with change in State law. Part of the requirements is that notification goes to DLCD. One of the things they noticed was that there is some subjective language. They suggested that we remove that subjective language. The proposed ordinance revises the definition of ADU. Ms Skinner read the revised definition of ADU as proposed. The rest of the ordinance is making the language consistent throughout the zones so that it's listed the same

Commissioner Nelson asked whether an ADU can be a rental unit. Ms Skinner answered that they can. Chair Kroen added that the ADU cannot, however, be a vacation rental.

2. Public Testimony

No Audience Testimony.

5.4.3.

MOTION:	Close the public hearing for ZOA 2019-14 ADU Cleanup
MOVER:	Joshua Brainerd, Commissioner
SECONDER:	Marci Baker, Commissioner
AYES:	Nelson, Kroen, Schlesinger, Brainerd, Baker, Griffiths
ABSENT:	Marie McFarland
RESULT:	Passed

5.4.4.

MOTION:	Recommend adoption of ZOA 2019-14 to City Council
MOVER:	Steve Griffiths, Commissioner
SECONDER:	Marci Baker, Commissioner
AYES:	Nelson, Kroen, Schlesinger, Brainerd, Baker, Griffiths
ABSENT:	Marie McFarland
RESULT:	Passed

5. ZOA 2019-03 Mobile Food Units

Chair Kroen opened the public hearing and read the procedures and required

No abstentions or disqualifications were declared.

5.5.1. ZOA 2019-03 Mobile Food Units and Pods

Ms Skinner presented the staff report. This is a zoning code amendment initiated at the request of the City Council. Amendments to Title 5 are not heard by the Planning Commission. One of the items not included in the land use portion is the use of biodegradable packaging, which is contained as one of the licensing requirements.

Chair Kroen asked whether waste recycling is included in the licensing requirements? Ms Skinner replied that it is.

Commissioner Nelson asked about the requirement for these uses to have insurance, which we do not require any other businesses to have. Mr Appicello replied that the insurance is part of the amendments to Title 5, which are not before the Planning Commission, but which was modeled after the requirements for food carts.

Following a comment from Commissioner Baker about only Class 3 and 4 being allowed, there was some conversation among the commissioners about the types of food allowed - targeting carts that actually cook food. **ood Units and Pods**

2. Public Testimony

No public comment

5.5.3.

MOTION:	Close the public hearing for ZOA 2019-03
MOVER:	Steve Griffiths, Commissioner
SECONDER:	Marci Baker, Commissioner
AYES:	Nelson, Kroen, Schlesinger, Brainerd, Baker, Griffiths
ABSENT:	Marie McFarland
RESULT:	Passed

4. Deliberation

Chair Kroen noted that the Planning Commission has had a lot of discussion about this over the months.

5.5.5.

MOTION:	Recommend adoption of ZOA 2019-03 to City Council with the stipulation to prohibit Class 1 and Class 2
MOVER:	Steve Griffiths, Commissioner
SECONDER:	Joshua Brainerd, Commissioner
AYES:	Nelson, Kroen, Schlesinger, Brainerd, Baker, Griffiths
ABSENT:	Marie McFarland
RESULT:	Passed

6. OLD BUSINESS

None

7. NEW BUSINESS

None

8. PLANNING COMMISSION TRAINING

None

9. REPORTS & COMMENTS

None

10. FUTURE AGENDA ITEMS & NEXT MEETINGS

11. ADJOURN

Respectfully submitted,

James White
Assistant Planner

Patti Kroen
Chair



PLANNING COMMISSION STAFF REPORT
MEETING DATE: January 7, 2020

Report prepared by AnneMarie Skinner, Planning & Community Development Director

Final Recommendation for CPA ZC 2019-04 Sutton Rezone

STAFF RECOMMENDATION

Motion and second to approve the Final Recommendation with Chair's signature to follow.

CPA ZC 2019-04 Recommendation (DOCX)

LINCOLN CITY PLANNING COMMISSION

IN THE MATTER OF

Amendments to the Lincoln City Comprehensive)
Plan Map and Lincoln City Municipal Code)
relating to CPA & ZC 2019-04)
Lincoln County Assessor’s Map 07-11-11-BC-01100)

**Final Recommendation
No. 2019-11**

NATURE OF THE APPLICATION

CPA ZC 2019-04 would amend the Lincoln City Comprehensive Plan Map and Lincoln City Zoning Map to re-designate property at 2126 NE Quay Place from Multiple-Family Residential (RM) to General Commercial (GC).

FINAL RECOMMENDATION

Based on the evidence presented at the public hearing on December 17, 2019, including the staff report, the Planning Commission recommends that the City Council deny the proposed comprehensive plan and zoning map amendments (4-2 vote). The four commissioners (Brainerd, Griffiths, Kroen, Nelson) who voted in favor of the recommendation for denial based their vote upon the following factors:

1. A comprehensive plan and zoning map amendment must be consistent and compatible with other unamended portions of the comprehensive plan per the Lincoln City Comprehensive Plan. The subject property is currently Multiple-Family Residential. The sites immediately adjacent to and surrounding the subject property to the north, south, and east are all Multiple-Family Residential. Placement of one site zoned General Commercial in the midst of surrounding properties zoned Multiple-Family Residential is not consistent or compatible with the surrounding Multiple-Family Residentially-zoned properties.
2. Adjacent residential uses to the north, south, and east of the site. Rezoning the site to GC zoning disturbs the existing residential nature of the adjacent residences and violates the purpose of the RM zone which is “to provide an environment suitable for higher density urban residential uses, and community services.” The zone change request is not consistent with the purpose statement of the RM zone, of which the surrounding properties are zoned.

The two commissioners (Schlesinger, Baker) who voted in opposition of the recommendation for denial based their vote upon the following factor:

1. The general surrounding area is a mixed-use area with a church farther north and the community center across the street to the west. This proposal is consistent with the mixed-use surroundings.

APPROVED THIS 7th DAY OF JANUARY, 2020.

Patti Kroen
Planning Commission Chair

ATTEST:

Anne Marie Skinner
Planning & Community Development Director



PLANNING COMMISSION STAFF REPORT
MEETING DATE: January 7, 2020

**Report prepared by AnneMarie Skinner, Planning & Community Development
Director**

Final Recommendation ZOA 2019-14 ADU Cleanup Ordinance

STAFF RECOMMENDATION

Motion and second to approve Final Recommendation with Chair's signature to follow

PC Final Recommendation ADU (DOC)

**LINCOLN CITY
PLANNING COMMISSION**

IN THE MATTER OF

Amendments to Title 17, Zoning, concerning)
Amendments for Accessory Dwelling)
Unit Standards)

Final Recommendation
No. 2019-13

NATURE OF THE APPLICATION

ZOA 2019-14 amends Title 17 (Zoning) in in Chapter 17.08 by revising the definition for accessory dwelling units to be consistent with state code, revising Section 17.80.110 to provide clear and objective language, and removing inconsistencies throughout Title 17 in reference to accessory dwelling units.

FINAL RECOMMENDATION

Based on the evidence presented at the public hearing on December 17, 2019, including the staff report, the Planning Commission recommends on a 6-0 vote that the City Council approve the draft ordinance.

APPROVED THIS 7th DAY OF January, 2020.

Patti Kroen
Planning Commission Chair

ATTEST:

Anne Marie Skinner
Planning & Community Development Director



PLANNING COMMISSION STAFF REPORT
MEETING DATE: January 7, 2020

Report prepared by AnneMarie Skinner, Planning & Community Development Director

Final Recommendation for ZOA 2019-03 Mobile Food Units

STAFF RECOMMENDATION

Motion and second to approve Recommendation for Chair's signature

PC Final Recommendation Mobile food units (DOC)

**LINCOLN CITY
PLANNING COMMISSION**

IN THE MATTER OF

Amendments to Title 17, Zoning, concerning) Final Recommendation
Amendments for Mobile Food Units) No. 2019-15
And Mobile Food Unit Pods)

NATURE OF THE APPLICATION

ZOA 2019-03 amends Title 17 (Zoning) by adding a new Section 17.80.160 (Mobile Food Units), establishing standards for mobile food units and mobile food unit pods. Amends several zones (Professional Campus, Recreation Commercial, General Commercial, Nelscott Plan District, Planned Industrial, Taft Village Core, Oceanlake Plan District, and Park) to allow mobile food units and mobile food unit pods.

FINAL RECOMMENDATION

Based on the evidence presented at the public hearing on December 17, 2019, including the staff report, the Planning Commission recommends on a 6-0 vote that the City Council approve the draft ordinance.

APPROVED THIS 7th DAY OF January, 2020.

Patti Kroen
Planning Commission Chair

ATTEST:

Anne Marie Skinner
Planning & Community Development Director



PLANNING COMMISSION STAFF REPORT
MEETING DATE: January 7, 2020

Report prepared by AnneMarie Skinner, Planning & Community Development Director

Final Recommendation for ZOA 2019-16 RCC Zone Creation

STAFF RECOMMENDATION

Motion and second to approve the final recommendation for the Chair's signature

PC Final Recommendation RCC zone creation (DOC)

**LINCOLN CITY
PLANNING COMMISSION**

IN THE MATTER OF

Amendments to Title 17, Zoning, concerning) Final Recommendation
Amendments for Creating a new zone) No. 2019-14
Resort Community Commercial (RCC))

NATURE OF THE APPLICATION

ZOA 2019-16 amends Title 17 (Zoning), Section 17.12.010 (Classification of zones) by adding a new Resort Community Commercial Zoning District and by creating a new chapter, Chapter 17.29 (Resort Community Commercial RCC).

FINAL RECOMMENDATION

Based on the evidence presented at the public hearing on December 17, 2019, including the staff report, the Planning Commission recommends on a 6-0 vote that the City Council approve the draft ordinance.

APPROVED THIS 7th DAY OF January, 2020.

Patti Kroen
Planning Commission Chair

ATTEST:

Anne Marie Skinner
Planning & Community Development Director



PLANNING COMMISSION STAFF REPORT
MEETING DATE: January 7, 2020

Report prepared by AnneMarie Skinner, Planning & Community Development Director

Election of Chair and Vice Chair

Entertain nominations for Chair and Vice Chair for 2020

STAFF RECOMMENDATION

Motion, second, and vote for Chair for 2020

Motion, second, and vote for Vice Chair for 2020



PLANNING COMMISSION STAFF REPORT
MEETING DATE: January 7, 2020

Report prepared by AnneMarie Skinner, Planning & Community Development Director

Training

See attached memo

14. Quasi-Judicial Training Memo revised 2019 (PDF)
20191223132619769 (PDF)

2019 Quasi-Judicial Proceedings Handout.

Oregon law requires the observance of certain procedural safeguards to ensure that quasi-judicial land use decisions are properly and lawfully made by the appropriate City decision maker. The manner in which land use hearings are conducted and the procedural due-process requirements for those hearings are found in ORS 197.763 and Lincoln City Municipal Code Section 17.76.030 (attached).

What is Quasi-Judicial?

The Oregon Supreme Court established a list of factors to be weighed to determine whether a decision is legislative or quasi-judicial:

- (1) Is the process bound to result in a decision?
- (2) Is the decision bound to apply preexisting criteria to concrete facts?
- (3) Is the action directed at a closely circumscribed factual situation or a relatively small number of persons? [citation omitted]

The more definitely the questions are answered in the negative, the more likely the decision is legislative. Otherwise, the decision is quasi-judicial. No single answer is determinative, but typically, a legislative decision exists if a negative answer is provided to the first and third inquiries.

Apply the Law / Requirement for Findings.

The function of a quasi-judicial land use hearing is to apply existing law (land use regulations) to the facts in the record concerning specific development applications. The application of existing law is the distinction. In legislative proceedings you make law, in quasi-judicial proceedings you are bound to apply existing law.

Every time the City decision maker applies the evidence in the record of a land use hearing to existing law the decision maker should be able to make a finding of compliance or non-compliance with the applicable law.

Quasi-Judicial findings involve the following rote finding procedure which the City decision maker absolutely must perform on each and every quasi-judicial application:

- 1. Identify the applicable law (regulation).
- 2. Identify the competent substantial evidence in the record (relevant evidence) which demonstrates compliance or non-compliance with the applicable criterion.
- 3. Discuss how the facts (evidence in the record) as applied to the applicable law (regulation) result in compliance or non-compliance with the criterion.
- 4. Clearly state the conclusion: compliance or non-compliance.

In a quasi-judicial proceeding, the Council, Planning Commission or Planning Director is acting like a judge. After performing this routine regulatory task, the decision should be relatively clear. The applicant has the burden to demonstrate with competent substantial evidence in the record that each and every applicable criterion

is satisfied. It is not staff's job to supply the needed information for the applicant. A denial can be supported by a single non-compliance.

A local government's quasi-judicial land use decision can be subjected to review by the Land Use Board of Appeals and by the Courts thereafter. Among other things, LUBA will review local government quasi-judicial land use decisions to determine if: (1) the local government acted within its jurisdiction; (2) provided the parties procedural due process, (*i.e. followed the procedures applicable to the matter*); (3) made a decision supported by substantial evidence; (4) applied and interpreted the law correctly.

Procedural Due Process

Generally speaking, conducting a new hearing (de novo hearing) will eliminate any procedural errors below. Lincoln City does not mandate two de novo hearings, and in fact, sets as the default provision, the review of Planning Commission actions by City Council "on the record." Because of this fact it is essential that the Planning Commission avoid procedural error. (The Code reserves to the Council the right to conduct a hearing de novo.)

Procedural due process requires that you follow your own procedures and that you provide notice and the meaningful opportunity to be heard to the participants. Additional due process safeguards include the right to be informed of all the facts upon which the decision is based (ex parte prohibition) and the right to an impartial decision maker (bias prohibition). Ex parte disclosure and bias allegations are addressed below.

Ex Parte Prohibition

It is the City decision maker's responsibility to provide a fair hearing to all participants. A hearing can only be fair if the evidence is known to all parties. Ex Parte communication is the receipt of information by the quasi-judicial decision maker outside of the formal hearing process. Violations of state law concerning ex parte contacts are not mere procedural errors; such violations are serious *substantive* error. That is, no showing of prejudice to a substantive right is required for reversal and remand of the decision. *Horizon Construction Inc. v. City of Newberg*, 114 Or. App 249 (1992); *Brown v. Union County* 32 Or LUBA 168 (1996); *Smith v. City of Phoenix*, 28 Or LUBA 517 (1995); *Angel v. City of Portland* 21 Or LUBA 1, (1991). Accordingly, ex parte communications can waste a significant amount of time and money - and should be avoided.

The best course of action is to avoid all ex parte communications with participants in local land use hearings. **You are acting as a Judge - no one thinks it is proper to supply evidence to a judge about a pending case outside of the courtroom.**

State law creates a process for damage control in the event of inadvertent receipt of ex parte information. The statutory curative process includes two important factors: first, the entire substance of the ex parte communication must be disclosed; second, the disclosure must be made as soon as possible, followed by the announcement of the right to rebut the substance of the disclosure.

(1) The substance of any ex-parte contact concerning the subject of a land use hearing must be disclosed. A participant has the right to rebut the evidence you received outside the hearing room. A practical suggestion is to reduce to writing any facts received as soon as is practical. You can provide such written material to the Planning Department for inclusion in the record therefore making such information available for rebuttal prior to the hearing; however, you must still make the required disclosure at the hearing.

Please be specific about facts. Don't just generalize and say, "some guy approached me and we talked about the proposed development." Get the relevant evidentiary material on the record. For example:

"Joe Environmentalist approached me and told me he saw an endangered rubber boa (*Charina bottae*) on the site last weekend and that under our Code this requires that the entire northwest portion of the site be preserved."

Obviously, proponents and opponents alike will want to investigate and address such factual and legal assertions and submit testimony or evidence to rebut or support such assertions. If, for example, you read a newspaper article or other publication concerning an issue in the hearing, an ex parte contact has occurred and simply stating that you read it is not enough. You must get the substance (if not a copy) of the document into the record as soon as possible. Opponents and proponents can respond to the facts and arguments in the document during the hearing or other evidentiary phase.

This does not mean however that your entire personal life experience, (every book you read in college), is an ex parte contact subject to disclosure. [citation omitted]. Reducing the ex parte contact to writing also helps to remember exactly what was said. The inability to recall the details of an ex parte contact creates additional problems:

[Commissioner's] ... inability to recall the substance of his communication with [an interested party] effectively nullifies petitioner's right to an opportunity to rebut that communication or stated differently, to a decision untainted by undisclosed ex parte communications. [Citation omitted]

In general, the remedy should be "tailored to rectify the evil at which it is directed"; in most cases, that is "providing a fair opportunity for interested persons to develop and present evidentiary and argumentative responses to the matter disclosed by the recipient" [citation omitted]. If the content of the communication cannot be recalled, a full rehearing may be required in the case.

Site visits are unquestionably information obtained outside the hearing, but technically they are not ex parte "communications". *Carrigg v. City of Enterprise*, 48 Or. LUBA 328 (2004). However, as a practical matter case law requires that site visits be disclosed **in the same manner and for the same reason** as ex parte communications. In fact, you will find numerous opinions referring to site visits as ex parte communications. As stated in *Carrigg*:

The procedural requirements governing site visits are imposed by case law, not statute. ... However, the requirements to disclose and offer an opportunity to

rebut site visits have a similar purpose to the purpose served by the requirements of the ex parte contact statutes: to ensure that land use decisions are based on information or evidence the decision makers receive within the public process, and are not based on information or evidence received outside the public process. *See Opp v. City of Portland*, 38 Or LUBA 251, 263-64, *aff'd* 171 Or App 417, 16 P3d 520 (2000) (ORS 227.180(3) is intended to ensure that land use decisions are based solely on publicly disclosed evidence and testimony that is subject to rebuttal or the opportunity for rebuttal). If such information or evidence is received outside the public process, whether from a site visit or an ex parte communication, the decision maker is obligated to make an adequate disclosure of the substance of the information during the public process, and provide an opportunity for participants to rebut that information. *Angel*, 21 Or LUBA at 8.

(2) The timing of the disclosure is also extremely important. The law requires disclosure and the right to rebut the substance of the communication “at the first hearing following the communication.” ORS 227.180(3)(b). In *Horizon Construction Inc. v. City of Newberg*, 114 Or. App 249, 254 (1992) the Court of Appeals stated: *ORS 227.180(3) does not simply establish a procedure by which a member of a deciding tribunal spreads a fact on the record. It requires that the disclosure be made at the earliest possible time. Implicit in that requirement is that the parties to the proceeding must be given the greatest possible opportunity to prepare for and to present the rebuttal that ORS 227.180(3)(b) requires that they be allowed to make. The purpose of the statute is to protect the substantive rights of the parties to know the evidence that the deciding body may consider and to present and respond to evidence. (emphasis added)*

It must be emphasized that staff discussions of the evidence in the record and advice of legal counsel are not ex parte communications. ORS 227.180(4). In fact, a local government decision maker is entitled to consult with its attorney regarding evidence submitted during the evidentiary phase of the local proceeding and interpretive issues. Parties have no right to rebut the substance of a local government attorney's advice to the local government decision maker. In terms of the order of proceedings, your legal counsel and staff, should be asked questions and interpretative issues after the close of the record. However, when you need facts not in evidence from staff, ask during the hearing, not after the close of the record. [citations above]

Bias and Prejudgment

LUBA described the requirement for impartiality in quasi-judicial proceedings as follows:

“As we have explained on many occasions, local quasi-judicial decision makers, who frequently are also elected officials, are not expected to be entirely free of any bias.” “To the contrary, local officials frequently are elected or appointed in part because they favor or oppose certain types of development.” “Local decision makers are only expected to (1) put whatever bias they may have to the side when deciding individual permit applications and (2) engage in the necessary fact finding and attempt to interpret and apply the law to the facts as they find them so that the ultimate decision is a reflection of their view of the

facts and law rather than a product of any positive or negative bias the decision maker may bring to the process.”

There are two types of bias: (1) prejudgment and (2) actual personal interest. A person challenging a City decision maker for bias has the burden to demonstrate bias or prejudgment in “a clear and unmistakable manner.” “The burden of proof that a party must satisfy to demonstrate prejudgment by a local decision maker is substantial.” LUBA has stated that the “burden to establish the city council was biased is a heavy one.” In order to demonstrate actual bias, a petitioner must show that a “decision maker or body was incapable of making a decision based on the evidence and argument before them.” Stated another way, “the standard for determining bias is whether the decision maker prejudged the application, and did not reach the decision by applying relevant standards based on the evidence and argument presented [during the quasi-judicial proceedings].” “An allegation of decision maker bias, accompanied by evidence of that bias, may be the basis for a remand [from LUBA] under ORS 197.835(9)(a)(B).”

Often times public statements made outside the hearing about a matter can lead to a bias challenge (especially quotes to a newspaper). However, how you conduct yourself during the hearing itself can lead to a challenge. Always be respectful of participants, ask questions of participants in a respectful manner. It is not wrong to affirmatively state for the record, after a challenge for bias or after disclosure of ex parte contacts or potential conflict of interest that as a Councilor or Commissioner you are not prejudiced or biased by your prior involvement or ex parte contacts, that you will make the decision based upon application of the facts in the record to the applicable criterion and that you will participate and vote in the matter. For example:

I have not prejudged this application and I am not prejudiced or biased by my prior contacts or involvement; I will make this decision based solely on the application of the relevant criteria and standards in the Code to the facts and evidence in the record of this proceeding.

However, if you cannot set aside your feelings, do not participate. If you cannot articulate why you find the application does meet the criterion or does not meet the criterion, you are probably biased and not making the decision based on the application of the facts to the law. Ultimately, each City decision maker must ask if they can “put whatever bias they may have to the side” and “apply the law to the facts as they find them so that the ultimate decision is a reflection of their view of the facts and law rather than a product of any positive or negative bias the decision maker may bring to the process.”

Financial Conflict of Interest

If you believe you have a financial conflict of interest state law mandates disclosure.

ORS 244.020 defines actual conflict of interest [ORS 244.020(1)] and potential conflict of interest. [ORS 244.020(13)] In brief, a public official is met with a conflict of interest when participating in official action which could result in a financial benefit or detriment to the public official, a relative of the public official or a business with which either are associated.

The difference between an actual conflict of interest and a potential conflict of interest is determined by the words “would” and “could.” An actual conflict of interest occurs when the action taken by a public official would affect the financial interest of the official, the official’s relative or a business with which the official or a relative of the official is associated. If the financial effect of an action is both specific and certain, then that action presents an actual conflict of interest.

What to do if a conflict exists?

Potential Conflict of Interest: Following the public announcement, the public official may participate in official action on the issue that gave rise to the conflict of interest.

Actual Conflict of Interest: Following the public announcement, the public official must refrain from further participation in official action on the issue that gave rise to the conflict of interest. [ORS 244.120(2)(b)(A)]

See the Guide for Public Officials and 2015 Supplement provided on your Councilor laptop Also Oregon Ethics Commission website:

http://www.oregon.gov/OGEC/Pages/forms_publications.aspx

You may contact the City Attorney’s Office or Contact the Oregon Ethics Commission if you have questions, but only advice from the Ethics Commission can protect you from financial penalty from the Ethics Commission.

Substantial Evidence / Apply Criteria

An applicant has the burden of proving, by a preponderance of evidence, that all the applicable approval criteria are met. The applicable criteria are identified in the notice and listed at the commencement of the hearing. During the land use process, the local decision-maker applies the preponderance of evidence standard for determining factual issues. Ultimately, however, the decision must be supported with substantial evidence in the record. The decision maker must identify the evidence upon which the decision maker bases its decision. To be defensible, the evidence used in making its decision must be substantial evidence. Substantial evidence has been defined by the Oregon Supreme Court:

When reviewing a land use decision, LUBA may reverse or remand if the local government’s decision is based on facts that are ‘not supported by substantial evidence in the whole record.’ ORS 197.835(9)(a)(C). A finding of fact is supported by substantial evidence if the record, viewed as a whole, permits a reasonable person to make that finding. *Younger v. City of Portland*, 305 Or. 346, 360, 752 P.2d 262 (1988)

... Stated another way, LUBA considers all the evidence in the entire record in evaluating whether a factual finding is supported by substantial evidence and determines whether a reasonable person could make that finding. *Younger*, 305 Or. at 356, 752 P.2d 262.

Staff reports and staff oral statements may constitute substantial evidence, in which case, they must be deemed evidence on which a reasonable person could rely. [citations omitted] Expert testimony is deemed substantial evidence if it concerns the subject matter in which the person is expert.

Applicants and opponents alike will often present evidence with **no relevance** to the applicable criteria because they perceive that such evidence will sway the decision maker. (e.g. an applicant may claim that approving the project will support the local economy, or help his/her family with some personal situation; an opponent may claim the applicant has violated the code on another project or that the project will attract “undesirables” to the community). (*Unless these matters are expressly listed as approval criterion for this application, they are irrelevant, some may even violate federal law - e.g. discrimination based on disability*).

Please disregard irrelevant evidence and focus on compliance or noncompliance with the applicable criteria. The worst thing you can do is make the decision based on improper purposes or considerations; focusing on the criteria will ensure a defensible decision. Because the Council or Commission will sometimes be accused of making a decision for improper purposes, it is important to point out what evidence is used in reaching the decision (and what evidence is specifically rejected as a basis for its decision).

About Deliberations

A local government decision maker is entitled to consult with its attorney and staff regarding evidence submitted during the evidentiary phase of the local proceeding and interpretive issues; parties have no right to rebut the substance of the local government attorney’s advice (or staff advice) to the local government decision maker. *Linebarger v. City of Dallas*, 24 Or LUBA 91, 93 (1992); *Dickas v. City of Beaverton*, 92 Or App 168, 172-73, (1988); *Thornton v. St. Helens* 31 Or LUBA 287 (1996).

Similarly, to the extent you discuss among yourselves and with your staff language for your findings and/or conditions, no party has the right to rebut these matters or participate in deliberations. *Arlington Heights Homeowners v. City of Portland*, 41 Or LUBA 560, 566 (2001). (opponents have no right to review or rebut proposed findings prior to their adoption).

(Please keep this in mind at the end of the hearing, assuming the record is closed and the applicant does not want to submit written argument, feel free to ask staff and your attorney to help you apply the facts to the law in your deliberations on the decision.)

197.763 Conduct of local quasi-judicial land use hearings; notice requirements; hearing procedures.

The following procedures shall govern the conduct of quasi-judicial land use hearings conducted before a local governing body, planning commission, hearings body or hearings officer on application for a land use decision and shall be incorporated into the comprehensive plan and land use regulations:

(1) An issue which may be the basis for an appeal to the Land Use Board of Appeals shall be raised not later than the close of the record at or following the final evidentiary hearing on the proposal before the local government. Such issues shall be raised and accompanied by statements or evidence sufficient to afford the governing body, planning commission, hearings body or hearings officer, and the parties an adequate opportunity to respond to each issue.

(2)(a) Notice of the hearings governed by this section shall be provided to the applicant and to owners of record of property on the most recent property tax assessment roll where such property is located:

(A) Within 100 feet of the property which is the subject of the notice where the subject property is wholly or in part within an urban growth boundary;

(B) Within 250 feet of the property which is the subject of the notice where the subject property is outside an urban growth boundary and not within a farm or forest zone; or

(C) Within 500 feet of the property which is the subject of the notice where the subject property is within a farm or forest zone.

(b) Notice shall also be provided to any neighborhood or community organization recognized by the governing body and whose boundaries include the site.

(c) At the discretion of the applicant, the local government also shall provide notice to the Department of Land Conservation and Development.

(3) The notice provided by the jurisdiction shall:

(a) Explain the nature of the application and the proposed use or uses which could be authorized;

(b) List the applicable criteria from the ordinance and the plan that apply to the application at issue;

(c) Set forth the street address or other easily understood geographical reference to the subject property;

(d) State the date, time and location of the hearing;

(e) State that failure of an issue to be raised in a hearing, in person or by letter, or failure to provide statements or evidence sufficient to afford the decision maker an opportunity to respond to the issue precludes appeal to the board based on that issue;

(f) Be mailed at least:

(A) Twenty days before the evidentiary hearing; or

(B) If two or more evidentiary hearings are allowed, 10 days before the first evidentiary hearing;

(g) Include the name of a local government representative to contact and the telephone number where additional information may be obtained;

(h) State that a copy of the application, all documents and evidence submitted by or on behalf of the applicant and applicable criteria are available for inspection at no cost and will be provided at reasonable cost;

(i) State that a copy of the staff report will be available for inspection at no cost at least seven days prior to the hearing and will be provided at reasonable cost; and

(j) Include a general explanation of the requirements for submission of testimony and the procedure for conduct of hearings.

(4)(a) All documents or evidence relied upon by the applicant shall be submitted to the local government and be made available to the public.

(b) Any staff report used at the hearing shall be available at least seven days prior to the hearing. If additional documents or evidence are provided by any party, the local government may allow a continuance or leave the record open to allow the parties a reasonable opportunity to respond. Any

continuance or extension of the record requested by an applicant shall result in a corresponding extension of the time limitations of ORS 215.427 or 227.178 and ORS 215.429 or 227.179.

(5) At the commencement of a hearing under a comprehensive plan or land use regulation, a statement shall be made to those in attendance that:

- (a) Lists the applicable substantive criteria;
- (b) States that testimony, arguments and evidence must be directed toward the criteria described in paragraph (a) of this subsection or other criteria in the plan or land use regulation which the person believes to apply to the decision; and
- (c) States that failure to raise an issue accompanied by statements or evidence sufficient to afford the decision maker and the parties an opportunity to respond to the issue precludes appeal to the board based on that issue.

(6)(a) Prior to the conclusion of the initial evidentiary hearing, any participant may request an opportunity to present additional evidence, arguments or testimony regarding the application. The local hearings authority shall grant such request by continuing the public hearing pursuant to paragraph (b) of this subsection or leaving the record open for additional written evidence, arguments or testimony pursuant to paragraph (c) of this subsection.

(b) If the hearings authority grants a continuance, the hearing shall be continued to a date, time and place certain at least seven days from the date of the initial evidentiary hearing. An opportunity shall be provided at the continued hearing for persons to present and rebut new evidence, arguments or testimony. If new written evidence is submitted at the continued hearing, any person may request, prior to the conclusion of the continued hearing, that the record be left open for at least seven days to submit additional written evidence, arguments or testimony for the purpose of responding to the new written evidence.

(c) If the hearings authority leaves the record open for additional written evidence, arguments or testimony, the record shall be left open for at least seven days. Any participant may file a written request with the local government for an opportunity to respond to new evidence submitted during the period the record was left open. If such a request is filed, the hearings authority shall reopen the record pursuant to subsection (7) of this section.

(d) A continuance or extension granted pursuant to this section shall be subject to the limitations of ORS 215.427 or 227.178 and ORS 215.429 or 227.179, unless the continuance or extension is requested or agreed to by the applicant.

(e) Unless waived by the applicant, the local government shall allow the applicant at least seven days after the record is closed to all other parties to submit final written arguments in support of the application. The applicant's final submittal shall be considered part of the record, but shall not include any new evidence. This seven-day period shall not be subject to the limitations of ORS 215.427 or 227.178 and ORS 215.429 or 227.179.

(7) When a local governing body, planning commission, hearings body or hearings officer reopens a record to admit new evidence, arguments or testimony, any person may raise new issues which relate to the new evidence, arguments, testimony or criteria for decision-making which apply to the matter at issue.

(8) The failure of the property owner to receive notice as provided in this section shall not invalidate such proceedings if the local government can demonstrate by affidavit that such notice was given. The notice provisions of this section shall not restrict the giving of notice by other means, including posting, newspaper publication, radio and television.

- (9) For purposes of this section:
 - (a) "Argument" means assertions and analysis regarding the satisfaction or violation of legal standards or policy believed relevant by the proponent to a decision. "Argument" does not include facts.
 - (b) "Evidence" means facts, documents, data or other information offered to demonstrate compliance or noncompliance with the standards believed by the proponent to be relevant to the decision. [1989

c.761 §10a (enacted in lieu of 197.762); 1991 c.817 §31; 1995 c.595 §2; 1997 c.763 §6; 1997 c.844 §2; 1999 c.533 §12]

17.76.030 Quasi-judicial public hearing procedure and requirements.

A. The following procedural entitlements shall be provided at the public hearing:

1. An impartial review as free from potential conflicts of interest and ex parte contact as is reasonably possible;
2. No member of a hearing body (planning commission or city council) shall participate in a discussion of the proposal or vote on the proposal when any of the following conditions exist:
 - a. Any of the following have a direct or substantial financial interest in the proposal: the hearing body member or the member's spouse, brother, sister, child, parent, father-in-law, mother-in-law, any business in which the member is then serving or has served within the previous two years, or any business with which the member is negotiating for or has an arrangement or understanding concerning prospective partnership or employment, or any business with which the member is in direct competition, where the number of similar businesses is five or less,
 - b. The member has a direct private interest in the proposal,
 - c. For any other valid reason, the member has determined that participation in the hearing and decision cannot be in an impartial manner;
3. Body members shall reveal any ex parte contacts with regard to any matter and shall state the parties' right to rebut the substance of the communication at the commencement of the first public hearing following the prehearing or ex parte contact where action will be considered or taken on the matter. If such contacts have not impaired the member's impartiality or ability to vote on the matter, the member shall so state and shall participate in the public hearing. If the member determines that such contact has affected his impartiality or ability to vote on the matter, the member shall remove himself from the deliberations;
4. A party to a hearing, or a member of a hearing body, may challenge the qualifications of a member of the hearing body to participate in the hearing and decision regarding the matter. The challenge shall state the facts relied upon by the challenger relating to a person's bias, prejudice, personal interest, ex parte contact or other facts from which the challenger has concluded that the member of the hearing body cannot participate in an impartial manner. The hearing body shall deliberate and vote on such a challenge. The person who is the subject of the challenge may not vote on the motion;
5. No officer or employee of the city who has a financial or other private interest in a proposal shall participate in discussion with or give an official opinion to the hearing body on the proposal without first declaring for the record the nature and extent of each interest;
6. A reasonable opportunity for those persons potentially affected by the proposal to present evidence;
7. A reasonable opportunity for rebuttal or new material.

B. Rights of Disqualified Member of the Hearing Body.

1. An abstaining or disqualified member of the hearing body may be counted for purposes of forming a quorum. A member who represents his or her own personal interests at a hearing may do so only by abstaining from voting on the proposal, physically joining the

audience and vacating the seat on the hearing body, and making full disclosure of his or her status and position at the time of addressing the hearing body.

2. Except for hearings on legislative actions conducted by the governing body, a member absent during the presentation of evidence in a hearing may not participate in the deliberations or final decision regarding the matter of the hearing unless the member has reviewed the record and evidence received at the prior hearing(s).

C. Burden and Nature of Proof. The burden of proof is upon the proponent. The proposal must be supported by proof that it conforms to the applicable provisions of this title, especially the specific criteria set forth for the particular type of decision under consideration.

D. Nature of Proceedings. An order of proceedings for a hearing will depend in part on the nature of the hearing. The following shall be supplemented by administrative procedures as appropriate.

1. Before receiving testimony on the issue, the following shall be addressed:

a. Any objections on jurisdictional grounds shall be noted in the record and if there is objection, the person presiding has the discretion to proceed or terminate.

b. Any abstentions or disqualification based on conflict of interest, personal bias, or ex parte contacts shall be determined. If ex parte contacts are reported by any commission member, the member shall state the content of the communication. Thereafter, the chairperson of the commission shall state that the parties have the right to rebut the substance of the ex parte communication. Communications with city staff are not to be considered as ex parte communications.

c. A statement by the chairperson presiding that:

i. States that testimony, arguments, and evidence must be directed toward the applicable criteria or other criteria in the comprehensive plan or this title which the person believes apply to the decision;

ii. States that failure to raise an issue accompanied by statements or evidence sufficient to afford the hearing body an opportunity to respond to the issue will preclude an appeal to the land use board of appeals based on that issue;

iii. States that failure of the applicant to raise constitutional or other issues relating to proposed conditions of approval with sufficient specificity to allow the city to respond to the issues will preclude an action for damages in the circuit court.

2. Presentations and Evidence.

a. The presiding officer shall preserve order at the public hearing and shall decide questions of order.

b. Members of the hearing body may take official notice of judicially cognizable facts of a general, technical or scientific nature. Such notice shall be stated and may be rebutted.

c. After presentation of the staff report, the proponent and all persons in favor of proponent's proposal shall be heard. Following the presentation of proponent's case, the opponents shall be heard. After presentation of the evidence by the opponents, neutral parties who do not necessarily support or oppose the petition shall have an opportunity to be heard, and then representatives of public agencies. Following all presentations of evidence, brief rebuttal shall be permitted in the same general order, but the presiding officer shall have broad discretion to limit rebuttal to avoid repetition and redundancy.

3. The hearing body may continue a hearing in order to obtain additional information or to serve further notice upon other property owners or persons it decides may be interested in

the proposal being considered. The time and date when the hearing is to resume may be announced.

4. Prior to the conclusion of the initial evidentiary hearing, any participant may request an opportunity to present additional evidence, arguments, or testimony regarding the application. The hearing body shall grant such request by either continuing the hearing or leaving the record open for additional written evidence, arguments, or testimony.

a. If the hearing body grants a continuance, the hearing shall be continued to a date, time, and place at least seven days from the initial evidentiary hearing. An opportunity shall be provided at the continued hearing for persons to present and rebut new evidence, arguments, or testimony. If new written evidence is submitted at the continued hearing, any person may request, prior to the conclusion of the continued hearing, that the record be left open for at least seven days to submit additional written evidence, arguments, or testimony for the purpose of responding to the new written evidence. The hearing body may grant or deny such a request, at its discretion.

b. If the hearing body leaves the record open for additional written evidence, arguments, or testimony, the record shall be left open for at least seven days. If new evidence is submitted during the period the record is left open, any participant, within two working days after the period terminates, may file a written request with the department for an opportunity to respond to new evidence submitted during the period the record was left open. If such a request is filed, the record shall be reopened for an additional five days to allow the participant to raise new issues in response to the new evidence.

5. When the hearing body reopens a record to admit new evidence, arguments or testimony, any person may raise new issues related to the new evidence, arguments, testimony, or criteria for decision making that apply to the matter at issue.

6. Unless waived by the applicant, the hearing body shall allow the applicant at least seven days after the record is closed to all other parties to submit final written arguments in support of the application. The applicant’s final submittal shall be part of the record. The applicant’s final submittal shall not include any new evidence and, if it does include new evidence, the new evidence shall be considered not part of the record and shall be disregarded.

7. Notwithstanding the provisions of subsections (D)(3), (4) and (5) of this section, the hearing body shall not continue a hearing, leave a record open for the submittal of additional written evidence, arguments, or testimony, or reopen a record, if the continuance, leaving open, or reopening will result in the city’s not taking final action on an application within the time period set out in LCMC [17.76.050\(A\)](#).

E. Decision. Following the procedure described in this section, the hearing body shall approve, approve with conditions, or deny the application. If the hearing is before the planning commission on a zoning map or text amendment, the planning commission shall make a recommendation to council to adopt or deny the change. Such recommendation will be reflected in the minutes of the planning commission. If the hearing is in the nature of an appeal, the body may affirm, affirm with modifications or additional conditions, reverse, or remand the decision that is on appeal. The hearing body shall not impose conditions of approval that have not been stated, either prior to the close of the hearing or prior to the close of a reopened hearing, with sufficient specificity to allow the applicant to respond to the conditions.

1. The decision of the hearing body, which has the authority to approve the application or decide the appeal, shall be by a written order signed by the presiding officer.

2. The order shall incorporate findings of fact and conclusions that include:

- a. A statement of the applicable criteria and standards against which the proposal was tested;
- b. A statement of the facts upon which the hearing body relied in establishing compliance or noncompliance with each applicable criteria or standards, briefly stating how those facts support the decision.

3. The written order is the final decision in the matter.

F. Record of Proceedings. The proceedings shall be recorded stenographically or electronically.

1. The hearing body shall, where practicable, retain as part of the hearing records each item of physical or documentary evidence presented and shall have the items marked to show the identity of the person offering the same and whether presented on behalf of a proponent or opponent. Exhibits received into evidence shall be retained in the hearing file.
2. The findings shall be included in the record.
3. A person shall have access to the record of proceedings at reasonable times, places and circumstances. A person shall be entitled copies of the record at the person's own expense.

G. Notice of Decision. Notice of decision by a hearing body shall be provided to all persons who appeared before the hearing body orally or in writing, or requested in writing that they be given notice of such decisions. The act of signing a petition shall not be deemed a written appearance before the hearing body and shall not confer party status on the signator. Only the representative submitting the petition or chief petitioner shall be given notice of the decision. The notice of the decision shall include:

1. A brief description of the decisions reached and date of decision;
2. A description of the requirements for an appeal, including the type of appeal that may be requested, and the applicable timelines;
3. A statement that an appeal may only be filed concerning criteria that were addressed at the initial public hearing;
4. A statement that the complete case, including the final order, is available for review at the city. (Ord. 2000-06-A §§ 14 – 18; Ord. 91-18 § 6; Ord. 84-2 § 9.030)

give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or deposits or causes to be deposited any matter or thing whatever to be sent or delivered by any private or commercial interstate carrier, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail or such carrier according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined under this title or imprisoned not more than 20 years, or both.

HONEST SERVICES 18 U.S.C. § 1346 The term “scheme or artifice to defraud” includes a scheme or artifice to deprive another of the intangible right of honest services.

CRIMINAL PROVISIONS INVOLVING PUBLIC OFFICIAL ETHICAL STANDARDS: OREGON REVISED STATUTES

The statutes below provide criminal penalties for acts which may also constitute ethical violations under Oregon law. This means that a public official who engages in those behaviors will not only be subject to Oregon’s Ethics Law penalties, but may also face criminal liability.

ORS 162.025 – BRIBE RECEIVING

ORS 162

- A public servant commits the crime of bribe receiving if the public servant:
- Solicits any pecuniary benefit with the intent that the vote, opinion, judgment, action, decision or exercise of discretion as a public servant will thereby be influenced; or
- Accepts or agrees to accept any pecuniary benefit upon an agreement or understanding that the vote, opinion, judgment, action, decision or exercise of discretion as a public servant will thereby be influenced.
- Bribe receiving is a Class B felony

ORS 162.405 – OFFICIAL MISCONDUCT IN THE SECOND DEGREE

ORS 162

- A public servant commits the crime of official misconduct in the second degree if the person knowingly violates any statute relating to the office of the person.

- Official misconduct in the second degree is a Class C misdemeanor.

ORS 162.415 – OFFICIAL MISCONDUCT IN THE FIRST DEGREE

ORS 162

- A public servant commits the crime of official misconduct in the first degree if, with intent to obtain a benefit or to harm another:
- The public servant knowingly fails to perform a duty imposed upon the public servant by law or one clearly inherent in the nature of office; or
- The public servant knowingly performs an act constituting an unauthorized exercise in official duties.
- Official misconduct in the first degree is a Class A misdemeanor.

ORS 162.425 – MISUSE OF CONFIDENTIAL INFORMATION

ORS 162

- A public servant commits the crime of misuse of confidential information if, in contemplation of official action by the public servant or by a governmental unit with which the public servant is associated, or in reliance on information to which the public servant has access in an official capacity and which has not been made public, the public servant acquires or aids another in acquiring a pecuniary interest in any property, transaction or enterprise which may be affected by such information or official action.
- Misuse of confidential information is a Class B misdemeanor.

ORS 163.275(G) – COERCION

ORS 163

- A person commits the crime of coercion when the person compels or induces another person to engage in conduct from which the other person has a legal right to abstain, or to abstain from engaging in conduct in which the other person has a legal right to engage, by means of instilling in the other person a fear that, if the other person refrains from the conduct compelled or induced or engages in conduct contrary to the compulsion or inducement, the actor or another will . . . unlawfully use or abuse the person's position as a public servant by performing some act within or related to official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely.
- Coercion is a Class C felony.

ORS 164.075(H) – THEFT BY EXTORTION

ORS 164

- A person commits theft by extortion when the person compels or induces another to deliver property to the person or to a third

person by instilling in the other a fear that, if the property is not so delivered, the actor or a third person will in the future . . . use or abuse the position as a public servant by performing some act within or related to official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely; or

- Theft by extortion is a Class B felony.

ORS 162.305 – TAMPERING WITH PUBLIC RECORDS

[ORS 162](#)

- A person commits the crime of tampering with public records if, without lawful authority, the person knowingly destroys, mutilates, conceals, removes, makes a false entry in or falsely alters any public record, including records relating to the Oregon State Lottery.
- Except as provided in paragraph (b) of this subsection, tampering with public records is a Class A misdemeanor.
- Tampering with records relating to the Oregon State Lottery is a Class C felony.

NON-CRIMINAL PROVISIONS: OREGON REVISED STATUTES

Some Oregon statutes provide for financial penalties for unethical acts of a non-criminal nature. These statutes sometimes also impose personal liability upon a public official. This means that the public official will be personally responsible for paying any civil penalties out of his or her own pocket. Misconduct under these statutes can also implicate criminal liability.

PROHIBITION OF POLITICAL ACTIVITIES

[ORS 260](#)

ORS 260.432 prohibits public employees from: soliciting any money, influence, service or other thing of value or otherwise promoting or opposing (1) any political committee; (2) the nomination or election of a candidate; (3) the gathering of signatures on an initiative, referendum or recall petition; (4) the adoption of a measure; or (5) the recall of a public office holder, while “on the job during working hours.” For the purposes of this law, an elected official is not considered a “public employee”; however under no circumstances should a public employee or elected official use public funds or resources to promote or oppose any of the above activities.



PLANNING COMMISSION STAFF REPORT
MEETING DATE: January 7, 2020

Report prepared by AnneMarie Skinner, Planning & Community Development Director

Overview of 2019 Planning

2019 Summary

Planning and Community Development Staff Changes

1. Director
 - Anne Marie Skinner became the director effective November 4, 2019 after the previous director resigned.
2. Senior Planner
 - Anne Marie Skinner started as the Senior Planner on April 1, 2019 after the previous Senior Planner retired.
 - The Senior Planner position is now vacant, following Anne Marie Skinner's promotion to director on November 4, 2019.
 - Applications are being accepted for this position.
3. Assistant Planner
 - James White began as the new assistant planner on September 4, 2019 as the previous assistant planner retired.
4. Weston Fritz remains as the other assistant planner, with a two-year anniversary on March 12, 2020.
5. Amanda Gustafson remains as the permit tech, with a four-year anniversary on February 1, 2020.

Planning Commission Member Changes

1. Three commissioners resigned over the course of 2019, and one commissioner's term ended in 2019.
2. Josh Brainerd, Marci Baker, and Lenny Nelson became commissioners in 2019.
3. Two positions are open, with interviews for one of the positions taking place on January 13, 2020. Applications are being accepted for the other open position.

Planning Commission Cases

Appeals

1. Hullinger geologic hazard report
2. Thomas vacation rental dwelling land use

Conditional Use Permits

1. Kennels for Oceanlake Veterinary Clinic were approved
2. Emergency shelter for Chance was approved

3. Transitional housing facility for Helping Hands was approved

Comprehensive Plan Map and/or Zone Map Amendments

1. Surftides request was denied
2. Creation of two new comprehensive plan map designations of Recreation Resort Mixed Use and Resort Residential Mixed Structure
3. Implementation of the two new comprehensive plan map designations on properties in the northern part of Lincoln City
4. Sutton request was recommended for denial; public hearing with City Council on January 27, 2020

Variances

1. None

Zoning Ordinance Amendments

1. Park zone minor amendment approved
2. Temporary sheltering as accessory uses to places of worship approved
3. Mobile food units and mobile food unit pods – recommended approval; goes to City Council on February 10, 2020
4. Allowances for emergency caches approved
5. FEMA maps and ordinance approved
6. Dock permitting standards approved
7. Development agreement standards approved
8. Manufactured dwellings consistency approved
9. ADU consistency with state code approved
10. Bluff setback amendment recommended approval; goes to City Council on February 10, 2020
11. Transitional housing allowances recommended approval; goes to City Council on January 13, 2020
12. ADU consistency throughout Title 17 recommended approval; goes to City Council on January 27, 2020
13. Creation of Resort Community Commercial zone recommended approval; goes to City Council on January 27, 2020

Staff Cases

1. 4 property line adjustments
2. 3 director's interpretation administrative decisions
3. 6 geologic hazard reports
4. 16 pre-application conferences
5. 3 site plan reviews
6. 5 tree removal permits



PLANNING COMMISSION STAFF REPORT
MEETING DATE: January 7, 2020

Report prepared by AnneMarie Skinner, Planning & Community Development Director

2020 Work List

Department Projects

1. Complete revision of applications and forms; add checklists and instructions (bed and breakfast, partition, and pre-application conference are complete; many more to go)
2. Review processes to eliminate inefficiencies and create more transparency and quicker review times (this is in process; have already met with Engineering and Finance; will now flowchart in the department)
3. Complete input of land-use file records and organization of record keeping system (this is in process; also cross-referencing overlapping cases, orders, and recommendations; working with IT and City Recorder as part of their goal to organize public records for the entire city)

Ordinance Amendments

1. Tree protection and preservation ordinance revision
2. Landscaping ordinance revision to make more clear and easier to understand for residential
3. Parking ordinance revision (minor change at the request of Urban Renewal and Economic Development Director)
4. Sign ordinance – complete what was started last year
5. Design standards – complete what was started last year
6. Annexation ordinance created for easier processing of annexation applications
7. Procedures ordinance revision for consistency and easier processing land use applications
8. Special events as accessory use to schools and possible inclusion in other zones – at the request of the City Attorney and the Planning Director to avoid director’s interpretation administrative decisions on a continuous basis
9. Creation of the Resort Neighborhood Zone to implement the Resort Residential Mixed Structure (RRMS)
10. General clean-up of Title 17 in its entirety to remove many inconsistencies throughout, remove definitions that aren’t used, add definitions that are used, re-organize some of the sections by moving to different sections where their location makes more sense

Zone Changes

1. Application of Resort Community Commercial zone – at the direction of, and when indicated by, the Urban Renewal and Economic Development Director
2. Rezone portion of the park on the east of NW Keel from RM to P at the request of Parks and Recreation Director
3. Rezone 35 acres on east side of The Knoll from R-1-7.5 to Open Space at the request of the City Attorney
4. Rezone areas in the city to P that either will be or are currently public parks for consistency – at the request and direction of the Parks and Recreation Director
5. Application of Resort Neighborhood Zone – at the direction of, and when indicated by, the Urban Renewal and Economic Development Director and City Manager

Planning Commission Requests

1. Discussion on an ordinance amendments at the request of Planning Commission

PLANNING COMMISSIONER QUESTIONS/THOUGHTS:

1. What are the Planning Commission's thoughts on removing residential uses as permitted and conditional in the General Commercial zone? Recreation Commercial zone?
2. What are the Planning Commission's thoughts on reducing the residential parking requirement?
3. What ordinance revisions, if any, does the Planning Commission wish to add to the 2020 work program?