

**LINCOLN CITY PLANNING COMMISSION
MINUTES
July 21, 2020**

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

Attendee Name	Title	Status	Arrived
Marci Baker	Commissioner	Present	
Kim Blackerby	Commissioner	Present	
Joshua Brainerd	Commissioner	Excused	
Patti Kroen	Chair	Present	
Lenny Nelson	Commissioner	Present	
Miles Schlesinger	Commissioner	Present	
MacNeale Smith	Commissioner	Present	

2. AGENDA CHANGES OR REVISIONS

No changes or revisions to the agenda

3. MINUTES

3.1.

MOTION:	Motion to adopt the minutes from the July 7, 2020 Planning Commission meeting
MOVER:	Lenny Nelson, Commissioner
SECONDER:	MacNeale Smith, Commissioner
AYES:	Baker, Blackerby, Kroen, Nelson, Schlesinger, Smith
EXCUSED:	Joshua Brainerd
RESULT:	Passed

4. FINAL ORDERS, RESOLUTION, & WRITTEN COMMUNICATIONS

1. Final Order 2020-05 SUB/PUD 2020-01

1. Discussion

City Attorney Richard Appicello introduced the conversation, saying that the findings and final order for the decision denying SUB/PUD 2020-01 was included in the meeting packet with a black spot for the Planning Commission to identify a legitimate basis for denial. There were conversations about trees, which are dealt with in condition #3. There were conversations about market absorption, which is not one of the applicable criteria. There was conversation about parking, but the application meets the code requirement for parking. That was in Anne Marie's testimony. The Planning Commission cannot change the requirements in the context of an application. The record has multiple instances of testimony from the City Engineer that a Traffic Impact Analysis is not triggered to require an exaction. Imposing a condition of approval or a denial seems to be inappropriate. When you have a prior approval

with improvements, those improvements should be bonded by code. If those prior things were not properly contracted or bonded, it is inappropriate to put that on the current developer.

Mr Appicello continued, say that there was also an alternate draft Final Order provided to the Planning Commission, and that in order to consider it, they would need to have a motion to reconsideration of the decision denying SUB/PUD 2020-01. If the motion is made and seconded and passes, it would take the commissioners back to deliberations, and then they could talk about the alternate Final Order. Mr Appicello summarized his comments by saying that the commissioners could discuss the basis for denial to complete the draft Final Order, or they could make a motion to reconsider the decision.

Chair Kroen asked Mr Appicello if the only way to consider the alternate document is to reopen deliberation. He confirmed that the commissioners could still make the same decision that they came to before, but that if they want to step back and discuss the alternate Final Order, the process is to make a motion to reconsider.

Commissioner Schlesinger said that he did not think revisiting the decision was necessary. He said that he thought the commissioners had voted against the application because the authority to build the subdivision had expired, and the previous applicants had not done the work that they were supposed to complete. He said that he does not see any reason to change his mind on that point.

Commissioner Nelson said that she would have liked more than 15 minutes to look at the draft alternative Final Order. She said that she thought the Planning Commission could stay with the original motion and fill in the blanks in the draft Final Order with the reasons why. One of the reasons would be that the surrounding traffic conditions are not suitable for this project.

Mr Appicello told the commissioners that there is no criterion in the code that a past failure of a project can be held against the applicants of a project. The substantial evidence in the record right now is that the project does not meet the triggers for a Traffic Impact Analysis, and that the requirements for the last phase do not apply to this project. The Planning Commission will decide how they want to decide, and the applicants are free to appeal to the City Council.

Chair Kroen said that the problem she has with the traffic issue is that the proposed project was a piece of a larger development that was brought to the Planning Commission in the past and there were requirements that the applicants seem to have gotten around by splitting the project into phases. Mr Appicello replied that the first approval would have had tied to it a requirement to enter into a contract or bond. The approval of this project is not related to the failure of that project. Developers break up projects all the time to avoid exaction. Maybe there should be a requirement in the code that treats these cumulatively, but we cannot be writing new code in this context.

Commissioner Schlesinger said that it is up to the Planning Commission to stop this ridiculous project which is poorly planned, and not one that should go forward - at least in the sense that the traffic plan is not made properly.

Commissioner Baker said that her understanding is that we do traffic impact studies for safety, and that it is known that one was required previously for this project when it was part

of the whole development. She asked whether, if there is a fire and a fire truck cannot get in to the neighborhood, the city liable for that, and said that she cannot ignore that, and the Planning Commission cannot put whole neighborhoods at risk.

City Manager Ron Chandler said that, ultimately, it is the role of the PC to make a decision. Staff came with recommendations. The Planning Commission needs to make a decision and describe the reasons why. The role of the Planning Commission is to take all of the information from the developer and the staff and to make a decision that is defensible. The City will have to defend the decision if it's challenged.

Mr Appicello reminded the commissioners of a recent training on quasi-judicial and legislative procedures. He said that the process of quasi-judicial procedures is rote. Does the application comply or not comply with the requirements of the code. Anne Marie Skinner said a number of times that the application complies with the code. When you take a position that you do not think it is fair because they are getting away with splitting up their projects - I understand that the code probably needs to be revised, but you don't get to write new code right now.

Chair Kroen asked whether it would be a dangerous precedent to set in the City? Mr Appicello responded that the code does not give direction to reach back to a prior approval and accumulate or aggregate all of the traffic impacts.

Commissioner Smith said that he wonders if the application can be recommended as technically correct but with reservation - that it sounds like it is technically correct, but the Planning Commission has significant reservations. Commissioner Schlesinger asked why the application would be technically correct if you have an expired permit and then you build six of the houses and then put in the road for another twelve.

Commissioner Nelson said that if the city needed no more than people who were competent to make rote decisions, it would not need a Planning Commission.

Chair Kroen said that the Planning Commission might want to go back and reopen deliberations and perhaps work a little more to craft the second document that Mr Richard sent. She said that, in addition to the issue of the street, she has six issues on her list. She suggested entertaining a motion to reconsider the decision, spending a little bit of time going over the six items that she identified, and then potentially bringing it back to the next meeting with a revised recommendation.

4.1.2.

MOTION:	Motion to reconsider the decision on SUB/PUD 2020-01 from the July 7, 2020 Planning Commission meeting
MOVER:	Kim Blackerby, Commissioner
SECONDER:	MacNeale Smith, Commissioner
AYES:	Baker, Blackerby, Kroen, Schlesinger, Smith
NAYS:	Lenny Nelson
EXCUSED:	Joshua Brainerd
RESULT:	Passed

3. Deliberation

Chair Kroen said that she wanted to quickly go through the six things that she would have put into the blanks in the this first Findings and Facts document that was included with the meeting packet:

"We have a brand new development agreement ordinance and it would be really nice if it actually was used. The application was submitted as needed housing, and while Lincoln City certainly has a need for affordable and workforce housing, this application presents neither. There is no housing included in the application, and likewise no development agreement. So no linkage there between what was suggested and what would actually happen.

"The second one we've beaten up pretty much. This is a piece of a larger development that was originally approved, that originated the traffic study. Sixteenth Street was not improved as the condition required - the permit lapsed. Basically Phase I and II included 28 lots. Seventy-five percent of those lots have not been developed, but then we were told that Phase II could not be done unless this phase was approved, indicating to me that it is an integral part of the larger project. And I think piecemealing this development now, the street improvement is required to address the cumulative impacts that would be ignored.

"The suggestion that this is affordable housing is questionable due to the costs associated with the extreme amount of prep and fill, plus retaining wall installation that apparently needs to be done to make the lots buildable. We were also told that 700 of the 730 trees or roughly 90% of the trees on the site need to be cleared and removed, and as Anne Marie stated, that the removal needs to be tied to a building permit. We don't have any building permits being applied for in this application, so it seems that clearcutting this acreage prior to the building permit is not consistent with our code. Particularly given the fact that 75% of the lots of Phase II remain undeveloped. That does make me nervous, that we would clear cut in advance of the development here. Perhaps that is mitigated by putting a time limit on the vertical structures.

"The multi-family requires a minimum of 250 square feet per unit that would be recreation area. In our hearing, we were told that the recreation area set aside is actually the drainage swale that would be left natural because it cannot be built upon. There is no plan to provide walking trails, benches, play structure, anything else within this recreation set-aside. I don't think that a recreation set-aside in a swale is consistent with recreation area. Sounds more like open space to me, and not consistent with our ordinance. So that's another question that I have. We didn't get any answer when I asked how the residents would actually recreate in that quote-unquote recreation area.

"The other, Richard has already talked about, was the expiration date. No building completion date was offered by the applicant, so would expect to see that as a condition of approval. There was also no tree replacement plan. There was no preliminary or final landscape plan offered by the applicant.

"So those are my six particulars that led me to want to deny this application."

Commissioner Nelson said that she thinks those are excellent reasons, and that what she sees happening here is the Planning Commission telling the developers what they need to do. Chair Kroen responded that planning departments or planning commissions often become

reaction departments. It would be nice if everyone came in with neat and tidy plans for development, but that has not been the experience.

Commissioner Blackerby asked Mr Appicello if there was anything in what Chair Kroen read that cannot be included in the findings. Mr Appicello replied that the first issue is that the applicant identified the development as needed housing under state law, which says you must have clear and objective criteria. We have clear and objective criteria. Staff apply the law at the time to the facts that been submitted in the application, and those facts either comply or do not comply. A developer can come in and ask to enter into a development agreement but that is not a by-right - so the first point that Chair Kroen brought up is not appropriate for those reasons. That this is a piece of a larger development that lapsed is factually correct. Our code does not say that if you are part of a development that lapsed we get to apply the cumulative impacts. If the City Engineer had something to hang her hat on, it would have been in her report, if there was something that allowed her to do that. So the second point is difficult to sustain. The issue of clearing the trees - the problem is that the condition says that the applicant will comply with the code. The code says you can build infrastructure and remove trees to build the infrastructure. The third basis stated is questionable because it is covered in Condition 3, which the applicant has already agreed to. The recreation is questionable, but the applicant said they were setting area aside for passive recreation, which we do value here.

Chair Kroen said that she does not have the code in front of her, but would like to look at the requirements for recreational space in planned unit developments. She said that it does seem to discuss requirements for recreation that are more than a swale.

Commissioner Schlesinger said that he values Mr Appicello's comments, but the Planning Commission has to represent the community, and this is not a good plan for the community because it has been piecemeal from the get-go. He said that he will not support it unless the applicant makes certain changes.

Commissioner Blackerby said that he agrees with Commissioner Schlesinger. He said that his opinion of the development has not changed - he does not think that it is for the good of the city and that he thinks that it is a sloppy plan at best.

Commissioner Baker said that she is in agreement with everyone else and that she would like to hear back on the wording in the code about recreation. She said that there was discussion about open space, but that she doesn't know if that is the same as the recreation area requirement - just leaving open space. The code requires recreation areas in the multifamily zone to provide places for families to recreate. Without hearing the words in the code, how are we supposed to know whether the application meets the requirement or not.

Commissioner Baker read section 17.52.260(F) of the Lincoln City Municipal Code, which discusses the requirements for recreation area for attached-single family developments. Mr Appicello said that some of the required space in the application is in backyards, and some of it is passive recreation. He said that he does not see anything in that section requiring facilities or active recreation. The definition of recreation does not include those things either.

Chair Kroen said that, if nothing else, the conversation has shown some glaring loopholes in the code. Commissioner Baker said that it sticks with her that the only testimony received was from a neighbor who was concerned with the traffic impacts.

4.1.4.

MOTION:	Motion to deny the application for SUB/PUD 2020-01 with the findings read during deliberation by Patti Kroen, and authorize Chair Kroen to sign the final order once it is put together
MOVER:	Lenny Nelson, Commissioner
SECONDER:	Miles Schlesinger, Commissioner
AYES:	Baker, Blackerby, Kroen, Nelson, Schlesinger, Smith
EXCUSED:	Joshua Brainerd
RESULT:	Passed

5. PUBLIC HEARINGS/DELIBERATIONS

None

6. OLD BUSINESS

None

7. NEW BUSINESS

None

8. PLANNING COMMISSION TRAINING

None

9. REPORTS & COMMENTS

Chair Kroen asked about the status of the search for a new senior planner. Mr Chandler said that, if all goes as planned, the new senior planner will begin by the end of July.

10. FUTURE AGENDA ITEMS & NEXT MEETINGS

11. ADJOURN

Respectfully submitted,

James White
Assistant Planner

Patti Kroen
Chair