

**LINCOLN CITY PLANNING COMMISSION
MINUTES
November 3, 2020**

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

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

2. AGENDA CHANGES OR REVISIONS

Commissioner Blackerby suggested that the discussion regarding the tree ordinance be moved to a different date to allow the meeting participants to follow the election.

3. MINUTES

3.1. Planning Commission - Regular Meeting - Sep 1, 2020 6:00 PM

MOTION:	Motion to approve the September 1, 2020 meeting minutes
MOVER:	Kim Blackerby, Commissioner
SECONDER:	Joshua Brainerd, Commissioner
AYES:	Blackerby, Brainerd, Kroen, Nelson, Schlesinger, Smith
EXCUSED:	Marci Baker
RESULT:	Passed

3.2. Planning Commission - Regular Meeting - Oct 6, 2020 6:00 PM

MOTION:	Motion to approve the October 6, 2020 minutes.
MOVER:	Lenny Nelson, Commissioner
SECONDER:	MacNeale Smith, Commissioner
AYES:	Blackerby, Brainerd, Kroen, Nelson, Schlesinger, Smith
EXCUSED:	Marci Baker
RESULT:	Passed

4. FINAL ORDERS, RESOLUTION, & WRITTEN COMMUNICATIONS

None

5. PUBLIC HEARINGS/DELIBERATIONS

1. APP 2020-06 Prince VRD License

For the purposes of this hearing, the Planning Commission will be functioning as the VRD License Appeal Board. This is an appeal of the Planning and Community Development Director's decision to deny renewal of a Vacation Rental Dwelling license for failure to file Transient Room Tax (TRT) reports for multiple consecutive periods.

Chair Patti Kroen read the required statements for the public hearing. There were no objections to the Board's jurisdiction, and no disqualifications. No objections were raised over participation of any board member.

1. Staff Report

Assistant Planner Weston Fritz gave the staff report. The Planning Department was notified by Finance that the appellant had not filed his TRT reports for the last 4 quarters. The Finance Department certified that the required notices were sent out, and the applicant was not in compliance at the time of decision.

Chair Kroen asked whether the City received a response to any of the notices. TRT reports were only submitted after the denial was issued.

Commissioner Schlesinger asked if the appellant had given any reasons for not filing the reports. Mr Appicello noted that the applicant would have a chance to speak, and that the reasons were given in the appeal documents.

2. Appellant Testimony

Charles Prince, appellant and owner of the VRD in question, addressed the VRD License Appeal Board. He started by saying that he has no acceptable excuse, and that when he reviews his actions it is personal, and hard to talk about. He lost his fiancée, who was also the person who did all the paperwork for the VRD, in 2019. All of the taxes were paid for the year, but he failed to file the required TRT reports. He said that he cannot go into too much detail, but that he had struggled with issues emotionally and physically, and that his inaction was based on things that he is being treated for.

Mr Prince said that he is working to make things right, and that he is hoping that he doesn't have to cancel his next bookings. It has been a very rough 2 years, and COVID took a toll. He has been fighting issues that he feels are now under control. Hired a book keeper and understand now what is required. He also claimed to have submitted the TRT reports in the payments drop box the first or second time it was re-opened, but they were done improperly.

Mr Prince continued, saying that there is not much he could say in his defense except that he has not been himself. He said that the only noise complaint he has received was this summer, and there were a lot of people misbehaving all over. He said that he believes that he can do a great job and represent Lincoln City, and that the City will never have a problem with him again.

Chair Kroen asked Mr Prince how long he has had the VRD. He responded that he has had the the VRD since 2014 or 2013, so six or seven years. He acknowledged that the need to file the TRT reports predates the issues he has had, and that he did not do his job - didn't do it in a timely fashion. He had help in the past, and so never had to do the reports himself.

Chair Kroen asked if the commissioners had any questions.

Commissioner Blackerby asked whether there have been any prior instances of reports not being filed prior to this. Mr Fritz replied that he is not personally aware of many or any issues at the house. Commissioner Blackerby responded, saying that we can assume that this is just an off year.

Chair Kroen pointed out that during the four quarters that the appellant was not responsive to the requests for the TRT reports, he was responsive to the noise complaints, which she said she finds a little odd. Mr Prince responded that he was contacted, but that he did not follow through with his responsibilities. He said that he didn't do anything willfully or intentionally to disregard or disrespect, and that the taxes had been paid even though the reports were not filed.

There were several questions from commissioners asking how the appellant knew how much tax to pay without compiling the report. Mr Prince and Mr Fritz clarified that the online platforms that Mr Prince rents through remit the taxes automatically, as required by the State of Oregon. They payments are sent in a lump sum to the City by the online platforms, rather than differentiated by individual, and the TRT reports from the license holders are important to know how much should have been paid.

Chair Kroen summarized that the obligation of the owner to file a report and remit on a quarterly basis is an import requirement to maintain a license in good standing in the city. For the last year they have not been filed for this particular dwelling. The appellant is insisting that the TRTs were paid but the reports were not filed. Regardless of what AirBNB and VRBO are doing, filing the reports is a requirement for the owner to do. A VRD is a business in the city.

5.1.3.

MOTION:	Motion to close the public hearing and the record for APP 2020-06
MOVER:	Lenny Nelson, Commissioner
SECONDER:	Joshua Brainerd, Commissioner
AYES:	Blackerby, Brainerd, Kroen, Nelson, Schlesinger, Smith
EXCUSED:	Marci Baker
RESULT:	Passed

4. Deliberation

Chair Kroen summarized the possible motions that could come out of deliberation - a motion to deny the appeal, which would affirm the Planning and Community Development Director's decision, or a motion to uphold the appeal, which would find the Planning and Community Development Director's decision was made in error.

Commissioner Blackerby asked whether there is an option for a probationary status - if the appellant fails to file one more report within the next year or two years. Chair Kroen replied that the VRD License Appeals Board does not have that option. Mr Appicello added that this

is a quasi-judicial hearing to decide whether there is a legal basis for an error on the part of staff, based on what is in front of the Planning Commission.

Commissioner Schlesinger also expressed interest in giving the appellant another chance, saying that the appellant was a good citizen and used the home for people who were displaced by the Echo Creek Fire. Chair Kroen responded that because of the quasi-judicial nature of the hearing, there is not a third option beyond upholding or denying the appeal.

Commissioner Smith said that, regardless of the feelings of the Commissioners, the question they have been asked to look at is whether or not the original decision to deny renewal of Mr Prince's VRD license is in error. He said that he cannot find an error with the original decision, regardless of how much sympathy he has for Mr Prince or his situation. He finished by stating that he believes that the original decision was correct.

Commissioner Brainerd expressed agreement with his fellow commissioners. He said that he feels for Mr Prince's life situation, but the decision that sits before the Board is not a judgment of the appellant's character, but of whether staff made the correct decision. He said that staff translated clearly what they had to do.

5.1.5.

Based on this decision, staff is directed to prepare a final order in preparation for the other meeting.

Commissioner Nelson asked whether the appellant will be able to reapply for a VRD license. Mr Chandler replied that there is a waiting list in the zone in which the home is located, but the appellant can put his home on the waiting list. In the interim he can also apply for an accessory VRD license, which is limited to 30 nights a year.

MOTION:	Motion to deny APP 2020-06, upholding the staff decision to deny renewal of the VRD license
MOVER:	Lenny Nelson, Commissioner
SECONDER:	MacNeale Smith, Commissioner
AYES:	Blackerby, Brainerd, Kroen, Nelson, Smith
NAYS:	Miles Schlesinger
EXCUSED:	Marci Baker
RESULT:	Passed

6. OLD BUSINESS

To allow members of the Planning Commission to devote their attention to following election results, the tree ordinance discussion was continued to the next meeting, scheduled for November 17, 2020.

7. NEW BUSINESS

Report from the City Manager - the Planning and Community Development Director position has closed. The head hunter finished their review and interviews are scheduled for next week.

8. PLANNING COMMISSION TRAINING

Training is set aside until the Planning Commission is in joint session with the City Council.

9. REPORTS & COMMENTS

None

10. FUTURE AGENDA ITEMS & NEXT MEETINGS

The tree ordinance discussion will be continued to the November 17, 2020 meeting. There are currently two public hearings on the schedule for the December 1, 2020 meeting.

11. ADJOURN

Respectfully submitted,

James White
Assistant Planner

Patti Kroen
Chair