

**LINCOLN CITY PLANNING COMMISSION
MINUTES
March 3, 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	Present	
Patti Kroen	Chair	Present	
Lenny Nelson	Commissioner	Present	
Miles Schlesinger	Commissioner	Absent	
MacNeale Smith	Commissioner	Present	

2. AGENDA CHANGES OR REVISIONS

3. MINUTES

3.1. Planning Commission - Regular Meeting - Feb 18, 2020 6:00 PM

MOTION:	Adopt the February 18, 2020 Planning Commission meeting minutes
MOVER:	Joshua Brainerd, Commissioner
SECONDER:	Marci Baker, Commissioner
AYES:	Baker, Blackerby, Brainerd, Kroen, Smith
ABSTAIN:	Lenny Nelson
ABSENT:	Miles Schlesinger
RESULT:	Passed

4. FINAL ORDERS, RESOLUTION, & WRITTEN COMMUNICATIONS

1. FR 2020-01: Final Recommendation for ANNEX 2020-01 CPA/ZC 2020-02 Woods Annexation

Planning Commission Chair Patti Kroen introduced the Final Recommendation 2020-01 and then made the following statement: "Before we vote on a final recommendation, I have to say something because I have been thinking about this action since our last meeting. Usually when I leave these meetings I feel good about what we've done. I think we do our homework, and I think we accomplish a lot of good for the City. I left the last meeting feeling that I made a mistake and I would like to correct that mistake now. I think that may be why there is a gap between tentative and final decisions – so we have an opportunity to reflect a little bit away from the moment and confirm in our minds we are doing the right thing."

"During the hearing I gave several reasons why I was not in favor of the annexation, and the reason I am saying this now is because I'm changing my vote and I want to make sure that my concerns are included in the recommendation that ultimately goes to the City Council. So I'm just going to reiterate them quickly."

"We talked during the meeting about having adequate land currently in the city limits for single-family residential construction. I mentioned that the City is working on the Villages, and several in-fill projects, and I continue to think that we have significant raw surplus land already zoned for single-family housing in the city limits."

"We have issues addressing the maintenance needs of water delivery and sewer systems – particularly in the Roads End area. Those have come to light during the discussions on the urban renewal district. So I'm puzzled why we would focus on adding 80 additional homes when we are having some issues maintaining what is already in the city."

"There is a potential for 80 homes on this site, and I continue to be concerned about issues that will add to the problems that already exist on Logan Road, which is the only exit from Roads End, and also with the Logan Road/Highway 101 intersection."

"The last and probably most important thing that kept rattling around in my head over the last couple of weeks is this: The annexation has been turned down twice. The first time it was turned down because there was no development agreement associated with it. The second time it was turned down because, while there was a development agreement, it was not considered specific enough. So then I had to wonder why we didn't have a development agreement with it coming in front of us last meeting."

"It was stated that the previous Planning Director preferred the applicant not to submit one. Without Lindsay here to confirm or deny whether she said that or not, we don't know what she said or why. But it doesn't make sense to me because during her short tenure here she made a point of being an advocate for development agreements, and in fact she was instrumental in writing new rules and regulations for development agreements that we passed through the Planning Commission and the City Council. So, I'm not sure why she would suggest the applicant not do one."

"And the reason a development agreement is important is because the city has a very specific need for a very specific type of housing right now. There is no guarantee and no commitment from the developer to actually provide the kind of housing the city needs on this property. So, again, I wonder why we would recommend annexation of this land without one, particularly when we were told that the developer is 'interested in negotiating one' but, for whatever reason, didn't?"

"During the hearing, the applicants' representative correctly stated that what the Planning Commission has to consider is the application in front of them. That is an application without a development agreement and no guarantees for the city. It was suggested that the city has changed a lot since 2005, and I would agree that's true. The laws have changed. The facts of the community have changed. Roads End has been annexed by the city, along with hundreds of more VRDs in that area requiring more workforce housing. The Villages has been acquired and has become a focus for new residential development in the city. But maybe more important: The City has initiated that more formalized development agreement process, and I think that it should be followed in this instance."

"I want to point out I have not talked to anyone on the Commission about this, so I didn't share my feelings or approach to this. But I have given it a significant amount of thought and I am

going to change my position and vote to deny this annexation and re-zone. I have no idea how my fellow commissioners feel about this, but I wanted to make sure that my reasoning is on the record and will be clearly forwarded to the City Council. The Planning Commission is not the final say in this. The applicant will certainly have an opportunity to address the City Council on this request. But personally, I think it is important to admit when you have made a mistake, if you make them, if you feel you've made one. And if you have time to correct it you should do that. And that is what I am doing."

Commissioner Marci Baker stated that she had been planning to ask if there was an option to change her vote. She said that she had gone back and read the minutes and wondered why she voted the way she did - that she had a lot of concerns that she had stated and that are present in the minutes for the February 18, 2020 meeting. Chair Kroen replied that she had appreciated Commissioner Baker's comments - especially about the requested zone change placing an island of R-1-5 zone in the middle of several different zones.

City Attorney Richard Appicello said that he has seen boards change their votes between preliminary and final decisions, but that usually approving a final recommendation is a rote exercise in making sure that the final recommendation matches what the Planning Commission wants to say. What they are doing is putting their concerns into the recommendation to the City Council. The Planning Commission is entitled to deliberate. Mr Appicello told the commissioners that if they feel the need to go back to deliberations, they can make a motion to reconsider the decision. He said that the decision in front of them is a final recommendation to approve the proposed annexation and zone change. If the Planning Commission is going to just vote up and down on that recommendation, they need a motion to vote on the recommendation that is before them. If they do not pass that motion, they will need to come back and deliberate.

Commissioner Kim Blackerby said that he also had thought a lot about the recommendation over the last couple of weeks. He said that he didn't think that he would change his vote, but that it is up to negotiation with the city, and that he hopes that the City Council would take into consideration the concerns of citizens.

Mr Appicello consulted the Planning Commission rules: "The vote on a final order or final recommendation is not meant to be a second vote on the subject of the hearing. If the final order or final recommendation accurately reflects the findings of the majority and the decision, Commissioners should vote to approve." Mr Appicello explained to the commissioners that if they change their votes, they have to explain why they changed their votes, and that if they have already explained why, the explanation is in the record.

Commissioner Baker indicated that she want to make a motion to reconsider the Planning Commission's decision and reopen deliberation. Mr Appicello explained that reconsideration is reconsideration on the final vote - someone who voted in favor makes a motion to reconsider and someone seconds. If the motion passes, deliberation is reopened.

4.1.2.

MOTION:	Reconsider the vote to recommend tentative approval of ANEX 2020-01 and CPA & ZC 2020-02
MOVER:	Marci Baker, Commissioner
SECONDER:	Joshua Brainerd, Commissioner
AYES:	Marci Baker, Joshua Brainerd, Patti Kroen, MacNeale Smith
NAYS:	Kim Blackerby
ABSTAIN:	Lenny Nelson
ABSENT:	Miles Schlesinger
RESULT:	Passed

The motion to reconsider the February 18, 2020 vote passed, removing the tentative approval and reopening deliberations.

Commissioner Baker said that they had talked during the discussions about the zone change creating an island of R-1-5 zone.

Mr Appicello reminded the commissioners that they have the option of approving the annexation and denying the rezone. There were reasons to do that when Roads End was annexed. He said that he did not know what rationale the commissioners would have to deny the rezone in this case. Ms Skinner added that approving the annexation and denying the rezone would result in the site coming into the city with county zoning, and City staff would have to administer the county ordinance. The Comprehensive Plan designation, lot size, and permitted uses are the same between R-1-5 and R-1-RE.

The commissioners confirmed that in removing the tentative approval, they intended the action to apply to both the annexation and the zone change, as the motion did not specify.

Commissioner Mac Smith said that the choice of zone is the issue for him. The R-1-5 zone seems to be inconsistent with what is currently going on in the area. He said that he has had similar second thoughts since the last meeting, and that R-1-5 is not the most appropriate zone for the area as it sits.

Chair Kroen said that she is focused on the annexation and the lack of a development agreement, and that the zoning issue does not address the lack of a development agreement.

Commissioner Blackerby asked whether the applicants will have to come back with a development agreement. Ms Skinner replied that they do not. In order to develop more than just the two lots as they are currently configured, they would have to come back with a subdivision/planned unit development, but a development agreement is not required.

Commissioner Baker asked whether the demand on the utilities would be one of the items addressed. Chair Kroen said that it comes down to us having capacity for a certain number of hookups, and whether this is where we want to use them. Mr Appicello replied that it is only a question of whether the City has the capacity, and not a question of whether this user or that user gets it. Until someone comes in with system development charges, they have not reserved

the capacity. It is first come, first served, and if an applicant comes in with a development proposal that needs more capacity than is available, they may be required to build the infrastructure. Especially when you are talking about more than a small subdivision.

Commissioner Blackerby asked whether, if the city does not annex the property, the owners could develop the property within county guidelines. Mr Appicello answered that there is a limitation on water service outside the city limits and that is the biggest limiting factor. A limitation on how much water and how many lots can be served, and it is not much. Everyone who develops in the city pays the same system development charges. Once you've been annexed and have a comp plan designation and a zoning designation, you get to come in under Title 16 of the Lincoln City Municipal Code and subdivide and pay the system development charges, etc. In this case there is no development agreement and the applicants are free to do whatever is allowed there under the land use and zoning designation. But nobody is treated differently. Sometimes, through the plan development process, there is some negotiation, but the plan development process is pretty spelled out in the code and there is not a lot to negotiate there.

Commissioner Blackerby said that there was a lot of conversation at the February 18, 2020 meeting about things that could be negotiated in the meeting, and asked whether there would be the possibility of negotiating improvements to the intersection. Ms Skinner replied that there are certain improvements that are required. Frontage improvements are one of those things if there is a nexus and proportionality based on the traffic impact study. With a negotiated development agreement, the City has a little bit of opportunity to ask for things that have no nexus or proportionality.

Mr Appicello pointed out that it is an option to continue the deliberations to the April 7, 2020 meeting when Commissioner Schlesinger is present. That would also give Commissioner Nelson an opportunity to review the hearing materials and video so that all seven commissioners can participate in the deliberation.

MOTION:	Continue deliberations on ANNEX 2020-01 and CPA & ZC 2020-02 to the April 7, 2020 meeting
MOVER:	Kim Blackerby,
SECONDER:	Joshua Brainerd, Commissioner
AYES:	Baker, Blackerby, Brainerd, Kroen, Nelson, Smith
ABSENT:	Miles Schlesinger
RESULT:	Passed

Mr Appicello reminded the commissioners to avoid ex parte contact related to the case before the April 7, 2020 Planning Commission meeting.

5. PUBLIC HEARINGS/DELIBERATIONS

1. CUP 2019-02 Oksenholt NW Port 6-plex

The applicant requested that the public hearing for CUP 2019-02 be continued to the April 7, 2020 meeting of the Planning Commission.

MOTION:	Continue the public hearing to the April 7, 2020 Planning Commission Meeting
MOVER:	Lenny Nelson, Commissioner
SECONDER:	Joshua Brainerd, Commissioner
AYES:	Baker, Blackerby, Brainerd, Kroen, Nelson, Smith
ABSENT:	Miles Schlesinger
RESULT:	Passed

2. CPA ZC 2020-01 Scrutton et al Zone Change - continued from February 18, 2020

The record was left open after the close of the February 18, 2020 public hearing at the request of the applicant. Commissioner Lenny Nelson, who was absent from that meeting, reviewed the hearing materials and the video, and is able to participate in deliberations.

Commissioner Nelson said that she tends to concur with the applicants - that the site of the proposed zone change is a good place for vacation rental dwellings, and that she doesn't see anything else that would go there. Chair Kroen clarified that although there was conversation at the public hearing about vacation rentals, and several of the existing homes at the site have current VRD licenses, there is no promise that, if the zone change is granted, the lots will continue to be used as VRDs. All of the uses permitted in the Recreation-Commercial zone would be available to the owners. Commissioner Nelson said that she concurs with the applicants. The site is an island in the middle of commercial use.

Commissioner Baker said that, in the context of the last two rezone requests that the Planning Commission has heard, she thinks about the history of the use of the area and its potential to be workforce housing. There was a difference of opinion between the applicant and staff about the R-C zone being a new zone to the area. It depends on your perspective. She said that the argument about the elevation change isolating this group of houses doesn't make a big difference - that she thinks of it as one continuous strand. We have a lot of unused commercial space in the City that is empty, so there is a lot of availability for commercial activities. Related to the amount of land available for multi-family, there have been arguments that particular land is not suitable. Commissioner Baker said that it makes her wonder how much of the reported surplus of buildable multi-family land is actually buildable.

Commissioner Josh Brainerd said that he thinks the zone change is a good use in the area, to extend what is already around the site. He said that he does not think that it is out of character, and is a very little piece of land. He said that he does not think that you could get any affordable workforce housing on the site, and that he is in favor of developing the lots. It isn't a bad thing to look at putting something new and more consistent in the area. Commissioner Brainerd said that he is inferring that someone will develop the property for some kind of commercial or vacation use.

Commissioner Blackerby said that he has gone back and forth on this case. It seemed from the public hearing that this was just a way to work around the vacation rental rules. At the same time, the surrounding area is all commercial. As you move south up the hill, what stops

lot owners from asking to be rezoned to recreation commercial? Commissioner Blackerby indicated that he is leaning toward recommending approval.

Commissioner Smith said that one of the things that struck him was the language that the applicants used, talking about the unsuitability of the site for development. It is hard to see a reason for the request other than as an attempt to get around the rules for VRDs. Commissioner Smith expressed concern about losing the actual housing units, but there is insufficient information in the application to tell. He said that a rezone in the area seems unnecessarily risky to the housing stock in the area, which is something we have been working to increase in Lincoln City. He said that he does not agree with statements that rents at the site would be prohibitively expensive. As it stands, just rezoning to rezone doesn't make sense.

Chair Kroen spoke Commissioner Baker's comments, saying that we have had several requests for zone changes, which seems to indicate an on-going chronic need to do a review and revision of the comp plan and do a review of zoning in a systematic way instead of parcel-by-parcel. She said that she is not in favor of changing the zoning of individual lots. From all of the information presented, it does seem like this request is about circumventing the VRD rules. Chair Kroen said that she doesn't see the urgency to rezone the site, especially in the context of statements that there is no plan currently to do anything differently there. The only advantage seems to be the ability to transfer the existing VRD licenses and to turn the other houses on the property into VRDs. Concerning the idea that turning these into VRDs is good for the tourism economy, she said that the tourism economy is not just more vacation rentals and that, in fact, VRD proliferation has been devastating to cities all over the world. Every VRD removes a unit from housing stock. Going back to the comp plan and requests for rezoning, we want to make sure that all of the zoning is consistent with the comp plan. The staff report identifies several planning goals that the rezone would be inconsistent with. Chair Kroen said that she is not in favor of recommending this rezone at this time. The number of requests that have come through show that we have issues with zoning in the city, and she would like to do this in a comprehensive way rather than pick things off individually.

Commissioner Baker said that there are so many people who were affected by the new VRD rules that were put into place. As we get zone change requests, we are really making precedent on how we deal with these.

Commissioner Nelson said that it is economically likely that someone would build workforce housing on the bluff, or even within walking distance. Houses that are right on the bluff are not likely to be used for affordable housing.

5.2.2.

MOTION:	Recommend approval of CPA & ZC 2020-01
MOVER:	Kim Blackerby, Commissioner
SECONDER:	Lenny Nelson, Commissioner
AYES:	Kim Blackerby, Joshua Brainerd, Lenny Nelson
NAYS:	Marci Baker, Patti Kroen, MacNeale Smith
ABSENT:	Miles Schlesinger
RESULT:	Failed by Roll Call Vote

After a tied vote on the motion, Mr Appicello talked about the Planning Commission's options. He said that they could try the opposite motion, or that someone could change their vote. Or that the vote could be sent to the City Council reported as a 3-3 tie.

Chair Kroen asked whether anyone wanted to change their vote. Commissioner Nelson asked Mr Appicello whether the matter would move on to the City Council without a recommendation. Mr Appicello replied the vote would be reported to the City Council as a tie vote. He said that the other option is to continue the matter until Commissioner Schlesinger is present and the Planning Commission has the ability to make a decision.

Commissioner Nelson said that she is content to wait until Commissioner Schlesinger is present.

Commissioner Blackerby said that, although he voted yes, he is willing to hear why those who voted differently did so. Chair Kroen said that at this point she is not thinking about what the applicants might do with the land. She said that she is she is thinking about whether the request is consistent with the Comprehensive Plan, and whether we should be changing zoning lot by lot. Since there is no urgency, no stated plan of what the applicants intend to do, this site would be an area that we would want to look at during a comp plan review. Rather than pick a lot here and a lot there every single meeting we have, Chair Kroen said that she would like to go into the comp plan and fix it once. She said that there are lots of things you could do on the site, but for her the job is to look at whether what comes before the Planning Commission is consistent, and in her opinion the zone change request is not consistent.

Commissioner Baker said that the character of the site is residential or empty. The adjacency to the run-down commercial area and whether or not the site will be used for VRDs is not the issue. The issue is the change of residential into commercial. She said that she thinks the change sets a precedent and the Planning Commission has to look at the precedent that they are setting. Right now with no urgency and no development plan, there is no reason to approve the zone change until there is an opportunity to look at the comp plan.

5.2.3.

MOTION:	Continue deliberation on CPA & ZC 2020-01 to the April 7, 2020 meeting
MOVER:	Kim Blackerby, Commissioner
SECONDER:	Marci Baker, Commissioner
AYES:	Baker, Blackerby, Brainerd, Kroen, Nelson, Smith
ABSENT:	Miles Schlesinger
RESULT:	Passed

Mr Appicello reminded the commissioners to not seek out additional information on the zone change request before the April 7, 2020 meeting and to avoid ex parte communication.

6. OLD BUSINESS

None

7. NEW BUSINESS

None

8. PLANNING COMMISSION TRAINING

8.1. Ex parte and quasi-judicial training

Mr Appicello presented a brief training, overview, and review of quasi-judicial procedures and ex parte contact.

9. REPORTS & COMMENTS

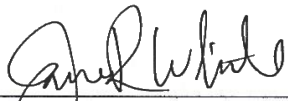
None

10. FUTURE AGENDA ITEMS & NEXT MEETINGS


At the March 17, 2020 meeting, the Planning Commission will hold the hearing for the revision of the design review standards that has been continued since June 2019. In order to make the design standards flow with the process, the amendments to parking and landscaping and procedures are also scheduled for March 17. These are a rearranging of the language in the existing code so that it is consistent with the design review standards language.

11. ADJOURN

Respectfully submitted,



James White
Assistant Planner



Patti Kroen
Chair