



AGENDA

Lincoln City Planning Commission
Tuesday, March 3, 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 - Feb 18, 2020 6:00 PM
4. **FINAL ORDERS, RESOLUTION, & WRITTEN COMMUNICATIONS**
 - 4.1. FR 2020-01: Final Recommendation for ANNEX 2020-01 CPA/ZC 2020-02 Woods Annexation
5. **PUBLIC HEARINGS/DELIBERATIONS**
 - 5.1. CUP 2019-02 Oksenholt NW Port 6-plex
 - 5.2. CPA ZC 2020-01 Scrutton et al Zone Change - continued from February 18, 2020
6. **OLD BUSINESS**
7. **NEW BUSINESS**
8. **PLANNING COMMISSION TRAINING**
 - 8.1. Ex parte and quasi-judicial training
9. **REPORTS & COMMENTS**
10. **FUTURE AGENDA ITEMS & NEXT MEETINGS**
11. **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
February 18, 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	Excused	
Miles Schlesinger	Commissioner	Present	
MacNeale Smith	Commissioner	Present	

2. AGENDA CHANGES OR REVISIONS

Chair Kroen welcomed Commissioner Mac Smith and asked him to introduce himself. Commissioner Smith is invested in the long-term growth of Lincoln City. He is a homeowner and business owner.

There are no agenda changes.

3. MINUTES

3.1. Planning Commission - Regular Meeting - Feb 4, 2020 6:00 PM

MOTION:	Commissioner Marci Baker pointed out that the minutes indicated incorrectly that she voted on a motion on the Final Order for Devils Lake RV Park that she was not present for. The motion and vote to approve the February 4, 2020 minutes included that correction.
MOVER:	Miles Schlesinger,
SECONDER:	Kim Blackerby,
AYES:	Baker, Blackerby, Brainerd, Kroen, Schlesinger, Smith
EXCUSED:	Lenny Nelson
RESULT:	Passed

4. FINAL ORDERS, RESOLUTION, & WRITTEN COMMUNICATIONS

4.1. Final Order (FO 2020-03) for CUP 2020-01 and SPR 2020-01 Conditional Use Permit and Site Plan Design Review for Northwest Natural resource center at 2815 NE 36th Drive

MOTION: Final Order (FO 2020-03) for CUP 2020-01 and SPR 2020-01 Conditional Use Permit and Site Plan Design Review for Northwest Natural resource center at 2815 NE 36th Drive

MOVER: Kim Blackerby,

SECONDER: Marci Baker, Commissioner

AYES: Baker, Blackerby, Brainerd, Kroen, Schlesinger

ABSTAIN: MacNeale Smith

EXCUSED: Lenny Nelson

RESULT: Passed

4.2. Final Order (FO 2020-02) for APP 2020-01 Lawson, et al Appeal of Eclevia dwelling as an unlimited use vacation rental dwelling

MOTION: Final Order (FO 2020-02) for APP 2020-01 Lawson, et al Appeal of Eclevia dwelling as an unlimited use vacation rental dwelling

MOVER: Marci Baker, Commissioner

SECONDER: Miles Schlesinger,

AYES: Baker, Blackerby, Brainerd, Kroen, Schlesinger

ABSTAIN: MacNeale Smith

EXCUSED: Lenny Nelson

RESULT: Passed

5. PUBLIC HEARINGS/DELIBERATIONS

1. CPA & ZC 2020-01 Scrutton et al

Chair Patti Kroen introduced the public hearing and read the required script. She asked the commissioners whether they had any ex parte contacts, conflicts of interest or bias to report. Commissioner Baker said that she worked for the Scruttons 5 or 6 years ago but declared that it does not affect her ability to make decisions based on the criteria. There were no other declarations of ex parte contacts, conflicts of interest, or bias.

No challenges from the audience to any of the commissioners participating.

Chair Kroen read the required statements. She AMS to read the substantive criteria.

Chair Kroen summarized the public hearing procedures.

5.1.1. CPA ZC 2020-01 Scrutton et al Zone Change: Request to rezone approximately 2.06 acres from Multiple-Family Residential (RM) to Recreation-Commercial (RC) zone

MOTION: CPA ZC 2020-01 Scrutton et al Zone Change: Request to rezone approximately 2.06 acres from Multiple-Family Residential (RM) to Recreation-Commercial (RC) zone

2. Staff Report

Planning and Community Development Director, Anne Marie Skinner presented the staff report.

The property consists of 8 tax lots with 2.06 acres currently in the Residential Multifamily (RM) zone. The request is to change the comprehensive plan designation to commercial recreation district with zone of Recreation Commercial. Ms Skinner summarized the location and the surrounding uses, and described the history of the application and public notices that were sent related to it. Portions of the site are in the local and distant tsunami evacuation zones. Portions of the site are located in the VE flood hazard area. The site contains no delineated wetlands and no significant riparian areas. The portion of SW 3rd street immediately abutting the site represents an aesthetic resource (as indicated on the City maps). But the site itself does not contain any. The subject property is in the bluff erosion zones.

Staff considers this to be a major revision because the requested change from residential to commercial represents a qualitative change as well as a spatial change (8 tax lots). The request must conform to the statewide planning goals and be consistent with un-amended portions of the comprehensive plan. If the zone change is approved, the site may be used for any of the uses allowed in the RC zone. Ms Skinner read the list of such permitted uses.

The comprehensive plan has a number of goals that need to be satisfied as well as statewide planning goals. Ms Skinner described how the proposed zone change satisfied or did not satisfy each of the comprehensive plan goals. Goal 1, *Land Use Planning Goal*, is not satisfied. Goal 2, *Citizen Involvement Goal*, is satisfied. Goal 3, *Public Services and Utilities Goal*, is generally satisfied. Goal 4, *Urbanization Goal*, is satisfied. Goal 5, *Natural Hazard Goal*, is not satisfied. Goal 6, *Housing Goal*, is not satisfied. Goal 7, *Economy Goal*, is not satisfied. Goal 8, *Aesthetic Goal*, is not applicable. Goal 9, *Transportation Goal*, is satisfied for vehicular traffic. Goal 10, *Energy Goal*, is partially satisfied. Goal 11, *Overall Environmental Goal*, is satisfied. Goal 12, *Shoreland, Beaches, Dunes, Estuary, and Ocean Resources Goal*, is satisfied. Ms Skinner did not elaborate on the compliance of the proposed zone change with the Statewide Planning Goals, but she did note that such is discussed in the written staff report.

Commissioner Blackerby asked about language in the staff report referring to 8 tax lots and five different ownerships. That was a typo and should refer to six ownerships. Chair Kroen asked if any of the properties re currently licensed as vacation rental dwellings. Ms Skinner replied that she will have to check. Commissioner Baker asked about staff's logic in determining that the proposed change is not consistent with the land use planning goal because there is no RC zone RC from SW 3rd to SW 36th street, while everything to the east is commercial. Ms Skinner replied that staff was looking at the border. That in the entire area north to south, east to west, there was no RC.

3. Applicant Testimony

Richard Townsend, Townsend Planning and Design and applicants' representative, and Karen Scrutten, one of the applicants, addressed the Planning Commission.

Mr Townsend spoke directly to the contents of the staff report, saying that the report raises a lot of points and that he was not sure that he could address all of them in 15 minutes. To the north of the property is the RC zone. Currently the lot line abutting with the RC zone is 450 ft

long. If the zoning change is approved, there will be 150 feet abutting between the RC and RM zones - a reduction of the abutment between the zones by 70%.

There is a difference between the application and the staff report in the measurement of the lot sizes, which is the difference between including just the developable land above the bluff (application) vs the entire lot sizes (staff report). The site has had RM zoning for many years and nobody has tried to develop multi family there. It is assessed at \$2.8M for the 8 lots, which is expensive for multi-family development. The possibility of the site being developed as RM is very small. With the addition of front yard and bluff setbacks required in RM, what is left of the site for development is little more than half an acre. A multi-family development at the site would only produce a small number of dwelling units that would command a very high price. Apartments ARE allowed under the RC zone. In the purposes of the RC zone, the code says that residential and multi-family housing is permitted.

Goal 1 of the Comprehensive Plan is about process and policy. It sets up a process for how changes are supposed to be processed. What makes the proposal a major change is the change from residential to commercial. Goal one sets out a process for such changes and contemplates that such changes are going to occur. The staff report states that the zone change would introduce a new zone in the area but says that because of that is not consistent. Going through the process is what is consistent with the goal. The comprehensive plan contemplates that this type of change. It is designed to reflect the changing circumstances in community desires and standards.

Mr Townsend indicated that the applicants have no argument with the staff report analysis for Goals 2-4. Related to Goal 5, he argued that the staff report does not say why being in the erosion zone and the tsunami zone means that is not consistent with Goal 5. There is nothing in the code that says if a property is in the erosion zone you can't build on it. As long as you jump through the hoop of getting a geotechnical report and the report says that structures can be built, they can be built. There is nothing in the code that talks about the tsunami evacuation zone. The Beat the Wave analysis says that after the shaking stops you can get out of the tsunami zone at a slow walk. The fact that the property is in the tsunami evacuation zone means there may have to be controls but that is not prohibitive.

Related to Goal 6, granting the zone change will have little to no effect on the availability of housing. The staff report says will the zone change will take 2+ acres out of the housing supply. The housing needs analysis looked at the amount of land needed and the supply we have. There is more RM land in supply than is identified as needed. Also the site is not 2 buildable acres, and only two of the lots are not built. So in total there is 1/4 acre of buildable land coming out of what is already a 50 acre surplus. The only difference is that multi-family would be a conditional use in the RC, which is a good thing because it gives the city more control and would be subject to the city's commercial design standards.

Mr Townsend expressed agreement with the staff report analysis for Goal 7 and acknowledged the requirement in Goal 8 for a report that needs to be done for development within 100 feet of an aesthetic resource.

Related to Goal 9, Mr Townsend said that any new development will have to put in sidewalks, and the City's Transportation System Plan has provisions for sidewalks from Hwy 101 to 9th as well as shared roadway markings for bicycles. Related to Goal 10, any new construction will have to comply with building code standards.

There are six houses on the site now. Three of them are vacation rental dwellings (VRDs). There could be as many as 8 VRDs there, which isn't bad. You would be hard pressed to find a place less impacted by VRDs because all of the surrounding use is commercial. In the area are dumpsters and abandoned buildings. Transient visitors will be focusing on the ocean. It is a great place for VRDs. There is a topographic change that isolates this area.

Commissioner Baker asked about the estimated traffic increase of 91 trips per day, which was done in comparison to Hwy 101, and whether the analysis looked at traffic on Ebb. People will be making a left turn there with no light, presenting the potential for traffic to get backed up. Mr Townsend responded that it isn't a problem because the increase in traffic is so minor. ODOT has not commented that there needs to be changes to the facilities.

Commissioner Blackerby asked why the applicants want the zone change. Karen Sutton, one of the applicants, replied that she has 10 grand children and that they want to be able to pass the property on to them. Mr Townsend elaborated that when the City made changes to the VRD rules, VRDs were disallowed in the RM zone. Nonconforming CRDs cannot be transferred as VRDs. If the Suttons want to hand the property down to their grandkids, they can transfer the house, but the use cannot be transferred. They want to maintain the value of the house as a VRD. Commissioner Blackerby asked about the motivation for the applicants who do not currently have VRDs. Is the motive to create a whole block of VRDs? Mr Townsend responded that the purpose is not to create a block of VRDs.

Commissioner Blackerby asked whether, by making the site commercial, down the road someone could take half of the site and propose a restaurant. Any of the uses allowed in the RC zone would be permitted.

Chair Kroen asked about references to "annexation" in the application. Those were typos. Chair Kroen pointed out that the land use goal is not just process. It is also a framework for the comprehensive plan.

4. Public Testimony

A. Testimony in Favor

None

B. Neutral Testimony

None

C. Testimony in Opposition

None

5. Rebuttal

Mr Townsend requested that the record be left open. The record will remain open until February 25th at 5 pm. The applicant waives the right to submit final written argument.

5.1.6.

MOTION:	Leave the record open until February 25 at 5 pm
MOVER:	MacNeale Smith, Commissioner
SECONDER:	Miles Schlesinger,
AYES:	Baker, Blackerby, Brainerd, Kroen, Schlesinger, Smith
EXCUSED:	Lenny Nelson
RESULT:	Passed

7. Deliberation

5.1.8.

MOTION:	Motion
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2. ANNEX 2020-01 and CPA/ZC 2020-02

Chair Patti Kroen introduced the public hearing and read the required script. She asked for declarations of ex parte contact, conflict of interest or bias. Chair Kroen declared that the topic of the proposed annexation was brought up at a meeting of the Roads End Improvement Association. Mr Townsend gave an overview to that group and mentioned that rezoning could mean as many as 80 new lots. That group was told about this public hearing. Chair Kroen indicated that participating in the Roads End meeting did not cause her to pre-judge the application and that she is not prejudiced by contact. Commissioner Blackerby indicated that he was also at the Roads End meeting and that he was also not prejudiced by the contact.

There were no challenges from the audience.

Chair Kroen asked Ms Skinner to read the applicable substantive criteria. She then read the rules and summarized the procedures for the hearing.

5.2.1. Annex 2020-01 CPA ZC 2020-02 Woods One: Annexation of approximately 11.15 acres, comprehensive plan map amendment and zone change from Lincoln County's Residential (R-1-A) to Lincoln City's Single-Family Residential District (R-5) and R-1-5 Zone

MOTION:	Annex 2020-01 CPA ZC 2020-02 Woods One: Annexation of approximately 11.15 acres, comprehensive plan map amendment and zone change from Lincoln County's Residential (R-1-A) to Lincoln City's Single-Family Residential District (R-5) and R-1-5 Zone
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2. Staff Report

Ms Skinner presented the staff report, summarizing the applicant, the site, the proposed annexation and zone change, and the surrounding zoning and uses. The site is surrounded by city limits, and is in the Urban Growth Boundary, which is the area designated for future city growth.

Previous efforts to annex the site. In 2005 Kirk Wardius asked that the site be annexed and retain the county single-family 6000 sf lot size. That effort did not include a development

plan. Council denied the request with a number of reasons including inability to assess the impacts of development without a development plan. There were also concerns about impacts to traffic and about the ability to supply water and other services. A 2014 attempt to annex the site included a comprehensive plan amendment/zone change and a preliminary development plan. The applicants proposed 71 dwelling units. The effort also included a development agreement. The City Council denied that attempt as well. In the final order, the City Council found that there was not a demonstrated need for residential lands, and that the level of commitment toward workforce housing was inadequate. The current request includes the annexation and zone change request but does not include a development agreement and does not include a development plan.

Ms Skinner described the public noticing effort. She referred to the analysis in the staff report looking at the comprehensive plan and Statewide Planning Goals and asked the commissioners whether there were any questions about the analysis. Chair Kroen asked about language under Goal 6, Housing. Ms Skinner indicated that language saying the application is inconsistent with Goal 6 is an error and that the proposal is consistent with Goal 6.

3. Applicant Testimony

Richard Townsend, the consultant on behalf of Woods One LLC, and Karen and Steven Woods, the owners of Woods One LLC, addressed the Planning Commission.

Mr Townsend expressed agreement with staff that the application is consistent with the goals in the comprehensive plan and with the Statewide Planning Goals. He said that he would like to address the things that have changed since the 2005 and 2014 annexation attempts when the two different prior owners were denied annexation. In the 2005 annexation there were 3 issues that Council raised, stating an inability to assess the impacts. The rules have changed - because of the size of the property there will have to be a Planned Unit Development (PUD) where before there would have only been a subdivision. The 2014 annexation did include a development plan and the Planning Commission did recommend approval.

Proposing the annexation and zone change without a proposal or plan for the PUD was what the former planning director and City Manager recommended doing. One of the reasons for this approach is that a PUD is very expensive to prepare with a lot of engineering and design work. The applicants did not want to go through the hoops and spend the money required if the site was not going to be annexed.

Chair Kroen asked about the plan created for the 2014 annexation attempt and there was some conversation about whether the previous plan could be reused. The applicants answered that they do not own the plan that was prepared previously but that they are planning on doing something similar.

At the time of the second annexation attempt there was a glut of housing. A lot has changed since then. Lot values are up. Bayview is thriving. Another thing that they were concerned about in 2014 was workforce housing. The problem is that the City Council never said how much workforce housing is enough. That is something that can be worked out in the development agreement. The Woods are willing to negotiate a development agreement. The amount of workforce housing is subject to negotiation and needs to be worked out.

The conditions that led to previous denials are very different now. We agree with staff that everything that needs to be consistent is consistent.

Chair Kroen said that the 2017 housing needs assessment determined that there was a substantial surplus of residentially zoned land - enough through 2036 - and that she doesn't believe that the assessment included the City's Villages property. Mr Townsend replied that the assessment included all of the lands within the UGB. However, those other developable lands will cost a fortune to bring services to. What you want to do is develop those lands first that are most easily served, and the subject property is that - it is an ideal spot for development. Because of topography, a substantial portion of the site will be left undeveloped.

Chair Kroen asked how the east side of the development will be accessed. Mr Townsend answered that the east side will be accessed by going around the drainage area - that he does not think that a bridge is necessary and was not identified in the development plan from 2014. The applicants displayed a map from the 2014 development plan. The map was not entered into the record.

Commissioner Baker said that it is interesting that the applicants are requesting the zoning be changed to R-1-5, which is a new zone to the area, and asked why they didn't chose one of the existing adjacent zones. Mr Townsend answered that because the site is in such a good location, it is a good idea to maximize the number of units on the land. There is conversation about building a significant number of affordable housing units - which makes it hard to make any money on the development. The more units you can have that are market-rate units, they end up subsidizing the affordable units. Commissioner Baker asked whether the request for R-1-5 is because of lot size. Mr Townsend answered that it is not just because of lots size. Commissioner Baker expressed concern that the request for R-1-5 zoning is because it is the one that allows unlimited VRD uses if a space comes available. In the R-1-7.5 and Roads End zones that wouldn' be possible. Mr Townsend answered that the request for R-1-5 is not about VRDs at all and said that he does not expect to see VRDs at all or at least not for a long time.

Commissioner Smith asked about the impacts of development at the site. Mr Townsend replied that there was a traffic study done previously, that public works has said that there is capacity for water and sewer, and that police impacts will be marginal. There will be substantial space left undeveloped, so there will be opportunities on site for recreation. Mr Townsend said that the cast majority of extra traffic will be on Logan Road with some on Port. Logan Road is congested down by Safeway and down by the traffic light, but is a lightly traveled road up by the subject site. Chair Kroen pointed out that everyone who lives in Roads End has to travel down that road and that it is dangerous. Mr Townsend answered that improving that portion of road is identified in the transportation system plan as something that needs to be done.

Commissioner Smith asked what is preventing the applicants from pursuing additional development through the county. Mr Townsend answered that the number one obstacle is water and guaranteed access to water.

Commissioner Blackerby pointed out that the proposed annexation and zoning are the subject of the hearing, and that the Planning Commission will look at any development in the future, if there is any. He asked about the several times that the staff report refers to promises not being binding without a development agreement. Mr Townsend answered that it is true and

that the Woods are willing to grant an easement (for the drainage way for the City's water tower), which would come in the negotiation of a development agreement, which has to be approved by the City Council. There will have to be a hearing for the master plan. And another hearing for the final master plan. And if development is phased, which it probably will be, each phase will also be subject to hearing by the planning commission.

Ms Skinner pointed out that there is an application form for a development agreement, which the applicants have not submitted. Chair Kroen asked what happens if the applicants do not submit a development agreement. Ms Skinner replied that they would have to develop as per the current code. The development agreement provides flexibility in how the applicants move forward and flexibility for the city. It is a negotiation.

Chair Kroen said that it is confusing that the first annexation attempt was unsuccessful because there was no development plan, and the second attempt was unsuccessful in spite of having a development plan. And now the current applicants have chosen to submit without a development plan. Mr Townsend responded that what the Planning Commission has to consider is the application in front of them. The laws have changed. The facts of the community have changed. The Woods are more than willing to negotiate a development agreement. Assuming that the annexation and zone change are approved, there will be an effort to do that.

4. Public Testimony

A. Testimony in Favor

None

B. Neutral Testimony

None

C. Testimony in Opposition

Patrick Dunn, a neighbor, addressed the Planning Commission. He began by explaining that during the 2015 denial of the proposed annexation, the City Council had difficulty forming a quorum and had to vote with a smaller group than normal after three Council members had to recuse themselves.

Mr Dunn explained that his objective is to ensure that the proposed annexation does not cancel the reforestation requirement of the 1971 Forest Practices Act resulting in a further period of blighted property. The property was clear cut in 2012. Reforestation is required and overdue. He expressed concern that the proposed annexation will not remedy the Forest Practice Act requirements, leaving the property blighted.

Chair Kroen asked whether the timber from the site was sold when the trees were removed. Mr Dunn said that it was, as far as he knows. He has pictures of the commercial logging trucks Chair Kroen asked whether the trees have to be grown for harvest in order for the cutting to be considered a commercial forest activity. Mr Dunn said that the law is unclear. Chair Kroen pointed out that people who buy a piece of property and decide to clear a portion of that property are not required to reforest that property. Mr Dunn agreed. He said that the forestry service is busy with commercial logging - that's where the violations are - and they don't have a lot of time. The replanting of the subject site is

small potatoes and would amount to the equivalent to a traffic ticket. He argued that it does not, however, negate the letter of the law and the forest practices act. Chair Kroen said that she is going to make the assumption that Mr Dunn's concern with the removal of the trees has to do with degradation of habitat. Mr Dunn answered that he is, and that his backyard looks at that property. He lost several of his trees to sunburn when the trees were cut. The property has sat there for over five years. It has invasive species and nothing has been done. Mr Dunn said that he came to ask what is to prevent the property from sitting there for another five years or indefinitely if the annexation is approved.

Chair Kroen addressed Mr Dunn, saying that she hears his concern and understands it. She said that if the annexation goes through and the zoning goes through, that there will be other hearings with the Planning Commission, and she expects to see him there with his input on the planning of the trees and the vegetation.

Steve Woods, one of the applicants, addressed the Planning Commission. He said that 240 seedlings per acre is a standard required amount of planting. He said that he has had to replant a logged-off property before. If the subject property is rezoned, it is not practical to do the replanting because are planning on developing the site. Chair Kroen said that she hopes that, if the annexation and zone change are approved, he takes the concerns and the impact that the logging activity had on the neighbors and consider some kind of planting screen that would assist them in getting some of that back.

There was no additional public comment.

5. Rebuttal

There was no request to leave the record open or continue the hearing.

5.2.6.

MOTION:	Close the Hearing and the Record
MOVER:	Marci Baker, Commissioner
SECONDER:	Joshua Brainerd, Commissioner
AYES:	Baker, Blackerby, Brainerd, Kroen, Schlesinger, Smith
EXCUSED:	Lenny Nelson
RESULT:	Passed

7. Deliberation

Applicant waives the right to provide written final argument.

Chair Kroen said that when she considers these types of things - annexing additional land into the city - she has to look at how much land is already here and the impact that the addition could have. You have to look at what wins and what loses. The City has a surplus of land right now and is doing everything that it can think of to encourage development in certain parts of the city. This is particularly true of the Villages, which has potentially thousands of lots. They are even working on an urban renewal district that will fund development in the Villages, identifying the undeveloped land as blighted. Also, many of the projects that are being funded through the public urban renewal process are to address aging infrastructure.

Water systems in Roads End are from the 1970s and work will be needed there. She said that she is concerned about money needed to bring 80 new hookups when there are hundreds of failing hookups in the vicinity. Traffic problems in the area have been understated. The actions that have been discussed to address those issues are all money that would be diverted by development at the proposed site. The application narrative states that the development would be beneficial to Roads End. It says that the development would provide a more pleasing entrance to Roads End. Chair Kroen said that she drives that road several times a day. More often than not she sees wildlife on that lot. She sees deer on that lot. If the clear cut had been appropriately addressed, it would be much more pleasing than a row of houses. The role of the Planning Commission is to decide the merits of the application based on the law and based on its consistency with our planning goals and the Statewide Planning Goals. However, a statement that the development will be beneficial to Roads End is not accurate. The traffic on Logan Road would not be beneficial. She said that she has been stuck in traffic on Logan Road. When you think of the hazards associated with those of us in Roads End, there is the one road in and one road out. Adding a bunch of houses that would all load out on to Logan Road is a significant impact. The traffic at Hwy 101 is an issue, and now we are talking about adding an additional 80 houses. And until the long talked-about extension of 47th to the golf course, there is no other access to 101. Any development agreement or and planned development will have a heavy lift in terms of approval without some significant thought given to those issues.

Commissioner Smith agreed that the proposed rezoning would make an island of R-1-5 in the midst of the other zones. We are talking about creating a more densely used area that seems to be inconsistent with the surrounding area. Chair Kroen pointed out that there are two decisions: a decision on the annexation and a decision on the zone change.

Commissioner Blackerby agreed with Chair Kroen's comments on the impacts of new development to Roads End and the community. He said he thinks that there are a number of undeveloped areas in the city that are just as ugly as the clear-cut site. And that there are some areas that are developed in the city that are just as ugly in the sense of code enforcement. Addressing the applicants he said that they want to develop the property and that it is going to cost them to make it a better place than it is now. He said that he doesn't think that it is a great entry into the city and that if he were the only one voting, he would say that it has to be something that is more advantageous to the city than the developer.

Commissioner Brainerd said that anything that improves the current state of the site is better.

Commissioner Schlesinger said that he thinks the property looks horrible as it is now. It needs to be part of the community. He expressed concerned that there is not a plan. The site is an eyesore now and has been an eyesore since they logged it in 2012. He said that he would be in favor of progressing with the proposal. We get another crack at it when it comes back around as a PUD. He also said that he thinks that it is appropriate to have as many lots as possible in Lincoln City so that more people can afford housing.

Commissioner Baker said that she sees an issue with the impact on traffic of 80 new units - especially with sounding like the goal with R-1-5 is about maximizing density. It makes sense to annex. The R-1-5 zoning seems to be inconsistent with the comp plan. It seems like a pretty hard line to throw in a zone next to others where it doesn't exist.

5.2.8.

MOTION:	Motion to recommend approval
MOVER:	Marci Baker, Commissioner
AYES:	Baker, Blackerby, Brainerd, Kroen, Schlesinger, Smith
EXCUSED:	Lenny Nelson
RESULT:	Passed

5.2.9.

Commissioner Brainerd said that he needs more information on the zone change. He agrees that traffic is an issue in the area.

Chair Kroen said that if workforce housing needs to happen, the density of development needs to come up. She said that she is torn because the city has no workforce housing. But there is no guarantee that workforce housing will be built, even if the change to R-1-5 zoning is approved.

Ms Skinner noted that the Planning Commission can recommend approval or they can recommend denial of the zone change.

Commissioner Schlesinger asked whether the Planning Commission can recommend approval with the recommendation that a percentage be made developed as affordable housing. Ms Skinner replied that it is not a conditional rezone.

Commissioner Blackerby asked what happens if the rezone is denied. Ms Skinner replied that if the City Council agreed with the recommendation and denied the rezone, the existing county zoning would remain and city staff would have to administer the county zoning on the site.

Commissioner Blackerby said that his opinion is to approve the rezone and deal with how the city controls what we would like to see down the road.

Commission Baker pointed out that the zone allowed by the Planning Commission will determine what development is allowed down the road.

Ms Skinner added that there are certain requirements that have to be met regardless of the zone (sidewalks, etc). Regardless of the zone the will have to do a new traffic impact study.

MOTION:	Recommend approval of the R-1-5 zone
MOVER:	Patti Kroen, Chair
SECONDER:	Kim Blackerby,
AYES:	Baker, Blackerby, Kroen, Schlesinger, Smith
NAYS:	Joshua Brainerd
EXCUSED:	Lenny Nelson
RESULT:	Passed

6. OLD BUSINESS

None

7. NEW BUSINESS

None

8. PLANNING COMMISSION TRAINING

Training is scheduled for the March 3, 2020 meeting.

9. REPORTS & COMMENTS

None

10. FUTURE AGENDA ITEMS & NEXT MEETINGS

A hearing for a conditional use permit for a six-plex in a general commercial zone is scheduled for the next meeting. Also deliberations and a recommendation on the Scrutton CPA & ZC.

11. ADJOURN

Respectfully submitted,

James White
Assistant Planner

Patti Kroen
Chair



**PLANNING COMMISSION STAFF REPORT
MEETING DATE: March 3, 2020**

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

FR 2020-01 Woods One Annexation

See attached Final Recommendation

ANNEX 2020-01 and CPA ZC 2020-02 Recommendation (DOCX)

LINCOLN CITY PLANNING COMMISSION

IN THE MATTER OF

Proposed annexation and amendments to the)	
Lincoln City Comprehensive Plan Map and zoning)	
relating to ANNEX 2020-01 and CPA & ZC 2020-0)	Final Recommendation
Assessor’s Map 06-11-35-CC Tax Lots 2400 and 2900)	No. 2020-01

NATURE OF THE APPLICATION

ANNEX 2020-01 and CPA & ZC 2020-02 would annex 11.15 acres in the City of Lincoln with a comprehensive plan map change from Lincoln County to Lincoln City’s Single-Family Residential District (R-5) and a zoning map change from Lincoln County’s Residential (R-1-A) Zone to Lincoln City’s Single-Family Residential (R-1-5) Zone.

FINAL RECOMMENDATION

Based on the evidence presented at the public hearing on February 18, 2020, including the staff report, the Planning Commission recommends that the City Council approve the proposed annexation (6-0 vote) and the proposed comprehensive plan and zoning map amendments (5-1 vote). The commissioners, in recommending approval of the annexation, based their vote upon the following factors:

1. The Planning Commission will have additional opportunities to review future proposed development on the site as part of any submissions for a planned unit development.
2. In spite of concerns that once the annexation and zone change are approved there is nothing binding the applicants to develop the types of housing that are identified as most needed in Lincoln City, the commissioners were reassured by the requirement of LCMC 16.08.050 (Approval authority) that subdivisions of land with an area greater than two acres or 10 lots shall be processed as a planned unit development, and that the City would have future opportunities to review plans for development of the site.

The commissioners (Baker, Blackerby, Kroen, Schlesinger, Smith) who voted in favor of the recommendation to approve the Comprehensive Plan amendment and zone change based their vote upon the following factors:

1. The applicant made a compelling argument that higher densities (than would be allowed with the nearby R-1-7.5 zone or the existing Lincoln County Residential designation) are necessary in order for significant numbers of units of workforce housing, which the applicant has indicated is one of their goals, and which the City is in need of, to be viable.
2. Not recommending approval of the zone change after recommending approval of the annexation presents the possibility of the Lincoln City Planning and Community Development Department being left responsible with administering Lincoln County zoning within Lincoln City limits.

The commissioner (Brainerd) who voted in opposition of the recommendation for approval based his vote upon the following factor:

1. More information is needed about the potential impacts of the proposed zone change. For example, traffic is an issue near the site. The zone change increases the allowed density of dwelling units in a place where we already have concerns about traffic.

APPROVED THIS 3rd DAY OF March, 2020.

Patti Kroen
Planning Commission Chair

ATTEST:

Anne Marie Skinner
Planning & Community Development Director



PLANNING COMMISSION STAFF REPORT
MEETING DATE: March 3, 2020

Report prepared by AnneMarie Skinner, Planning & Community Development Director

CUP 2019-02 Oksenholt NW Port 6-plex

The applicant has requested to continue this hearing to April 7, 2020.

STAFF RECOMMENDATION

Motion and second to continue the public hearing for CUP 2019-02 Oksenholt NW Port 6-plex to April 7, 2020 at 6:00 p.m.



PLANNING COMMISSION STAFF REPORT

MEETING DATE: March 3, 2020

Report prepared by AnneMarie Skinner, Planning & Community Development Director

CPZ ZC 2020-01 Scrutton et al Zone Change

Continued from February 18, 2020. See attached materials.

Planning Commission Staff Report CPA ZC 2020-01 (PDF)
Application Package(PDF)
Comments Agencies (PDF)
Comments Applicants (PDF)
Aerial Map (PDF)
Zoning Map (PDF)
Bluff Erosion Zones (PDF)
FEMA Flood Hazard Areas (PDF)
Aesthetic Resource (PDF)
Zones SW 3rd to SW 37th (PNG)
Comments App representative (PDF)

Staff Report

Planning Commission Hearing on February 18, 2020

Case File CPA/ZC 2020-01

Date: February 11, 2020

Case File: CPA/ZC 2020-01 Scrutton, et al Comprehensive Plan Amendment and Zone Change

Applicants:

Michael B. Test/Jean L. Celia 4523 Pacific Ct Lincoln City, OR 97367	Eugene L. and Karen L. Scrutton 7956 SE 17 th Ave Portland, OR 97202
Robert Glanville 315 SW Ebb Ave Lincoln City, OR 97367	Coast Commercial Associates LLC 735 Browning Ave SE, Ste 120 Salem, OR 97302
Monica Steele PO Box 967 Lincoln City, OR 97367	Eric W. Coats and Robin L. Coats, Trustees PO Box 5984 Bend, OR 97708

Applicant's Representative: Richard Townsend
Townsend Planning & Design LLC
1936 NE 63rd St
Lincoln City, OR 97367

Property Owners: Same as Applicants

Situs Addresses: 305 SW Ebb Ave, 315 SW Ebb Ave, 327 SW Ebb Ave, 339/343 SW Ebb Ave, 405 SW Ebb Ave, Unaddressed, 427 SW Ebb Ave, 887 SW 5th St

Location: West side of SW Ebb Ave, bordered by SW 3rd St to the north and SW 5th St to the south

Tax Map and Lots: 07-11-15-DB-00700, 07-11-15-DB-00800, 07-11-15-DB-00900, 07-11-15-DB-01000, 07-11-15-DB-01100, 07-11-15-DB-01201, 07-11-15-DB-01200, 07-11-15-DB-01300

Comprehensive Plan Designation: High Density Residential District (R-M)

Zoning District: Multiple-Family Residential (R-M) Zone

Site Size: 0.08 ac, 0.08 ac, 0.14 ac, 0.11 ac, 0.40 ac, 0.37 ac, 0.39 ac, 0.49 ac = 2.06 ac

Proposal: Comprehensive plan map amendment from High-Density Residential District (R-M) to Commercial-Recreation District (R-C) and zone change from Multiple-Family Residential (R-M) Zone to Recreation-Commercial (RC) Zone



Proposed Comprehensive Plan Designation:	Commercial-Recreation District (R-C)
Proposed Zone:	Recreation-Commercial (RC) Zone
Surrounding Land Uses and Zones:	North: Residential; RC South: Residential; RM East: Residential and Commercial; GC West: Pacific Ocean
Public Notice:	The Planning and Community Development Department mailed notice to the owners of all properties within 250 feet of the site on January 28, 2020. <i>The News Guard</i> published the public hearing notice on February 5, 2020.
Authority:	Lincoln City Municipal Code (LCMC) Section 17.88.040.A. <i>Upon filing of the application for an amendment as described in LCMC 17.88.030, or upon motion of the city council or planning commission for the initiation of the amendment, the matter shall automatically be referred to the planning commission. The planning commission shall study the matter to the extent that it considers such study to be necessary, including the holding of a public hearing if it so desires, and shall, in open meeting, recommend the approval or disapproval of the amendment. The recommendation shall be reported to the city council by filing the recommendation with the city manager. The city manager shall, upon filing the recommendation, report the same to the city council at a subsequent regular city council meeting after the filing of the recommendations, by setting the matter for public hearing pursuant to LCMC 17.88.050</i>
Applicable Substantive Criteria:	The amendment must be in conformance with the Oregon Statewide Planning Goals, the Lincoln City Comprehensive Plan, and the applicable provisions of LCMC Title 17.

BACKGROUND

The application for the requested comprehensive plan map amendment and zoning change was received on December 19, 2019 and deemed complete on January 6, 2020. Notice of the public hearings was mailed to property owners within 250 feet of the site on January 28, 2020. Notice of the public hearing was published in *The News Guard* on February 5, 2020.

The subject site consists of eight tax lots, and is hereinafter referred to as the site. The eight tax lots in their totality equal 2.06 acres and have five different ownerships. With the exception of two of the eight tax lots, the site is completely developed with residential dwellings. Construction dates of the existing houses, per Lincoln County Property Reports, are as follows: 305 SW Ebb Ave constructed in 1979; 315 SW Ebb Ave constructed in 1938; 327 SW Ebb Ave constructed in 1934; 339 and 343 SW Ebb constructed in 1940 and 1944 respectively; 405 SW Ebb Ave constructed in 1924; and 887 SW 5th St constructed in 1948. All were constructed as houses and are being used for residential purposes. They are being assessed for tax purposes as improved residential property.

The site is bounded by three streets and the Pacific Ocean. The north boundary of the site is SW 3rd Ave. The south boundary of the site is SW 5th Ave. The east boundary of the site is SW Ebb Ave. The west boundary of

the site is the Pacific Ocean. The three streets are paved, public, local streets. None have sidewalks, curb, gutter, or bicycle lanes. The use of the properties immediately adjacent to the north of SW 3rd St of the site is residential. The use of the properties immediately adjacent to the east of SW Ebb Ave if the site is a combination of commercial and residential. The use of the properties immediately adjacent to the south of SW 5th St of the site is residential.

The southwestern-most portion of the site is in the Distant Tsunami Evacuation Zone. The remainder of the site is in the Local Tsunami Evacuation Zone. The southwestern-most portion of the site is in the VE Flood Hazard Area. The remainder of the site is not in a special flood hazard area. The site contains no wetlands, significant wetlands, delineated wetlands, or significant riparian areas. The site contains no historical or cultural resources. The portion of SW 3rd St immediately abutting the northern property line of the site is an aesthetic resource, but the site itself contains no aesthetic resources. The entire site is in the Bluff Erosion Zone, ranging from the Active Hazard Zone, to High Hazard to Moderate Hazard to Low Hazard Zone. The very southeastern-most portion of the site is not in the Bluff Erosion Zone.

ANALYSIS

The city's comprehensive plan provides for major and minor revisions. Major revisions are changes to the comprehensive plan and zoning map that have widespread and significant impact upon the immediate area of the change; such as quantitative changes, producing large volumes of traffic; a qualitative change in the character of the land use itself, such as conversion of residential to commercial land use; or a spatial change that affects large areas or many different ownerships. Staff considers this a major revision since the requested change from multiple-family residential to recreation-commercial zoning would produce a qualitative change in the character of the land use itself from residential to commercial, as well as being a spatial change since the request includes eight tax lots with different ownerships. The proposed amendment must conform to the Statewide Planning Goals and be consistent and compatible with other unamended portions of the Comprehensive Plan.

If rezoned, the property owners may use the tax lots for any use the Recreation-Commercial (RC) zone permits. In an RC zone, the following are given as examples of those uses which meet the intent of this zone:

- A. Motels and resorts;
- B. Eating and drinking establishments;
- C. Gift shops;
- D. Convention centers;
- E. Single-family dwellings and duplexes;
- F. Time-share units;
- G. Bed and breakfast accommodations;
- H. Attached single-family dwellings;
- I. Manufactured homes;
- J. Essential emergency communications, early warning and associated emergency facilities;
- K. Community gardens and market gardens;
- L. Mixed-use development;
- M. Transportation uses;
- N. Tiny house developments;
- O. Four-flat dwellings.

Vacation rental dwellings are also allowed as a permitted use in the RC zone.

A. Lincoln City Comprehensive Plan Goals

1. Land Use Planning Goal

“To establish a land use planning process and policy framework as a basis for all decisions and actions related to use of land and to assure an adequate factual base for such decisions and actions.”

The City Council established a land use policy framework and implementing ordinance through adoption of a comprehensive plan and zoning ordinance, respectively. The Land Conservation and Development Commission acknowledged the City of Lincoln City’s Comprehensive Plan (Comprehensive Plan) and implementing land development regulations (including Zoning Title 17) as complying with the Statewide Planning Goals. Review of these amendments in accordance with the Comprehensive Plan and the applicable zoning ordinance provisions, including the provisions of LCMC Chapter 17.88, establishes conformance with this goal.

The Comprehensive Plan Land Use Planning element states that zoning as the most common method of land use regulation and control. It is generally guided by the comprehensive plan. Essentially, zoning is a means of ensuring that the land uses of an area are properly situated in relation to one another. The proposed amendment must conform to the Statewide Planning Goals and be consistent and compatible with other unamended portions of the comprehensive plan.

The request is to change approximately 2.06 acres of property currently zoned as the Multiple-Family Residential zone to the Recreation-Commercial zone. The proposed map amendment and zone introduces a new zone to the area of the site. The site is bordered by SW 3rd St to the north. Staff notes that, while there is Recreation-Commercial zoning north of SW 3rd St, a review of the zoning map shows that there is no Recreation-Commercial zoning south of SW 3rd St until SW 36th St. In fact, there is no Recreation-Commercial zoning at all from the Pacific Ocean to the eastern City limits in the area between south of SW 3rd St and the north side of SW 36th St. It is this area in which the site resides.

An extension of the RC zone to the south will represent an intrusion into the existing residential area that is not consistent with the unamended portion of the Comprehensive Plan. The change is not consistent with the land use planning goal, as it represents a major shift or the first domino to fall in an area that currently contains no RC zoning. Accordingly, the amendment is not consistent with the City’s land use planning goal.

Goal 1 is not satisfied.

2. Citizen Involvement Goal

“Develop a Citizen Involvement Program which ensures the continued participation of citizens in the land use planning process.”

The Comprehensive Plan’s Citizen Involvement Program goal is to “develop a Citizen Involvement Program which ensures the continued participation of citizens in the land use planning process.” The City has developed a Citizen Involvement Program through Resolution 94-33. The public hearing process for the proposed map amendment and zone change included mailed and published notice to the public and property owners, and review of the proposal by the Planning Commission and the City Council, consistent with the Plan, Goal, and Resolution.

Among the policies under the City’s Citizen Involvement Program goal is one that says “Lincoln City shall assure that a reasonable effort is made to encourage the opportunity for citizens to attend public meetings.” The Planning Commission and City Council meetings are publicized widely with hearing notices mailed to

property owners in the affected area, published in *The News Guard*, and posted on the City's website. The City holds public hearings in the evening to encourage public attendance. Moreover, for those unable to attend in person, the meetings are televised live, streamed live over the internet, and rebroadcast on cable television. Video of meetings and the packet materials are also available on the City's website for review, free of charge. These aforementioned items in their totality constitute a more than reasonable effort to encourage citizens to attend public meetings and meet Goal 2.

Goal 2 is satisfied.

3. Public Services and Utilities Goal

"To plan and develop a timely, orderly, and efficient arrangement of public facility and services which compliment the area and serve as a framework for urban and rural development."

Public services and utilities are already in place at the site of the proposed map amendment and zone change. Available public services and utilities are as follows:

- a. Pacific Power provides electric power;
- b. The City of Lincoln City provides water service;
- c. The City of Lincoln City provides sanitary sewer service;
- d. NW Natural provides natural gas service;
- e. Various providers provide land line and cellular telephone service.
- f. Streetlights are provided from the City of Lincoln City and Pacific Power.

Existing services and utilities generally satisfy Goal 3.

4. Urbanization Goal

"To promote an orderly and efficient transition of land uses from rural to urban."

The area affected by the proposed map amendment and zone change is within the urban growth boundary and the City limits and has already developed as urban. The proposed rezoning will not change the current urban development and may allow for increased intensity of use.

Goal 4 is satisfied.

5. Natural Hazard Goal

"The City shall control development in hazardous areas to protect life and property from natural disasters and hazards."

The City's maps show the site as being in Bluff Erosion and Tsunami Evacuation zones. With the exception of two of the eight tax lots, the site is fully developed with residential dwellings.

The proposal is not consistent with Goal 5.

6. Housing Goal

"To provide for the housing needs of all citizens."

The applicant states:

“The proposed rezoning will have little if any effect on the availability of adequate numbers of needed housing units at price ranges and rents commensurate with the area. Because the property is ocean-front, and ocean-front property is expensive compared to other properties, there is no practical way the property could be used for affordable or workforce housing.”

The proposed rezoning would convert approximately 2.06 acres of development land from multiple-family residential zoning to recreation-commercial zoning. The proposed RC zone permits single-family dwellings and duplexes, attached single-family dwellings, manufactured homes, tiny house developments, and four-flat dwellings, as accessory dwelling units. Multi-family dwellings are allowed with conditional use permit approval.

The site in its current zoning could support the conversion of the existing dwellings to multi-family dwelling units as an outright permitted use. The site could also continue to support the existing residences as well as new residences or new multi-family dwellings on the undeveloped portion of the site without any zone changes. Additionally, the site could support a joint conversion from the existing single-family dwellings to a multi-family dwelling complex in its present zone.

The City conducted an Economic Opportunities Analysis and Housing Needs Analysis, dated April 2017, prepared by Cogan Owens Greene, FCS Group, and Fregonese Associates. An analysis of the existing housing and tenancy found the current housing mix consists primarily of single-family detached homes, with 61 percent of the total housing stock. Multi-family housing accounts for 19 percent of the housing inventory. Townhomes/plexes and mobile homes each account for 10 percent of the housing inventory. Among permanent residents, owner-occupied housing is concentrated in the single-family detached and mobile home categories.

The resulting baseline housing forecast for the City identifies the need for 948 net new dwellings for permanent residents over the next 20 years. If we assume the current level of seasonal housing (second homes and short-term rentals) and vacant inventory remain at current levels (36 percent of total inventory), there would be additional demand for approximately 536 housing units. The combination of housing for permanent residents and seasonal housing is expected to require 1,484 dwellings over the next 20 years.

The study showed the buildable land inventory for residential uses in the City includes approximately 1,124.5 acres on 1,702 tax lots. Nearly 93 percent of the residential land supply, or 1,041 acres, is dedicated to single-family homes. The remaining 83.5 acres is designated for multi-family development. Buildable residential lands are well-distributed among various lot sizes. The study states that the estimated demand for residential lands in the City ranges from 206 to 249 acres. With a vacant residential land supply of 1,124 acres, the City has a surplus of approximately 876 acres of buildable residential lands. Even though the City has a surplus of buildable residential lands, the bulk of the current housing stock is single-family detached homes. Removing 2.06 acres of land that currently outright permits multi-family dwellings, while not impacting to a significant degree the surplus, does impact the potential the site has for developing into multi-family housing units which are lacking.

Staff finds the request is not consistent with Goal 6.

7. Economy Goal

“To support the tourist industry and achieve a degree of diversity in the community which will allow a balanced economy that will, in turn, support an adequate level of services for all members of the area.”

The applicant states the following:

“The proposed rezoning will have a positive effect on the tourist economy...It will encourage development or redevelopment of the property to be rezoned and if used as vacation rentals will allow that use to continue indefinitely rather than ceasing on the sale or transfer of the property.”

The Comprehensive Plan states that the City’s primary industry is tourism and concludes that tourism will continue to function as the City’s basic industry. The City conducted an Economic Opportunities Analysis and Housing Needs Analysis, dated April 2017, prepared by Cogan Owens Greene, FCS Group, and Fregonese Associates. The lodging demand portion of the analysis indicated that over the next 20 years there will be demand for approximately 1,600 new hotel/motel rooms in Lincoln City. Lodging is one of the recommended target uses from the study, as well as food/beverage services. Both motels and resorts and eating and drinking establishments are permitted uses in the RC zone.

Staff finds that Goal 7 is satisfied.

8. Aesthetic Goal

“To develop a livable and pleasing city which enhances man’s activities while protecting the exceptional aesthetic quality of the area.”

With the exception of two of the eight tax lots comprising the site, the site is fully developed with existing structures. No changes to the site, the landscaping, or the exteriors of the buildings are proposed as part of this application. The application does not include a request for a statutory development agreement, nor does it include any development plans for the two undeveloped tax lots or redevelopment plans for the developed tax lots. While the applicant states that “this extensive and detailed report will provide the city, through a decision by the Planning Commission, the means to ensure that development or redevelopment on the property will not adversely affect the aesthetic character of the area,” without a statutory development agreement, no mechanism is provided through a rezone application to make such a promise.

Staff finds that Goal 8 is either not applicable to this application or is not satisfied.

9. Transportation Goal

“To provide a safe, convenient and rapid transportation network to facilitate the movement of goods and people.”

The site is accessible by SW Ebb Ave, which is a paved local public street. SW Ebb Ave does not contain sidewalks or bike paths. The site’s SW Ebb Ave frontage connects to Hwy 101 to the east via SW 3rd St, SW 4th St, and SW 5th, all of which are paved local public streets. None contain bicycle paths. Sidewalks are sporadic, and there are no marked crosswalks at any of the intersections between the site and Hwy 101.

Staff finds Goal 9 is satisfied for vehicular traffic, but not for pedestrian and bicycle traffic.

10. Energy Goal

“To conserve energy.”

No new construction is proposed. No additions or remodeling are proposed. The structures will remain in their current status built to whatever energy and building codes existed at the time of construction. The site is close to other destinations and services.

Staff finds Goal 10 partially satisfied.

11. Overall Environmental Goal

"To achieve a balance between the need to provide housing and services and the need to protect and enhance the natural environment of the city."

The site is largely developed. The city's inventory of natural resources, including wetlands, riparian areas, and fish and wildlife habitat, show none are on the site. The site contains no known aesthetic, cultural, or designated historic resources.

Staff finds Goal 11 is satisfied.

12. Shoreland, Beaches, Dunes, Estuary, and Ocean Resources Goal

"To conserve, protect, and enhance the coastal resources of the city."

With the exception of two of the eight tax lots comprising the site, the area proposed for rezoning is a developed site containing buildings and landscaping. Rezoning of the already-developed tax lots will not have any environmental or other additional impact on the coastal shorelands. Since the entire site is in the bluff erosion zone, development of the two undeveloped tax lots will necessitate a topographic survey, followed by a geotechnical report, wherein the unaltered bluff edge and maximum annual erosion rate is identified, which will further identify the required minimum setback from the unaltered bluff edge. With adherence to development requirements regarding bluff erosion zones, this goal is satisfied.

Staff finds Goal 12 is satisfied.

B. Statewide Planning Goals

Goal 1 – "Citizen Involvement" "To develop a citizen involvement program that ensures the opportunity for citizens to be involved in all phases of the planning process."

The application for amending the comprehensive plan map and changing the zoning is available at no cost on the City's website and also available for public review and purchase at the counter. Staff is available to explain the proposal and technical information. The City publishes hearing notices in the local newspaper in accordance with notice requirements and mails notices to impacted property owners pursuant to Measure 56. The findings concerning the Comprehensive Plan Citizen Involvement are incorporated herein by this reference. Staff made its report on the land use proposals available on the City's website in advance of the meeting.

The request is consistent with Goal 1.

Goal 2 - "Land Use Planning" "To establish a land use planning process and policy framework as a basis for all decisions and actions related to use of land and to assure an adequate factual base for such decisions and actions."

The City Council adopted the Lincoln City Comprehensive Plan and its implementation measure, the Lincoln City Zoning Ordinance, after public hearings and has reviewed them on a periodic cycle to take into account changing public policies and circumstances. Citizens and affected governmental units had opportunities for review and comment during preparation, review, and revision of the plan and implementing ordinances. Review of this proposed rezoning in accordance with the Lincoln City Comprehensive Plan and the applicable zoning ordinance provisions establishes conformance with this goal.

The proposed rezoning is not consistent with the planning process and policy framework; specifically, the proposed amendment does not further compliance with existing policies to stabilize and protect existing residential neighborhoods from incompatible uses. The findings concerning the planning goal for the Comprehensive plan are incorporated herein by this reference.

The proposal is not consistent with Goal 2.

Goal 3 – “Agricultural Lands” “To preserve and maintain agricultural lands.”

The area affected by the proposed rezoning is within the City’s Urban Growth Boundary. The area is currently designated and zoned for urban development and will remain as such, any rezoning notwithstanding. The rezoning will not affect agricultural lands.

Goal 3 is not applicable.

Goal 4 – “Forest Lands” “To conserve forest lands by maintaining the forest land base and to protect the state’s forest economy by making possible economically efficient forest practices that assure the continuous growing and harvesting of forest tree species as the leading use on forest land consistent with sound management of soil, air, water, and fish and wildlife resources and to provide for recreational opportunities and agriculture.”

The area affected by the proposed rezoning is within the City’s Urban Growth Boundary and currently zoned and developed for urban development. The affected area does not contain any designated forest lands.

Goal 4 is not applicable.

Goal 5 – “Open Spaces, Scenic and Historic Areas and Natural Resources” “To protect natural resources and conserve scenic and historic areas and open spaces.”

The area affected by the proposed rezoning does not include any areas zoned Open Space, designated as Scenic Historic Areas, or identified in the Natural Resources Overlay Zone.

Goal 5 is not applicable.

Goal 6 – “Air, Water and Land Resources Quality” “To maintain and improve the quality of the air, water and land resources of the state.”

Current building and public works standards for new development require protection of these resources. No new construction, additions, or new development are proposed as part of this application.

Goal 6 is not applicable.

Goal 7 – “Areas Subject to Natural Disasters and Hazards” “To protect people and property from natural hazards.”

City maps show no the site as being in the Bluff Erosion and Tsunami Evacuation Zones. The findings concerning the Comprehensive Plan’s Natural Hazard Element are incorporated herein by this reference.

The proposal is not consistent with Goal 7.

Goal 8 – “Recreational Needs” “To satisfy the recreational needs of the citizens of the state and visitors and, where appropriate, to provide for the siting of necessary recreational facilities, including destination resorts.”

The recreation commercial zone permits recreational uses of eating and drinking establishments.

The application is consistent with Goal 8.

Goal 9 – “Economic Development” “To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon’s citizens.”

The proposed rezoning allows for economic uses, including motels and resorts, eating or drinking establishments, gift shops, or vacation rental dwellings. The findings concerning the Comprehensive Plan’s Economy Goal are incorporated herein by this reference.

The proposed rezoning is consistent with Goal 9.

Goal 10 – “Housing” “To provide for the housing needs of citizens of the state.”

Current multiple-family residential zoning would allow the existing residences to remain, as well as allowing for new development of multi-family dwellings on the undeveloped tax lots or a redevelopment of the entire site into a large multi-family complex. A change of zoning to the RC zone would allow the same number of units currently allowed, but would require conditional use permit approval for such. Zoning to the RC zone also allows for unlimited use of the existing dwellings as vacation rental dwellings, thus removing them from the available housing stock for permanent residences. The findings that address the City’s housing goal are incorporated herein by this reference.

Staff finds the proposal is not consistent with Goal 10.

Goal 11 – “Public Facilities and Services” “To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.”

Utilities and services are available to the site. The findings concerning the City’s Public Services and Utilities goal are incorporated herein by this reference.

The proposed rezoning is consistent with Goal 11.

Goal 12 – “Transportation” “To provide and encourage a safe, convenient and economic transportation system.”

The site is accessible by SW Ebb Ave, a local public street. SW 3rd St is north of the site, and SW 5th St is south of the site; both are local public streets and both directly connect with NW Highway 101, which is a principal arterial. The proposed use, therefore, is consistent with the City’s Comprehensive Plan and

Transportation Plan has it has access to three local streets and close connection with a principal arterial. Neither bicycle lanes or sidewalks exist on the streets. The findings concerning the City's Transportation goal are incorporated herein by this reference.

The proposed comprehensive plan map amendment and zone change is consistent with Goal 12 for vehicular traffic, but not for pedestrian and bicycle traffic.

Goal 13 – “Energy Conservation” “To conserve energy.”

With the exception of two of the eight tax lots comprising the site, it is fully developed with existing dwellings. No new development or construction is proposed. In the event any new development or construction takes place at a future date, such development or construction will have to comply with building and energy codes in place at the time of application. The findings concerning the City's Energy goal are incorporated herein by this reference.

Goal 13 is not applicable to this application.

Goal 14 – “Urbanization” “To provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities.”

The proposed rezoning is an up-zoning to a more intense district of a property already built for urban use. The findings concerning the Comprehensive Plan's Land Use goal, Housing goal and Urbanization goal are incorporated herein by this reference.

The proposal is consistent with Goal 14.

Goal 15 – Willamette Greenway” “To protect, conserve, enhance and maintain the natural, scenic, historical, agricultural, economic and recreational qualities of lands along the Willamette River as the Willamette River Greenway.”

The proposed rezoning does not affect any areas within the Willamette River Greenway; therefore, Goal 15 is not applicable.

Goal 16 – “Estuarine Resources” “To recognize and protect the unique environmental, economic, and social values of each estuary and associated wetlands; and to protect, maintain, where appropriate develop, and where appropriate restore the long-term environmental, economic, and social values, diversity and benefits of Oregon's estuaries.”

The proposed rezoning does not affect any areas adjacent to the Siletz Bay estuary; therefore, Goal 16 is not applicable.

Goal 17 – “Coastal Shorelands” “To conserve, protect, where appropriate, develop and where appropriate restore the resources and benefits of all coastal shorelands, recognizing their value for protection and maintenance of water quality, fish and wildlife habitat, water-dependent uses, economic resources and recreation and aesthetics. The management of these shoreland areas shall be compatible with the characteristics of the adjacent coastal waters; and to reduce the hazard to human life and property, and the adverse effects upon water quality and fish and wildlife habitat, resulting from the use and enjoyment of Oregon's coastal shorelands.”

The site is in the Bluff Erosion Zone, but most of the site is already developed. Adherence to requirements pertinent to development in the Bluff Erosion Zone is required for any new development or redevelopment of the site. The findings concerning the Comprehensive Plan's Shoreland, Beaches, Dunes, Estuary & Ocean Resources Element are incorporated herein by this reference.

Goal 17 is satisfied.

Goal 18 – “Beaches & Dunes” “To conserve, protect, where appropriate develop, and where appropriate restore the resources and benefits of coastal beach and dune areas; and to reduce the hazard to human life and property from natural or man-induced actions associated with these areas.”

The proposed rezoning does not affect any areas located within a beach or active dune area. The findings concerning the City's Shoreland, Beaches, Dunes, Estuary & Ocean Resources goal are incorporated herein by this reference.

Goal 18 is met or not applicable.

Goal 19: “Ocean Resources” “To conserve marine resources and ecological functions for the purpose of providing long-term ecological, economic, and social value and benefits to future generations.”

Since the area of the proposed rezoning is on the dry land area of the City, the proposed rezoning will not affect the near shore ocean and continental shelf. The findings concerning the City's Shoreland, Beaches, Dunes, Estuary & Ocean Resources goal are incorporated herein by this reference.

Goal 19 is not applicable.

RECOMMENDATION

The Planning Commission should hold a public hearing on the proposed comprehensive plan map amendment to Commercial-Recreation District (R-C) and zone change to Recreation Commercial (RC) Zone, close the public hearing, deliberate, and make a recommendation of approval or denial to City Council based upon compliance with the Comprehensive Plan, Statewide Planning Goals, and submitted evidence.

OFFICE USE ONLY
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 Deemed Incomplete: _____
 Deemed Complete: _____
 120 Day Deadline: _____



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APPLICATION TYPE

<input type="checkbox"/> ANNEXATION	<input type="checkbox"/> LOT LINE ADJUSTMENT	<input type="checkbox"/> SITE PLAN REVIEW
<input type="checkbox"/> APPEAL OF PLANNING COMMISSION DECISION	<input type="checkbox"/> MINOR PARTITION	<input type="checkbox"/> SUBDIVISION
<input type="checkbox"/> APPEAL OF PLANNING DEPARTMENT DECISION	<input type="checkbox"/> NATURAL RESOURCE DEVELOPMENT REVIEW	<input type="checkbox"/> URBAN GROWTH BOUNDARY AMENDMENT
<input checked="" type="checkbox"/> COMPREHENSIVE PLAN & ZONING MAP AMENDMENT	<input type="checkbox"/> NATURAL RESOURCE DEVELOPMENT VARIANCE	<input type="checkbox"/> VACATION
<input type="checkbox"/> COMPREHENSIVE PLAN &/OR ZONING ORDINANCE TEXT AMENDMENT	<input type="checkbox"/> PLANNED UNIT DEVELOPMENT PRELIMINARY MASTER PLAN	<input type="checkbox"/> VARIANCE
<input type="checkbox"/> CONDITIONAL USE PERMIT	<input type="checkbox"/> PLANNED UNIT DEVELOPMENT FINAL MASTER PLAN	<input type="checkbox"/> OTHER _____

NAME OF APPLICANT: Eugene L Scrutton & Karen L. Scrutton
MAILING ADDRESS: 7956 SE 17th Ave
CITY: Portland **STATE:** OR **ZIP:** 97202-6765
DAYTIME PHONE: _____ **Signature:** _____
EMAIL (OPTIONAL): _____

OWNER OF RECORD (if other than applicant)
NAME: _____
MAILING ADDRESS: _____
CITY: _____ **STATE:** _____ **ZIP:** _____
DAYTIME PHONE: _____ **Signature:** Eugene L Scrutton Karen L. Scrutton
EMAIL (OPTIONAL): _____

APPLICANT AND/OR OWNER'S INTEREST IN PROPERTY SUBJECT TO REQUEST:
 AGENT, FEE OWNER, CONTRACT PURCHASER, OPTION HOLDER, LESSEE, OTHER
PROJECT LOCATION: _____
PROJECT ADDRESS: 405 SW Elk Ave
ASSESSOR'S MAP NO.: 07-11-15-DB **TAX LOT(S):** 01100
AREA: 0.17 (acres) **SQ. FT.:** _____ **ZONING:** R-M

AMENDMENT TO THE
 ZONING ORDINANCE TEXT OR MAP
 COMPREHENSIVE PLAN TEXT OR MAP
FOR PLANNING COMMISSION AND CITY COUNCIL APPROVAL

LCMC 17.88.010 Procedure: The zoning ordinance and/or the comprehensive plan map or text may be amended by changing the boundaries of districts or designations or by changing any other provisions thereof, whenever the public necessity and convenience and the general welfare requires such an amendment, by following the procedure of this article.

LCMC 17.88.020 Initiation of amendments: An amendment to the text of the zoning ordinance or to the zoning map and/or to the comprehensive plan map or text may be initiated by:

- A. Motion of the Planning Commission.
- B. Motion of the City Council.
- C. Application filed by an owner of record, a purchaser under a recorded land sale contract, or the holder of an option to purchase property which is the subject of the application for rezoning or comprehensive plan map re-designation.
- D. A Lincoln City resident requesting a change to the text of the comprehensive plan or zoning ordinance document(s).
- E. The Planning and Community Development Director.

THE FOLLOWING ATTACHMENTS SHALL ACCOMPANY THE FILING OF THIS APPLICATION:

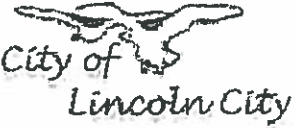
- 1. A complete application form and all supporting documents and evidence;
- 2. Proof that the property affected by the application is in the exclusive ownership of the applicant, or that the applicant has the consent of all parties in ownership of the affected property;
- 3. A description of the property affected by the application and, in the case of a quasi-judicial map amendment, a legal description.

FINDINGS OF FACT:

In order for the city council to adopt an ordinance for an amendment to this zoning ordinance, findings must be made, and adopted as a part of said ordinance, that are adequate to support the amendment proposal. The findings must be factual and must be supported by substantial evidence submitted into the record. The burden is on the applicant to submit such evidence, responding to the following (*additional sheets may be attached*):

- 1. It must be found that the amendment complies with and conforms to the comprehensive plan goals, policies, and land use map.

See attached narrative

OFFICE USE ONLY Date Filed: _____ Amount/Fee: _____ Receipt No: _____ Received By: _____ 30 Days: _____ Deemed Incomplete: _____ Deemed Complete: _____ 120 Day Deadline: _____	 LAND USE APPLICATION	OFFICE USE ONLY Stamp Date Received _____ File No: _____
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APPLICATION TYPE

<input type="checkbox"/> ANNEXATION	<input type="checkbox"/> LOT LINE ADJUSTMENT	<input type="checkbox"/> SITE PLAN REVIEW
<input type="checkbox"/> APPEAL OF PLANNING COMMISSION DECISION	<input type="checkbox"/> MINOR PARTITION	<input type="checkbox"/> SUBDIVISION
<input type="checkbox"/> APPEAL OF PLANNING DEPARTMENT DECISION	<input type="checkbox"/> NATURAL RESOURCE DEVELOPMENT REVIEW	<input type="checkbox"/> URBAN GROWTH BOUNDARY AMENDMENT
<input checked="" type="checkbox"/> COMPREHENSIVE PLAN & ZONING MAP AMENDMENT	<input type="checkbox"/> NATURAL RESOURCE DEVELOPMENT VARIANCE	<input type="checkbox"/> VACATION
<input type="checkbox"/> COMPREHENSIVE PLAN &/OR ZONING ORDINANCE TEXT AMENDMENT	<input type="checkbox"/> PLANNED UNIT DEVELOPMENT PRELIMINARY MASTER PLAN	<input type="checkbox"/> VARIANCE
<input type="checkbox"/> CONDITIONAL USE PERMIT	<input type="checkbox"/> PLANNED UNIT DEVELOPMENT FINAL MASTER PLAN	<input type="checkbox"/> OTHER _____

NAME OF APPLICANT: Michael B. Test & Jean L. Celia
MAILING ADDRESS: 2245 Crestview Dr. S 4523 Pacific CT
CITY: Lincoln City **STATE:** OR **ZIP:** 97367
DAYTIME PHONE: 541-557-1694 **Signature:** Michael B. Test Jean L. Celia
EMAIL (OPTIONAL): MKLTST@hotmail.com rcvjlc@yahoo.com

OWNER OF RECORD (if other than applicant)
NAME: MICHAEL B. TEST / JEAN L. CELIA
MAILING ADDRESS: 4523 Pacific CT
CITY: Lincoln City **STATE:** OR **ZIP:** 97367
DAYTIME PHONE: 541-557-1694 **Signature:** Michael B. Test Jean Celia
EMAIL (OPTIONAL): MKLTST@hotmail.com rcvjlc@yahoo.com

APPLICANT AND/OR OWNER'S INTEREST IN PROPERTY SUBJECT TO REQUEST:
 AGENT, FEE OWNER, CONTRACT PURCHASER, OPTION HOLDER, LESSEE, OTHER
PROJECT LOCATION: _____
PROJECT ADDRESS: 305 SW 6th Ave
ASSESSOR'S MAP NO.: 07-11-15-DB **TAX LOT(S):** 00700
AREA: 0.08 (acres) **SQ. FT.:** _____ **ZONING:** R-M

OFFICE USE ONLY Date Filed: _____ Amount/Fee: _____ Receipt No: _____ Received By: _____ 30 Days: _____ Deemed Incomplete: _____ Deemed Complete: _____ 120 Day Deadline: _____	 LAND USE APPLICATION	OFFICE USE ONLY Stamp Date Received _____ File No: _____
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<input type="checkbox"/> CONDITIONAL USE PERMIT	<input type="checkbox"/> PLANNED UNIT DEVELOPMENT FINAL MASTER PLAN	<input type="checkbox"/> OTHER _____

NAME OF APPLICANT: Robert Glanville

MAILING ADDRESS: 315 SW Ebb Ave

CITY: Lincoln City **STATE:** OR **ZIP:** 97367

DAYTIME PHONE: _____ **Signature:** _____

EMAIL (OPTIONAL): _____

OWNER OF RECORD (if other than applicant)

NAME: _____

MAILING ADDRESS: _____

CITY: _____ **STATE:** _____ **ZIP:** _____

DAYTIME PHONE: 541 921 7127 **Signature:** R. Glanville

EMAIL (OPTIONAL): _____

APPLICANT AND/OR OWNER'S INTEREST IN PROPERTY SUBJECT TO REQUEST:


AGENT, FEE OWNER, CONTRACT PURCHASER, OPTION HOLDER, LESSEE, OTHER

PROJECT LOCATION: _____

PROJECT ADDRESS: 315 SW Ebb Ave

ASSESSOR'S MAP NO.: 07-11-15-DB **TAX LOT(S):** 00800

AREA: 0.08 (acres) **SQ. FT.:** _____ **ZONING:** R-11

OFFICE USE ONLY Date Filed: _____ Amount/Fee: _____ Receipt No: _____ Received By: _____ 30 Days: _____ Deemed Incomplete: _____ Deemed Complete: _____ 120 Day Deadline: _____	 LAND USE APPLICATION	OFFICE USE ONLY Stamp Date Received _____ File No: _____
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<input type="checkbox"/> CONDITIONAL USE PERMIT	<input type="checkbox"/> PLANNED UNIT DEVELOPMENT FINAL MASTER PLAN	<input type="checkbox"/> OTHER _____

NAME OF APPLICANT: Monica Steele

MAILING ADDRESS: P.O. Box 967

CITY: Lincoln City **STATE:** OR **ZIP:** 97367

DAYTIME PHONE: _____ **Signature:** _____

EMAIL (OPTIONAL): _____

OWNER OF RECORD (if other than applicant)

NAME: Monica Steele

MAILING ADDRESS: _____

CITY: _____ **STATE:** _____ **ZIP:** _____

DAYTIME PHONE: _____ **Signature:** Monica Steele

EMAIL (OPTIONAL): _____

APPLICANT AND/OR OWNER'S INTEREST IN PROPERTY SUBJECT TO REQUEST:

AGENT, FEE OWNER, CONTRACT PURCHASER, OPTION HOLDER, LESSEE, OTHER

PROJECT LOCATION: _____

PROJECT ADDRESS: 327 SW Ebbs Ave

ASSESSOR'S MAP NO.: 07-11-15-DB **TAX LOT(S):** 00900 & 01000

AREA: 0.24 (acres) **SQ. FT.:** _____ **ZONING:** R-M

KAREN

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 Date Filed: _____
 Amount/Fee: _____
 Receipt No: _____
 Received By: _____
 30 Days: _____
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LAND USE APPLICATION


APPLICATION TYPE

<input type="checkbox"/> ANNEXATION	<input type="checkbox"/> LOT LINE ADJUSTMENT	<input type="checkbox"/> SITE PLAN REVIEW
<input type="checkbox"/> APPEAL OF PLANNING COMMISSION DECISION	<input type="checkbox"/> MINOR PARTITION	<input type="checkbox"/> SUBDIVISION
<input type="checkbox"/> APPEAL OF PLANNING DEPARTMENT DECISION	<input type="checkbox"/> NATURAL RESOURCE DEVELOPMENT REVIEW	<input type="checkbox"/> URBAN GROWTH BOUNDARY AMENDMENT
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<input type="checkbox"/> CONDITIONAL USE PERMIT	<input type="checkbox"/> PLANNED UNIT DEVELOPMENT FINAL MASTER PLAN	<input type="checkbox"/> OTHER _____

NAME OF APPLICANT: Coast Commercial Associates LLC
MAILING ADDRESS: 1441 ~~Atlanta Dr~~ NE 735 Browning Ave SE #120
CITY: Ketter Salem **STATE:** OR **ZIP:** 97303 97302
DAYTIME PHONE: 503-999-0421 **Signature:** Don Wyatt Sr
EMAIL (OPTIONAL): _____

OWNER OF RECORD (if other than applicant)
NAME: Coast Commercial Associates LLC
MAILING ADDRESS: 735 Browning Ave SE #120
CITY: Salem **STATE:** OR **ZIP:** 97302
DAYTIME PHONE: 503 999 0421 **Signature:** Don Wyatt Sr
EMAIL (OPTIONAL): _____

APPLICANT AND/OR OWNER'S INTEREST IN PROPERTY SUBJECT TO REQUEST:
 AGENT, FEE OWNER, CONTRACT PURCHASER, OPTION HOLDER, LESSEE, OTHER
PROJECT LOCATION: _____
PROJECT ADDRESS: 427 SW Ebb Ave
ASSESSOR'S MAP NO.: 07-11-15-DB **TAX LOT(S):** 01200 & 01201
AREA: 0.25 (acres) **SQ. FT.:** _____ **ZONING:** R-M

OFFICE USE ONLY Date Filed: _____ Amount/Fee: _____ Receipt No: _____ Received By: _____ 30 Days: _____ Deemed Incomplete: _____ Deemed Complete: _____ 120 Day Deadline: _____	 LAND USE APPLICATION	OFFICE USE ONLY Stamp Date Received _____ File No: _____
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<input type="checkbox"/> CONDITIONAL USE PERMIT	<input type="checkbox"/> PLANNED UNIT DEVELOPMENT FINAL MASTER PLAN	<input type="checkbox"/> OTHER _____

NAME OF APPLICANT: Eric W. Coats, Trustee & Robin L. Coats, Trustee
 MAILING ADDRESS: P.O. Box 5984
 CITY: Bend STATE: OR ZIP: 97708
 DAYTIME PHONE: 541-419-4440 Signature: [Signature]
 EMAIL (OPTIONAL): _____

OWNER OF RECORD (if other than applicant)

NAME: _____
 MAILING ADDRESS: _____
 CITY: _____ STATE: _____ ZIP: _____
 DAYTIME PHONE: _____ Signature: [Signature]
 EMAIL (OPTIONAL): RobinLCoats@gmail.com

APPLICANT AND/OR OWNER'S INTEREST IN PROPERTY SUBJECT TO REQUEST:

AGENT, FEE OWNER, CONTRACT PURCHASER, OPTION HOLDER, LESSEE, OTHER
PROJECT LOCATION: _____
PROJECT ADDRESS: 887 SW 5th St
ASSESSOR'S MAP NO.: 07-11-15-DB **TAX LOT(S):** 01300
AREA: 0.18 (acres) **SQ. FT.:** _____ **ZONING:** R-M

OFFICE USE ONLY Date Filed: _____ Amount/Fee: _____ Receipt No: _____ Received By: _____ 30 Days: _____ Deemed Incomplete: _____ Deemed Complete: _____ 120 Day Deadline: _____	 LAND USE APPLICATION	OFFICE USE ONLY Stamp Date Received _____ File No: _____
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APPLICATION TYPE

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<input type="checkbox"/> APPEAL OF PLANNING COMMISSION DECISION	<input type="checkbox"/> MINOR PARTITION	<input type="checkbox"/> SUBDIVISION
<input type="checkbox"/> APPEAL OF PLANNING DEPARTMENT DECISION	<input type="checkbox"/> NATURAL RESOURCE DEVELOPMENT REVIEW	<input type="checkbox"/> URBAN GROWTH BOUNDARY AMENDMENT
<input checked="" type="checkbox"/> COMPREHENSIVE PLAN & ZONING MAP AMENDMENT	<input type="checkbox"/> NATURAL RESOURCE DEVELOPMENT VARIANCE	<input type="checkbox"/> VACATION
<input type="checkbox"/> COMPREHENSIVE PLAN &/OR ZONING ORDINANCE TEXT AMENDMENT	<input type="checkbox"/> PLANNED UNIT DEVELOPMENT PRELIMINARY MASTER PLAN	<input type="checkbox"/> VARIANCE
<input type="checkbox"/> CONDITIONAL USE PERMIT	<input type="checkbox"/> PLANNED UNIT DEVELOPMENT FINAL MASTER PLAN	<input type="checkbox"/> OTHER _____

NAME OF APPLICANT: Eric W. Coats, Trustee & Robin L. Coats, Trustee

MAILING ADDRESS: P.O. Box 5984

CITY: Bend **STATE:** OR **ZIP:** 97708

DAYTIME PHONE: _____ **Signature:** _____

EMAIL (OPTIONAL): _____

OWNER OF RECORD (if other than applicant)

NAME: _____

MAILING ADDRESS: _____

CITY: _____ **STATE:** _____ **ZIP:** _____

DAYTIME PHONE: _____ **Signature:** _____

EMAIL (OPTIONAL): robinalecoats@gmail.com

APPLICANT AND/OR OWNER'S INTEREST IN PROPERTY SUBJECT TO REQUEST:


AGENT, FEE OWNER, CONTRACT PURCHASER, OPTION HOLDER, LESSEE, OTHER

PROJECT LOCATION: _____

PROJECT ADDRESS: 887 SW 5th St

ASSESSOR'S MAP NO.: 07-11-15-DB **TAX LOT(S):** 01300

AREA: 0.18 (acres) **SQ. FT.:** _____ **ZONING:** R-M

OFFICE USE ONLY Date Filed: _____ Amount/Fee: _____ Receipt No: _____ Received By: _____ 30 Days: _____ Deemed Incomplete: _____ Deemed Complete: _____ 120 Day Deadline: _____	 LAND USE APPLICATION	OFFICE USE ONLY Stamp Date Received _____ File No: _____
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APPLICATION TYPE

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<input type="checkbox"/> CONDITIONAL USE PERMIT	<input type="checkbox"/> PLANNED UNIT DEVELOPMENT FINAL MASTER PLAN	<input type="checkbox"/> OTHER _____

NAME OF APPLICANT: _____

MAILING ADDRESS: _____

CITY: _____ **STATE:** _____ **ZIP:** _____

DAYTIME PHONE: _____ **Signature:** _____

EMAIL (OPTIONAL): _____

OWNER OF RECORD (if other than applicant)

NAME: _____

MAILING ADDRESS: _____

CITY: _____ **STATE:** _____ **ZIP:** _____

DAYTIME PHONE: _____ **Signature:** _____

EMAIL (OPTIONAL): _____

APPLICANT AND/OR OWNER'S INTEREST IN PROPERTY SUBJECT TO REQUEST:

AGENT, FEE OWNER, CONTRACT PURCHASER, OPTION HOLDER, LESSEE, OTHER

PROJECT LOCATION: _____

PROJECT ADDRESS: _____

ASSESSOR'S MAP NO.: _____ **TAX LOT(S):** _____

AREA: _____ (acres) **SQ. FT.:** _____ **ZONING:** _____

APPLICANTS' NARRATIVE

Nature of Request

Eugene and Karen Scrutton, on behalf of themselves and their neighboring property owners, request rezoning of eight lots totaling approximately 1.0 acre of land located within the Lincoln City city limits. They propose a change in zoning from the existing Multiple Family Residential (RM) zone to the Recreation-Commercial (RC) zone.

Site Information

Applicants/Owners: Eugene L. and Karen L. Scrutton
7956 SE 17th Avenue
Portland OR 97202

Applicants' Representative: Richard Townsend
Townsend Planning & Design LLC
1936 NE 63rd Street
Lincoln City, OR 97367

Maps and Tax Lots: Map 07-11-15-DB Tax Lots 00700, 00800, 00900, 01100, 01200, 01201, 01300

Location: 405 SW Ebb Avenue

Current City Comprehensive Plan Designation: High Density Residential (R-M)

Current City Zoning Designation: Multiple-Family Residential (R-M)

Proposed Comprehensive Plan Designation: Commercial-Recreation (R-C)

Proposed Zoning Designation: Recreation Commercial (R-C)

Surrounding Land Uses And Zoning: North: Dwellings and Motel, (R-M and R-C)
East: Commercial (G-C)
South: Dwellings (R-M)
West: Beach and ocean

Evidence of Compliance with Standards

LCMC 17.88.030.E. requires an applicant for a comprehensive plan amendment to provide evidence “indicating the precise manner in which the proposed amendment is in conformance with the comprehensive plan” and other applicable standards. This evidence is provided here.

A. Comprehensive Plan Goals

1. Planning Goal: *“To establish a land use planning process and policy framework as a basis for all decisions and actions related to use of land and to assure an adequate factual base for such decisions and actions.”*

The Comprehensive Plan of Lincoln City is the document that guides land use decisions in the City of Lincoln City. The plan, which the Oregon Department of Land Conservation and Development has acknowledged as consistent with the Statewide Planning Goals, is the policy framework that guides the city’s land use decisions as it establishes goals and policies that provide a general framework for implementing land use regulations. As described below, this application complies with the comprehensive plan’s goals and policies.

Regarding the process for this application, the city code does not specify a process or criteria specifically for making a decision on annexation. But the city does have a general procedure, set out in Chapter 12 of LCMC Title 17, for handling such decisions. With two public hearings including published and mailed public notice, this process complies with this goal. Since this application will go through this process, it too complies with this goal.

2. Citizens Involvement Goal: *“Develop a Citizen Involvement Program (CIP) which ensures the continued participation of citizens in the land use planning process. ”*

The City has a Citizen Involvement Program that provides opportunities for citizens to participate in policy and ordinance development and to comment on specific land use proposals. The present application for annexation and rezoning will be available for public review and examination at the Planning Department and online at the city’s website. There will be two public hearings that will be preceded by notice to the public in general and specifically to surrounding property owners. Both the city’s planning commission and city council will hold public hearings on this application and the hearings, which will be televised and live-streamed, will include opportunities for written and oral public comments. This process makes this application consistent with this goal.

3. Public Services and Utilities Goal: *“To plan and develop timely, orderly, and efficient arrangement of public facilities and services which complement the area and serve as a framework for urban and rural development.”*

The property is fully urbanized and developed, and is currently being served by public services and utilities as follows:

- A) The property is currently being served by electric power through Pacific Power.
- B) The property is currently receiving water service from the City of Lincoln City.
- C) The property is currently receiving sanitary sewer service from the City of Lincoln City.
- D) The property is currently receiving natural gas service from NW Natural.
- E) The property is currently served by street lighting from the City of Lincoln City and Pacific Power.

Services are currently available and on site, and no changes or extensions are requested or needed. This goal is satisfied.

4. Urbanization Goal: *"To promote an orderly and efficient transition of land uses from rural to urban."*

The property lies well within the Lincoln City urban growth boundary, and in fact well within the Lincoln City city limits. It is already fully developed and fully urbanized. The proposed rezoning conforms to this goal.

5. Natural Hazard Goal: *"The City shall control development in hazardous areas to protect life and property from natural disasters and hazards."*

Lincoln City has identified and mapped various areas of natural hazards such as those described in Environment Hazards, Coastal Lincoln County, Oregon (RNKR, 1979), in flood hazard mapping, and more recently in reports from the Oregon Department of Geology and Mineral Industries relating to tsunami inundation and coastal erosion that have been incorporated into the city's comprehensive plan. Most of the property already is developed.

The property is not within the 100-year floodplain. The property is located in the nearshore tsunami zone, but only a few feet to the south or east are easily accessible areas that will provide safe refuges from any tsunami. The property also is in the coastal erosion zone. Lincoln City Municipal Code Chapter 17.47 controls any future development in this area and requires a geotechnical analysis of the site and a set-back from the bluff edge of 60 times the annual erosion rate plus five feet. Through adopting this requirement the City Council has deemed this an adequate protection and buffer city-wide and the proposed rezoning will not affect this requirement. The proposal to rezone it to the city's RC zone is consistent with this goal.

6. Housing Goal: *"To provide for the housing needs of all citizens."*

The proposed rezoning will have little if any effect on the availability of adequate numbers of needed housing units at price ranges and rents commensurate with the area. Because the property is ocean-front, and ocean-front property is expensive compared to other properties, there is no practical way the property could be used for affordable or workforce housing.

The 2017 Housing Needs Assessment concludes that there is a substantial “surplus” of residentially-zoned land within the Lincoln City UGB. It says Lincoln City has plenty of available land inside its UGB for residential development through 2036 and therefore there is no need to add more land to the UGB to meet state law requirements. The actual figures are: a need for 206 to 249 acres of land, a supply of 1,124 acres within the UGB, and therefore a “surplus” of 876 acres within the UGB.

The proposed rezoning is consistent with this goal.

7. Economy Goal: *“To support the tourist industry and achieve a degree of diversity in the community that will allow a balanced economy that will, in turn, support an adequate level of services for all members of the area.”*

The proposed rezoning will have a positive effect on the tourist economy. The Recreation-Commercial (RC) zone is intended for commercial uses having a definite relationship to the community’s resort and recreation industry such as food, lodging, recreational activities and services that have a resort character. It will encourage development or redevelopment of the property to be rezoned and if used as vacation rentals will allow that use to continue indefinitely rather than ceasing on the sale or transfer of the property. The rezoning is consistent with the Economy Goal.

8. Aesthetic Goal: *“To develop a livable and pleasing city which enhances man’s activities while protecting the exceptional aesthetic quality of the area.”*

By itself, rezoning has little or nothing to do with the aesthetic quality of the area. But there is a “significant aesthetic resource” adjacent to the northern end of the proposed rezoning area, in the right-of-way of SW Third Street, west of SW Ebb Avenue. This is one of many street rights-of-way that were declared significant in 1999 and 2000, principally to preserve them as ocean overlooks and view corridors. At the present time this “significant aesthetic resource” is not developed as an overlook but consists merely of a grassy patch with a barricade backed by salal. See the illustration, below.



Figure 1: SW Third Street Significant Aesthetic Resource

LCMC 17.48.020 requires that “development in areas of significant aesthetic resources must not reduce the scenic character of the area.” The Municipal Code does not provide any standards in this regard, but the Comprehensive Plan does. It requires those proposing development within 100 feet of a scenic viewpoint to provide a detailed diagram and narrative explaining how the proposed development will affect the visual and aesthetic quality of the scenic area. It must address the following:

- a. How the activity will maintain natural vegetation.
- b. If vegetation is removed, how the activity will restore and protect the site from erosion and other negative results.
- c. If necessary, how the activity should be screened to protect the scenic view.
- d. The number, size, and design of signs associated with the activity.
- e. The extent of natural materials and design to be employed in the activity.
- f. The balance between the activity and other surrounding developed areas.
- g. How wildlife habitats and environmental quality will be protected.

This extensive and detailed report will provide the city, through a decision by the Planning Commission, the means to ensure that development or redevelopment on the property will not adversely affect the aesthetic character of the area. The Planning Commission’s decision is appealable to the City Council, and in fact the City Council may call the decision up for review on its own motion.

Another significant protection for the aesthetic character of the area will come as a direct result of rezoning it. Once the property is rezoned into the Recreation-Commercial zone it will be subject to the city’s commercial design standards. This will ensure that any new development on the property will be an attractive, well-designed asset to the community. The rezoning is consistent with this goal.

9. Transportation Goal: *“To provide a safe, convenient and rapid transportation network to facilitate the movement of goods and people.”*

The property is in an area that already is fully developed. A local street runs adjacent to the property. It is less than 200 feet from Highway 101. There is a sidewalk on Highway 101, but not on SW Ebb Avenue. Public transit runs along Highway 101 in both north and south directions. This goal largely is already met in the area, and redevelopment under the new zone will make it better still. The property has frontage on SW Ebb Avenue. LCMC 17.52.230, *Public Infrastructure Improvement Requirements*, requires the installation of curbs, gutters, and sidewalks along abutting streets when properties are developed. This means that if the property is redeveloped the pedestrian transportation network will be improved in both extent and safety through putting in a stretch of sidewalk where none is found today.

A quick look at the reasonable worst case traffic generation before and after the proposed rezoning shows that there would be only a minor traffic impact from the rezoning. The site is long and narrow, constrained by the required setback along SW Ebb Avenue and the requirement for a coastal erosion geological hazard setback along the west side of the property. Taking this into account, the amount of traffic generated by various allowed uses under the existing and the proposed zoning would be as shown in Table 1, below.

	Units	Trips Per Day Per Unit		Total Trips Per Day	PM Peak Trips Per Unit		Total Peak Trips
		RM	RC		RM	RC	
MFR	20	6.72	6.72	134.4	0.62	0.62	12.4
Motel	40	--	5.63	225.2	--	0.47	18.8
SFR	8	9.57	9.57	76.56	1.01	1.01	8.08

Table 1. Vehicle trip generation by various uses in the RM and RC zones, based on ITE Trip Generation Manual.

This shows that in a reasonable worst case development under the RC zone, consisting of a 40-unit motel, would result in 6.2 additional PM peak hour trips compared to the reasonable worst case development allowed (consisting of a 20-unit multifamily dwelling [MFD]) under the existing R-M zone. The maximum total trip generation is estimated to be about 225 trips per day under the RC zone, compared to 134 trips per day under the R-M zone, a difference of 91 trips per day. Given the proximity of Highway 101 to the property it is likely that almost all of

the trips from the property will use the highway. According to ODOT's State Highway Traffic Volumes table, the average daily traffic at the D River traffic counter is 25,400 trips per day. The additional trips resulting from the rezoning would amount to slightly over one-third of one percent of the traffic on the highway. This shows that the traffic resulting from the proposed zone change will not significantly affect the transportation system. The rezoning is consistent with the transportation goal.

10. Energy Goal: *"To conserve energy."*

The energy goal speaks to using ensuring that development in the city meets or exceeds the energy conservation requirements of the building code. In fact the plans examiners and the building official carefully review building plans to make sure any proposed development does just that. Thus any development or redevelopment on the property would be in compliance with this goal.

The energy goal also encourages development that is within walking distance of services and shopping areas. The property is within walking distance of the many employment sites such as the stores and restaurants only a few hundred feet away on Highway 101. The shopping areas along Highway 101 within walking distance include many tourist-oriented businesses as well as those such as McKay's Market oriented toward residents. So while rezoning, by itself, will have no immediate effect on energy conservation, development of the site will conform to this goal.

11. Overall Environmental Goal: *"To achieve a balance between the need to provide housing and services and the need to protect and enhance the natural environment of the city."*

The property already is completely urbanized and largely developed. There is no "natural environment" there. Years ago the city conducted inventories natural resource inventories city-wide for wetlands, riparian areas, fish and wildlife habitat, and aesthetic and scenic areas. These inventories and subsequent "significance" determinations show that the property contains no sites or resources designated as "significant" under the city's Natural Resource Overlay Zone other than the "significant aesthetic resource" in the SW Third Street right-of-way, described above. Thus the city determined there are no unusually valuable resources on the site that warranted restrictions on development that differ from those imposed on all property in the city, other than that one aesthetic resource that has adequate protections in place as described above. The proposed rezoning is consistent with this goal.

12. Shoreland, Beaches, Dunes, Estuary and Ocean Resource Goal: *"To conserve, to protect, to enhance the coastal resources of the city."*

Because the city's coastal shoreland planning area extends westward from Highway 101, the property is within the coastal planning area. Nevertheless, there is only minimal applicability of

this goal. The goal requires protection of significant coastal shorelands resources including significant wetlands, riparian areas, major marshes, or fish and wildlife habitats, and aesthetic and scenic areas. But there are no significant wetlands, riparian areas, major marshes, and fish or wildlife habitats mapped on the property. There is one significant aesthetic area: the right-of-way of SW Third Street west of SW Ebb, as described above. As described above, there are adequate protections for this resource in place to ensure that it is not degraded.

This goal also prohibits residential development and commercial and industrial buildings on beaches, active foredunes, conditionally stable foredunes that are subject to ocean undercutting or wave over-topping, and deflation planes that are subject to ocean flooding. To the limited extent the property includes the beach, this policy will ensure that it is protected from any development. As for the other coastal resources mentioned, this policy does not apply because these coastal resources are not found on the subject property. For these reasons, the proposed rezoning is consistent with this goal.

B. Statewide Planning Goals

In addition to the goals of the city's Comprehensive Plan, the annexation and rezoning must be consistent with Oregon's Statewide Planning Goals. In large measure these parallel the city's goals, and the proposed annexation and rezoning are consistent with the Statewide goals for the same reasons they are consistent with the city's goals as described above.

Goal 1. Citizen Involvement: *"To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process."*

The City has developed a Citizen Involvement Program that the state has approved. The present application for annexation and rezoning will be available for public review and examination at the Planning Department and online at the city's website. There will be two public hearings that will be preceded by notice to the public in general and specifically to surrounding property owners. Both the city's planning commission and city council will hold public hearings on this application and the hearings, which will be televised and live-streamed, will include opportunities for written and oral public comments. This process makes this application consistent with Goal 1.

Goal 2. Land Use Planning: *"To establish a land use planning process and policy framework as a basis for all decisions and actions related to use of land and to assure an adequate factual base for such decisions and actions."*

The city has adopted a land use planning process and policy framework in the form of the comprehensive plan and the zoning ordinance. These provide the basis for all decisions and actions related to the use of land and ensure an adequate factual base for such decisions and actions. The City Council adopted them after public hearings, and from time to time has revised them as circumstances have changed. The revisions also followed public hearings. The city's Comprehensive Plan has been acknowledged as being consistent with the Statewide Planning Goals. Citizens and affected governmental units had opportunity for review and input during preparation, review, and revision of the plan and implementing ordinances. Review of this application in accordance with the Lincoln City Comprehensive Plan and the applicable zoning ordinance provisions establishes conformance with this goal.

Goal 3. Agricultural Lands: *"To preserve and maintain agricultural lands."*

The property carries the zone of R-M which is a residential zone, not an agricultural zone. It has had this zone for many years. The proposed rezoning does not affect agricultural lands. Accordingly, this goal is not applicable to this application.

Goal 4. Forest Lands: *"To conserve forest lands by maintaining the forest land base and to protect the state's forest economy by making possible economically efficient forest practices that assure the continuous growing and harvesting of forest tree species as the leading use on forest land consistent with sound management of soil, air, water, and fish and wildlife resources and to provide for recreational opportunities and agriculture."*

The property carries the zone of R-M, which is a residential zone, not a forest zone. It has had this zone for many years. The proposed annexation and rezoning do not affect forest lands. Accordingly, this goal is not applicable to this application.

Goal 5. Open Spaces, Scenic and Historic Areas and Natural Resources: *"To protect natural resources and conserve scenic and historic areas and open spaces."*

The property is located well within the city's Urban Growth Boundary. The property does not contain any areas designated as a Goal 5 resource, though it is adjacent to the "significant aesthetic resource" in the right-of-way of SW Third Street. As described above under the Comprehensive Plan Aesthetics goal, there are code and plan provisions already in place that provide strong protections for that resource. Development and redevelopment of the property will not adversely affect the resource and the proposed rezoning is consistent with this goal.

Goal 6. Air, Water and Land Resource Quality. *"To maintain and improve the quality of the air, water, and land resources of the state."*

The city is not in an air quality non-attainment area, nor is it in an air quality maintenance area. There is no danger that it will be in any such area in the foreseeable future. Development pursuant to the city's zoning ordinance of this site would not affect these resources. The city maintains water quality through its wastewater treatment facility, which operates pursuant to a National Pollutant Discharge Elimination System permit, and is within the federal standards for water quality. The city's wastewater treatment facility can handle wastewater from development or redevelopment of the property. The proposed rezoning is consistent with this goal.

Goal 7. Areas Subject to Natural Disasters and Hazards: *"To protect people and property from natural hazards."*

The property is mostly in the nearshore tsunami evacuation zone, but at its southern end it is not. It has easy walking access to the areas outside the tsunami zone. The property is in the coastal erosion zone. Lincoln City Municipal Code Chapter 17.47 controls any future development in this area and requires a geotechnical analysis of the site and a set-back from the bluff edge of 60 times the annual erosion rate plus five feet. Through adopting this requirement the City Council has deemed this an adequate protection and buffer city-wide and the proposed rezoning will not affect this requirement. The proposal to rezone it to the city's RC zone is consistent with this goal. Since there are adequate protections in place already, property development there will be consistent with this goal.

Goal 8. Recreational Needs: *"To satisfy the recreational needs of the citizens of the state and visitors and where appropriate to provide for the siting of necessary recreational facilities including destination resorts."*

The property is located in the midst of extensive recreational facilities. The city's seven-mile-long beach is immediately adjacent to the property. The D River State Wayside is a short walk away. The property also has easy access to the Devils Lake State Park and its trails and other recreational facilities, as well as the city-owned open space that is adjacent to the state park. The Lincoln City Cultural Center, with its entertainment and art facilities, is located a short walk from the property. The proposed rezoning is consistent with this goal.

Goal 9. Economic Development: *"To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens."*

The present R-M zoning does not provide any opportunities for economic activities other than the existing VRDs (which are not allowed to be transferred), short-term construction, and small-scale home occupations. The proposed rezoning would allow a greater variety of economic activities as well as stabilizing the existing ones. Stabilization is important to economic investment; without it the incentive to invest is greatly reduced, if not eliminated completely.

Moreover, the greater suite of allowed economic activities under the RC zone would encourage the creation of jobs. These facts demonstrate that the proposed rezoning is consistent with the Economic Development Goal.

Goal 10. Housing: *“To provide for the housing needs of citizens of the state.”*

The proposed rezoning will have little if any effect on the availability of adequate numbers of needed housing units. Because the property is ocean-front, and ocean-front property is expensive compared to other properties, there is no practical way the property could be used for affordable or workforce housing.

The 2017 Housing Needs Assessment concludes that there is a substantial “surplus” of residentially-zoned land within the Lincoln City UGB. It says Lincoln City has plenty of available land inside its UGB for residential development through 2036 and therefore there is no need to add more land to the UGB to meet state law requirements. The actual figures are: a need for 206 to 249 acres of land, a supply of 1,124 acres within the UGB, and therefore a “surplus” of 876 acres within the UGB.

Goal 11. Public Facilities and Service: *“To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.”*

The property is fully urbanized and developed, and is currently being served by public services and utilities as follows:

- A) The property is currently being served by electric power through Pacific Power.
- B) The property is currently receiving water service from the City of Lincoln City.
- C) The property is currently receiving sanitary sewer service from the City of Lincoln City. D) The property is currently receiving natural gas service from NW Natural.
- E) The property is currently served by street lighting from the City of Lincoln City and Pacific Power.

Services are currently available and on site, and no changes or extensions are requested or needed. This goal is satisfied.

Goal 12. Transportation : *“To provide and encourage a safe, convenient and economic transportation system.”*

Rezoning, by itself, will not affect transportation. But once it is accomplished, the property will be able to be developed with uses other than what is allowed now, that could have some level of impact on the city’s transportation system. As described above under the Comprehensive

Plan Transportation Goal, in a reasonable worst case development scenario under the RC zone, there would be 6.2 additional PM peak hour trips compared to development allowed under the existing zone. The total trip generation was estimated to be about 225 trips per day, which is only 91 trips more than what could be expected under the current zoning. This additional traffic is just a little more than one-third of one percent of the traffic on Highway 101. The traffic resulting from the proposed zone change will not significantly affect the transportation system.

The property has about 450 feet of frontage on SW Ebb Avenue. LCMC 17.52.230, *Public Infrastructure Improvement Requirements*, requires the installation of curbs, gutters, and sidewalks along abutting streets when properties are developed. This means that the pedestrian transportation network will be improved in both extent and safety through putting in a stretch of sidewalk where none are found today. The rezoning is consistent with the transportation goal.

Goal 13 Energy Conservation: *"To conserve energy."*

The property is adjacent to existing utilities and city streets. The property is within walking distance of numerous employers, a grocery store, other retail, recreation, public transportation, and community services. Development would be required to provide sidewalks that would encourage non-motorized transportation. All of this would result in substantial energy conservation compared to development elsewhere in the urban growth boundary. The annexation and rezoning, therefore, would be consistent with the energy goal.

Goal 14. Urbanization: *"To provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities."*

The property consists of already urbanized land within the city limits. Rezoning will not result in any need to extend public services such as water, sewer, and police. Rezoning the property will preserve the efficiencies that exist today and in fact enhance them through encouraging even more efficient use of oceanfront property located at the center of the city. The proposed zoning is consistent with the surrounding uses and zoning. The rezoning proposal meets this goal.

Goal 15. Willamette River Greenway: *"To protect, conserve, enhance and maintain the natural, scenic, historical, agricultural, economic and recreational qualities of lands along the Willamette River as the Willamette River Greenway."*

The State of Oregon established the boundaries of the Willamette River Greenway in the 1980's, and the property is not within the Greenway. Accordingly, Goal 15 does not apply to this application.

Goal 16. Estuarine Resources: *“To recognize and protect the unique environmental, economic, and social values of each estuary and associated wetlands; and to protect, maintain, where appropriate develop, and where appropriate restore the long-term environmental, economic, and social values, diversity and benefits of Oregon’s estuaries.”*

The property is not within or adjacent to any estuarine areas. This goal is not applicable to the proposed rezoning.

Goal 17. Coastal Shoreland: *“To conserve, protect, where appropriate, develop and where appropriate restore the resources and benefits of all coastal shorelands, recognizing their value for protection and maintenance of water quality, fish and wildlife habitat, water-dependent uses, economic resources and recreation and aesthetics. The management of these shoreland areas shall be compatible with the characteristics of the adjacent coastal waters; and To reduce the hazard to human life and property, and the adverse effects upon water quality and fish and wildlife habitat, resulting from the use and enjoyment of Oregon’s coastal shorelands.”*

Because the city’s coastal shoreland planning area extends westward from Highway 101, the property is within the coastal planning area. Nevertheless, there is only minimal applicability of this goal. The goal requires protection of significant coastal shorelands resources including significant wetlands, riparian areas, major marshes, fish and wildlife habitats, and aesthetic and scenic areas. But there are no mapped significant wetlands, riparian areas, major marshes, fish or wildlife habitats, and only the small aesthetic area adjacent at SW Third Street. This goal also prohibits residential development and commercial and industrial buildings on beaches, active foredunes, conditionally stable foredunes that are subject to ocean undercutting or wave overtopping, and deflation planes that are subject to ocean flooding. This policy does not apply because these coastal resources are not found on the subject property.

Goal 18. Beaches & Dunes: *“To conserve, protect, where appropriate develop, and where appropriate restore the resources and benefits of coastal beach and dune areas; and To reduce the hazard to human life and property from natural or man-induced actions associated with these areas.”*

This goal requires local governments to inventory beaches and dunes in order to provide information necessary for identifying and designating beach and dune uses and policies for the governments’ comprehensive plans. Lincoln City relies on the inventory material contained in two studies: The inventory material is from Beaches and Dunes of the Oregon Coast (O.L.C. & D.L., 1975) and Environmental Hazard Inventory, Coastal Lincoln County (RNKR Associates, 1977). The property is not in a designated beach or active dune area. Accordingly, Goal 18 does not apply to this application.

Goal 19. Ocean Resources: *“To conserve marine resources and ecological functions for the purpose of providing long-term ecological, economic, and social value and benefits to future generations.”*

This goal relates to actions by local, state, and federal agencies that are likely to affect the ocean resources and uses of Oregon’s territorial sea. Neither the currently allowed uses of the property nor the additional uses that would be allowed under the proposed RC zone are likely to affect marine resources and ecological functions and accordingly Goal 19 does not apply to this application.

C. Transportation Planning Rule

OAR 660-012-0060(1): *“If an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation (including a zoning map) would significantly affect an existing or planned transportation facility, then the local government must put in place measures as provided in section (2) of this rule, unless the amendment is allowed under section (3), (9) or (10) of this rule.”*

The Transportation Planning Rule requires the city to determine whether a proposed land use amendment would “significantly affect an existing or planned transportation facility” and if so to mitigate that effect through certain prescribed measures. In the present case the issue is whether the proposed rezoning would “significantly affect” Highway 101. If not, then analysis under the transportation planning rule is completed and no mitigation is necessary. The initial analysis under the transportation planning rule is a comparison of reasonable worst case scenarios under the existing and proposed zones, in this case R-M and RC. As shown above under a reasonable worst case analysis the RC zoning would result in 6.2 additional PM peak hour trips compared to the trips generated under the R-M zoning. Also, based on 2018 traffic counts on Highway 101 at the D River the addition of these weekday peak hour trips will increase travel on Highway 101 by 0.002% at the maximum hour. Based on these findings, the additional 6.2 peak hour trips generated by the zone change will not significantly affect the transportation system and, therefore no further traffic impact analysis is needed and no further inquiry under the transportation planning rule is required.

Prepared and submitted by:

Richard Townsend

Townsend Planning & Design LLC
1936 NE 63rd Street
Lincoln City, OR 97367
townsendplanning@gmail.com
541-921-0474

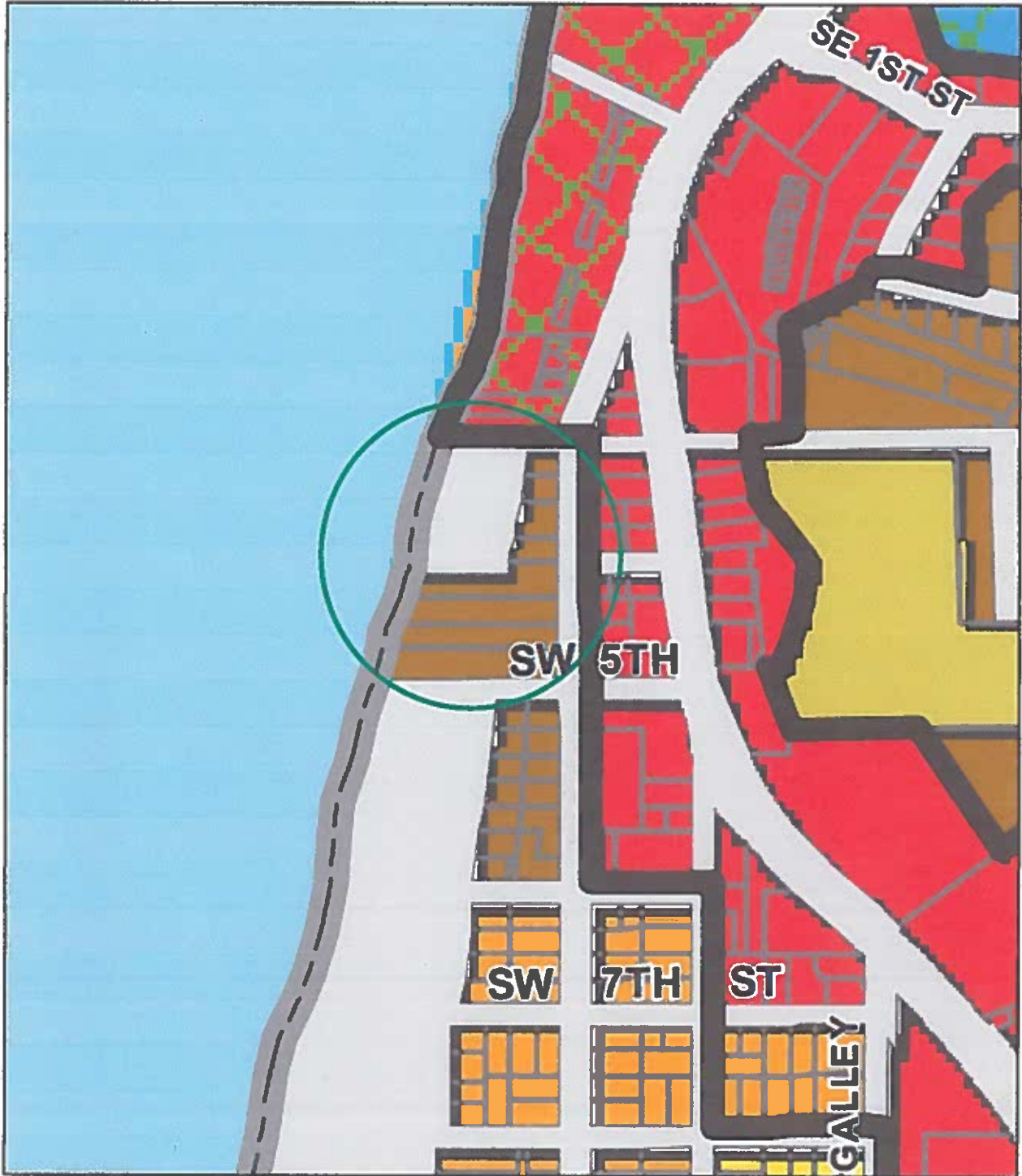


Figure 2: Zoning map detail showing the property proposed for rezoning circled in green.

AnneMarie Skinner

From: Daniel Wentz
Sent: Thursday, December 19, 2019 4:29 PM
To: James White
Cc: Stephanie Reid
Subject: RE: CPA & ZC 2020-01 Scrutton et al

James,

Public Works doesn't have any comments on this zoning change.

Thanks



Daniel Wentz, MPH
 ENGINEERING TECHNICIAN III

City of Lincoln City | Public Works
 801 SW Hwy 101 | PO Box 50 | Lincoln City, OR
 P: 541.996.1238 | C: 541.364.1029
 E: Dwentz@lincolncity.org | W: LincolnCity.org

From: James White
Sent: Thursday, December 19, 2019 1:37 PM
To: AnneMarie Skinner <askinner@lincolncity.org>; Alison Robertson <arobertson@lincolncity.org>; Brandon Zipser <brandonz@nwcodepros.com>; Daniel Wentz <dwentz@lincolncity.org>; 'Duane Liner' <duane.j.liner@odot.state.or.us>; 'Ed Ulrich' <fulrich@nlfr.org>; Jeanne Sprague <jsprague@lincolncity.org>; Jerry Palmer <jpalmer@lincolncity.org>; Lila Bradley <lbradley@lincolncity.org>; 'ODOT Region 2 Manager' <ODOTR2PLANMGR@odot.state.or.us>; Richard Appicello <rappicello@lincolncity.org>; Ronald Chandler <rchandler@lincolncity.org>; 'Scott Nelson' <brian.s.nelson@odot.state.or.us>; Stephanie Reid <sreid@lincolncity.org>
Subject: CPA & ZC 2020-01 Scrutton et al

Good afternoon,

The attached application and associated materials have been submitted to the Planning and Community Development Department for the above-referenced project. Please review the materials to determine whether everything has been provided to allow your department to provide comments for the requested comprehensive plan map and zone change. Please reply as follows:

1. If there are items or information missing from the materials, please reply to this email specifically indicating the items or information needed.
2. If the application is complete for your purposes, please reply to this email indicating the application is complete.

AnneMarie Skinner

From: Frederick Ulrich <fulrich@nlfr.org>
Sent: Monday, January 6, 2020 12:10 PM
To: James White; AnneMarie Skinner; Alison Robertson; Brandon Zipser; Daniel Wentz; 'Duane Liner'; Jeanne Sprague; Jerry Palmer; Lila Bradley; 'ODOT Region 2 Manager'; Richard Appicello; Ronald Chandler; 'Scott Nelson'; Stephanie Reid
Subject: RE: CPA & ZC 2020-01 Scrutton et al

The submitted documents do not indicate any conflict with the 2019 Oregon Fire Code.



Frederick E. (Ed) Ulrich, Jr.

Fire Marshal

North Lincoln Fire & Rescue District #1

P.O. Box 200 / 4520 SE Highway 101
 Lincoln City, Oregon 97367
 541-996-2233 (office) 541-996-5344 (fax)
 541-921-9024 (cell)

From: James White <jwhite2@lincolncity.org>
Sent: Monday, January 06, 2020 11:01 AM
To: AnneMarie Skinner <askinner@lincolncity.org>; Alison Robertson <arobertson@lincolncity.org>; Brandon Zipser <brandonz@nwcodepros.com>; Daniel Wentz <dwentz@lincolncity.org>; 'Duane Liner' <duane.j.liner@odot.state.or.us>; Frederick Ulrich <fulrich@nlfr.org>; Jeanne Sprague <jsprague@lincolncity.org>; Jerry Palmer <jpalmer@lincolncity.org>; Lila Bradley <lbradley@lincolncity.org>; 'ODOT Region 2 Manager' <ODOTR2PLANMGR@odot.state.or.us>; Richard Appicello <rappicello@lincolncity.org>; Ronald Chandler <rchandler@lincolncity.org>; 'Scott Nelson' <brian.s.nelson@odot.state.or.us>; Stephanie Reid <sreid@lincolncity.org>
Subject: RE: CPA & ZC 2020-01 Scrutton et al

Good morning,

The attached application and materials have been deemed complete and are ready for review. **Please provide comments/conditions of approval by Thursday, January 23rd at 5:00 p.m.** If responses are not received by the date and time indicated, the assumption is that your department has no comments regarding the attached application.

Thank you,



James White
 Assistant Planner

AnneMarie Skinner

From: Karen Scrutton
Sent: Monday, February 3, 2020 7:37 PM
To: Planning
Subject: CPA & ZC 2020-01 Scrutton etal

Dear Members of the Planning Commission,

We've owned our home at 405 SW Ebb for the past 20 years. The current zoning on our block is for multi family (RM zone). Our block is narrow shaped and has the ocean on one side and commercial properties on the other side. We are across the street from the dilapidated old fire hall, the Sip & Sand restaurant that has been closed for over 10 years and The Pier restaurant dumpster. Our block is not a good fit for apartments / multi family dwellings due to it's shape (long skinny wedge) and land costs of the oceanfront.

The 2 empty lots to our south (next door) have been vacant for longer than 20 years and occupied with people building forts in the shrubs and climbing down the bank to the beach. This block could benefit from a zone change to RC zone. It would spark ideas for a buyer to build on the 2 empty lots or give different options to all the owners of these narrow shaped lots. Please consider this zone change for us and our neighbors on the block.

Jean Celia
Mike Test
4523 NW Pacific Court
Lincoln City, Oregon 97367

February 10, 2020

Lincoln City Planning Commission
801 SW Hwy 101
Lincoln City, Oregon 97367



RE: CPA & ZC 2020-01 Scrutton et al.

Dear Commissioners:

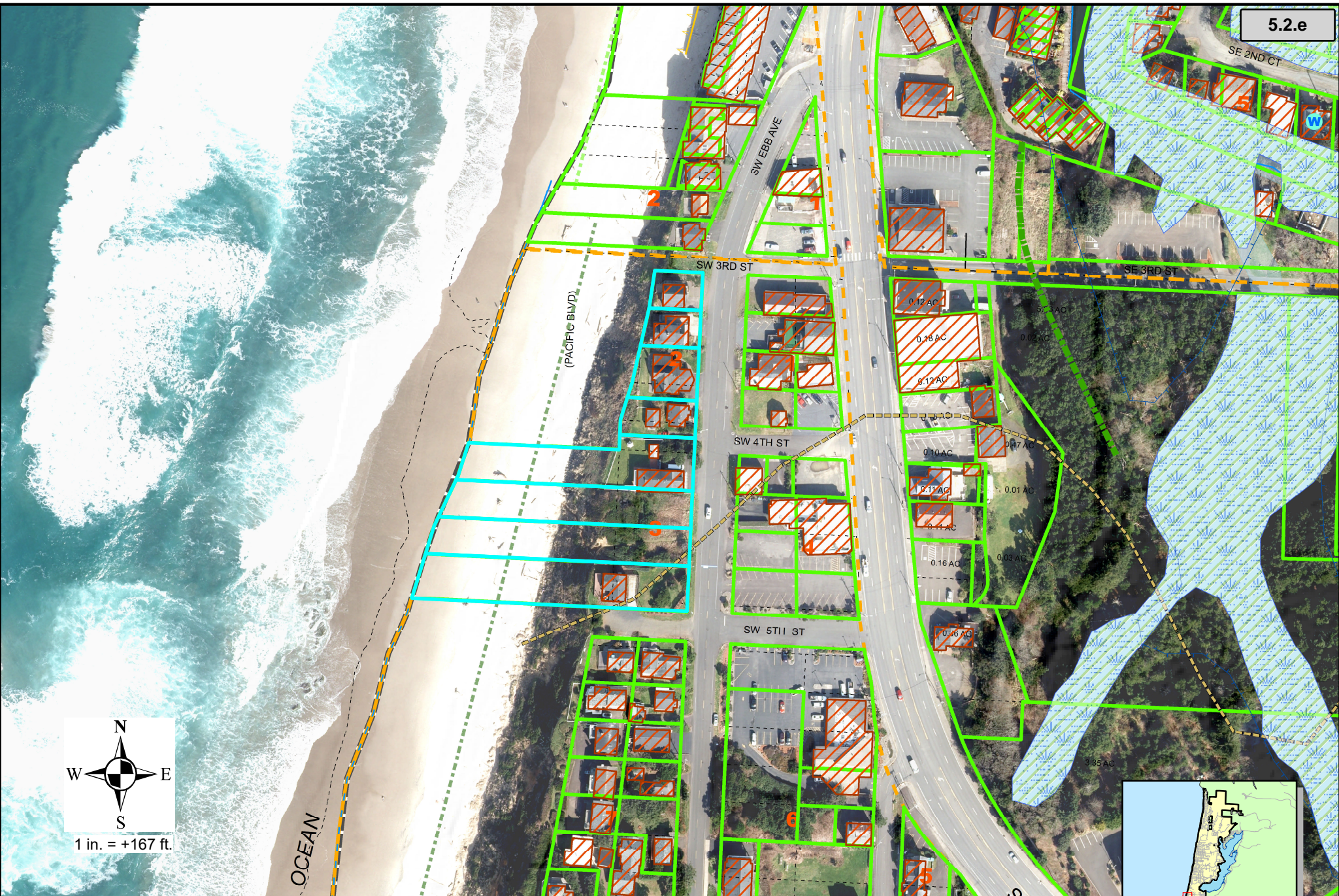
Thank you for reviewing the above-referenced application.

Since this property is in next to commercial uses (Subway, bank, etc.), and one block west of Hwy 101, please consider re-zoning it from RM. The configuration of the subject properties (a long, thin wedge) does not lend itself to multi-family construction, such as apartment development. The value of oceanfront property also is not conducive to such development.

Thank you again for your consideration.

Sincerely,

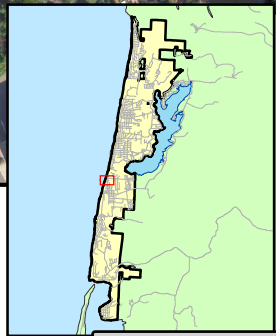
Jean Celia

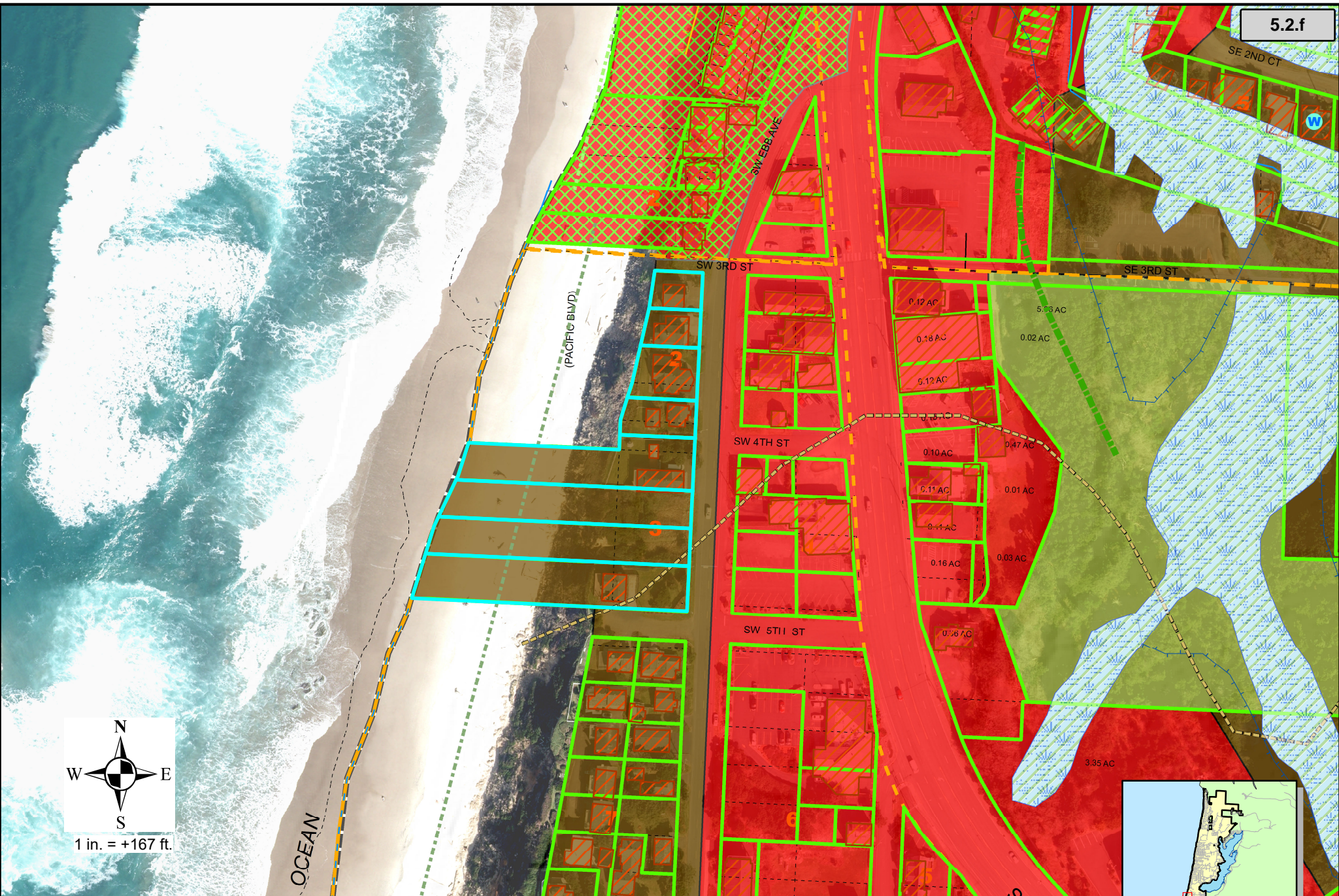


Aerial Map



City of Lincoln City government use only. Use for any other purpose is entirely at the risk of the user. This product is for informational purposes and may not have been prepared for, or be suitable for legal, engineering, or surveying purposes. Users of this information should review or consult the primary data and information sources to ascertain the usability of the information.

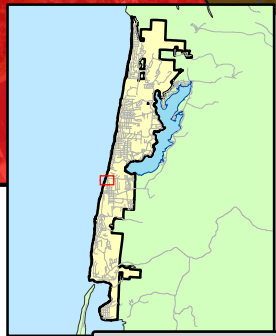


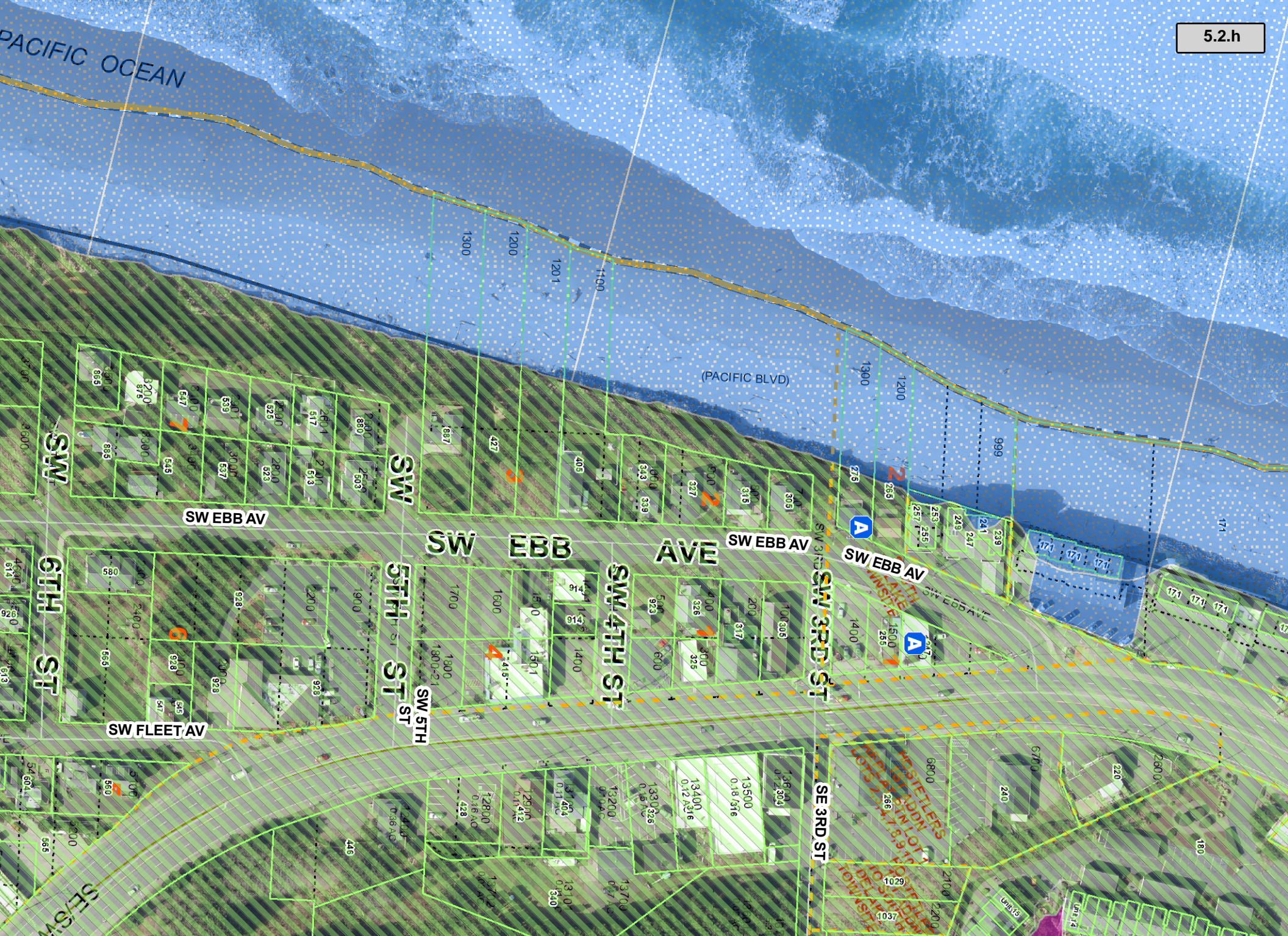


Zoning Map



City of Lincoln City government use only. Use for any other purpose is entirely at the risk of the user. This product is for informational purposes and may not have been prepared for, or be suitable for legal, engineering, or surveying purposes. Users of this information should review or consult the primary data and information sources to ascertain the usability of the information.





TOWNSEND PLANNING & DESIGN LLC

1936 NE 63RD STREET
LINCOLN CITY, OR 97367



PHONE: (541)921-0474

EMAIL: TOWNSENDPLANNING@GMAIL.COM

Case File CPA/ZC 2020-01

Scrutton et al. Comprehensive Plan Amendment and Zone Change

APPLICANTS' ADDITIONAL TESTIMONY AND EVIDENCE

This is a supplement to the applicant's narrative previously submitted. Its principal purpose is to respond to issues raised in the staff report. The applicant's narrative is incorporated here by reference.

Introductory Information

1. Differences from the Cho and Sutton Applications. At the outset I want to make a clear differentiation between this application and two other proposed rezonings that the city council recently denied: the single-lot Sutton rezoning by the Community Center and the single-lot Cho rezoning by the Surftides. Those involved single lots that directly abutted other residentially zoned lots. There was no separation of any kind between them and the other residentially zoned properties that they abutted or in one case wedged into.

Here two factors are very different. First, there is a street, a public right-of-way, 40 feet wide, that separates the area to be rezoned from the remaining residentially zoned area. Second, and perhaps more important, there is a topographic change that creates a geographic differentiation between the rezoned area and the rest of the area. At SW Ebb and 5th Street, the ground elevation is 68 feet. But as one heads south the elevation rapidly changes. At 7th street it is 120 feet, an increase of over 50 feet. By the time one gets up to Ebb and 8th Street, the elevation is 142 feet, almost 80 feet higher. There is a clear difference between the rezone area and the elevated property to the south. The

horizontal and vertical spacing makes this situation very different from those past situations.

Also, right now at this site there is a 450 foot interface between the commercial zoned area to the east and the residential zoned area that this application relates to. Right now that interface is characterized on the commercial side by parking lots, storage lockers, dumpsters, and a couple of derelict commercial buildings. The rezoning would reduce that interface to only about 130 feet, which would be along SW 5th Street, so to the extent one is concerned about potential conflicts between commercial uses and residential uses, the rezoning will reduce the interface, and therefore the potential for conflicts, by over 70%. In that way, rather than creating conflicts, it largely cleans things up.

2. Size of the Property. I should clear up the matter of the size of the property. The staff report says there's about 2.06 acres while the applicant's narrative says an acre. They're both right, depending on the context. The difference comes from reliance on the assessor's office's distinction between land that is east of the vegetation line on the beach and land that is to the west. There is about an acre of land in the four southernmost lots that is on the beach and west of the vegetation line that while technically part of those lots, is not developable and not taxed, and therefore is not really being changed regarding allowed uses. In much of the discussion in the application and here it is that one acre up on top of the bluff that really matters.

3. Suitability for Multi-family Development. I also want to address the suitability of the site for multi-family housing development. For the moment ignore the fact that except for two lots, this property already is developed. Its location and configuration preclude multi-family development. Remember that there is only one acre of developable land in these 8 lots. That's 43,560 square feet. The multi-family development standards require a 20-foot setback from the street. The street frontage along Ebb Avenue is 450 feet long. Twenty times 450 is 9,000, so the developable portion of the lots comes down to 34,560 square feet. Then there is the required geological setback from the bluff. That is 60 times the annual erosion rate plus five feet. Assuming this site is typical of Lincoln City's erosion rate, the erosion rate is 0.27 feet per year. That is a little more than 3 inches per year. Sixty years times 3 inches is 180 inches, or 15 feet. 15 feet plus 5 feet is 20 feet. Again the property is 450 feet long, and 20 feet times 450 feet (actually it's

somewhat longer) is another 9,000 square feet. So now we're down to 25,560 square feet.

Into that a developer would have to get the building or buildings for the apartments themselves, plus the required parking, plus the required landscaping, plus the required recreation area. Each of those pushes down the number of apartments that would physically fit on the land. According to the county assessor, the land has a value of about \$2.8 million per acre. At that price you need to either a lot of apartments or really, really, high rents. You can't get very many apartments on this land and no one has ever identified a market in Lincoln City for really, really, high rents.

To illustrate, compare this site's \$2.8 million per acre to the land values of the last three apartment projects in Lincoln City: Windward Place by the golf course, Lake Forest Commons by the hospital, and the other by Bi-Mart. Those three had land values very close to each other and they averaged just over \$400,000 per acre. The land value of the property we're talking about here is SEVEN times as high as those of the other apartment projects, and this site is much more constrained by its configuration (a long, narrow wedge).

Multi-family development likely will never pencil out on this property. RC zoning, with different setback requirements in the front yard makes much more sense for this site.

Now stop ignoring the fact that the property already is mostly developed. The value of improvements, according to the Lincoln County Assessor, is \$1,252,120. There are only two undeveloped lots in this property, and according to the county assessor they total only a quarter of an acre of buildable area. Multi-family development is highly unlikely. A four-plex might fit, and in the RC zone that would be a conditional use subject to the city's commercial design standards, giving the city a great deal of control over what gets built. Alternatively four-flats could be built on them, and they're supposed to look like just a big house, so there would be no real conflict with any residential uses to the south. Finally, remember that any kind of residential development that is allowed in the RM zone also is allowed in the RC zone. If people think apartments or townhouses or single-family dwellings are a good idea they will be free to go ahead and build them.

Comprehensive Plan Goals

I turn now to the issues raised in the staff report regarding whether the proposed rezoning is consistent with the city's comprehensive plan. The sections are numbered in accordance with the numbers of the specific goals in the plan.

1. Land Use Planning

"To establish a land use planning process and policy framework as a basis for all decisions and actions related to use of land and to assure an adequate factual base for such decisions and actions."

The key words here are "to establish a process and policy framework [emphasis added]." This goal is about procedure and structure. It sets procedures for various types of land use decisions including: data base updates; plan goal, policies, or zoning ordinance amendments; comp plan and zoning map amendments (major); comp plan and zoning map amendments (minor); and UGB and urbanization policy amendments.

The planning director has determined that the application before you tonight is a major comp plan and zoning map amendment. As the staff report says, *"Staff considers this a major revision since the requested change from multiple-family residential to recreation-commercial zoning would produce a qualitative change in the character of the land use itself from residential to commercial."* What makes this a major change is the change from residential to commercial.

Goal 1 of the comprehensive plan sets out a process, a procedure, for reviewing major comp plan and zoning map amendments such as is before you here. Goal 1 says (introduced with the word "Procedure"): "Procedure: The proposed amendment must conform to the Statewide Planning Goals and be consistent and compatible with other unamended portions of the comprehensive plan."

Then the staff report then says that rezoning would introduce a new zone to the area. This is not accurate because the area of the proposed rezoning abuts the RC zone immediately to the north, i.e. it is in the area. The staff report also ignores the fact that the more intensely commercial GC zone abuts the area for its entire length to the east. This is hardly introducing commercial zoning to an area that has none.

The staff report then goes on to say that the rezoning from a residential zone to a commercial zone is inconsistent with the comprehensive plan because it is a major

change: "The change is not consistent with the land use planning goal, as it represents a major shift or the first domino to fall in an area that currently contains no RC zoning. Accordingly, the amendment is not consistent with the City's land use planning goal."¹

This kind of change is the very definition of a major change, for which the comprehensive plan's Goal 1 establishes a procedure. It is not the definition of something that is inconsistent with the comprehensive plan. This is exactly what the major change process contemplates. Moreover, elsewhere the comprehensive plan expressly contemplates the need to consider exactly this kind of change. It says, under "Plan Review and Amendment," *"Although the comprehensive plan is designed and intended to be the controlling land use planning instrument to the year 2010, it is important to recognize and effectively deal with major changes in the community. The comprehensive plan reflects the desires of the community at the time it is adopted and must be continually reviewed and revised to keep pace with changing circumstances and community desires and standards."*

The staff report does get it right in its first paragraph under Goal 1, *"Review of these amendments in accordance with the Comprehensive Plan and the applicable zoning ordinance provisions, including the provisions of LCMC Chapter 17.88, establishes conformance with this goal."* In other words, following the procedures set out in the comp plan and the municipal code, means this goal is satisfied. That is what the hearing before the Planning Commission and the hearing before the City Council are about.

5. Natural Hazard Goal

"The City shall control development in hazardous areas to protect life and property from natural disasters and hazards."

In this regard the staff report just says *"The City's maps show the site as being in Bluff Erosion and Tsunami Evacuation zones. With the exception of two of the eight tax lots, the site is fully developed with residential dwellings. The proposal is not consistent with Goal 5."* The staff report contains no evidence supporting this conclusion beyond the bare fact that the property is in the bluff erosion and tsunami hazard zones. It doesn't say why the rezoning would not be consistent with Goal 5.

¹ To the extent anyone is concerned about "dominos" falling, they should keep the Sutton and Cho rezoning denials in mind. These show clearly that the City Council well knows how to draw a line and say "no."

In any event, the goal doesn't say that development should be banned in natural hazard areas – it just needs to be controlled. In fact the goal says, "There are areas in Lincoln City where development activities must be controlled to protect life and property. The City has defined these areas on the Plan Map. The City will allow development within these areas if adequate protective measures can be employed which prevent or minimize damage."

There is a whole chapter in Title 17 (17.47) about controlling development in hazard zones. Particular attention is given to coastal erosion, allowing development provided a geotechnical analysis is conducted and development proceeds in accordance with that analysis. That's what the bluff setback mentioned earlier is all about. That is the control that the city has determined is needed. That code chapter was just updated a few years ago, and no ban on development was proposed or considered.

Regarding the tsunami evacuation zone, there is nothing in the municipal code that prohibits development in the tsunami zone other than essential structures such as hospitals and fire and police stations, or special occupancy structures such as schools and large auditoriums. In fact the tsunami hazard maps have never been adopted as part of the comprehensive plan or the zoning ordinance and so do not fall under the terms of this Goal.

In any event, as noted in the application materials, only a few feet to the south or east are easily accessible areas that will provide safe refuges from any tsunami. In fact, the city has marked the street right in front of the two vacant lots, "Leaving Tsunami Zone." As was shown in the DOGAMI "Beat the Wave" modeling, people in the rezoning area will have 20 minutes or more to get to high ground after the earthquake shaking stops, and will easily be able to reach high ground just by going at what DOGAMI calls a "slow walk pace."

As the staff report notes, the site already is developed. Allowing continued occupancy and development is not contrary to the comp plan or the code. If the city feels additional controls are necessary it is free to enact them, but at this point there is nothing in the plan or the code that provides a basis for limiting development in the tsunami zone.

6. Housing Goal

"To provide for the housing needs of all citizens."

As said in the written narrative, the rezoning will have little or no effect on the availability of housing, especially workforce housing since the land is so expensive (\$2.8 million per acre, plus another \$1.2 million for the existing improvements). The staff report repeatedly emphasizes that the rezoning would remove 2.06 acres of RM zoned land from the available supply of 83.5 acres. Actually, as described before, the actual area east of the vegetation line, which is the developable area, is just one acre. The rest is down over the bluff and on the beach. And all but a quarter of the one remaining acre is already developed and not counted in the 83.5 acres of available RM land. So this rezoning would not reduce the inventory of available RM land by 2 acres.

Also, the staff report lists the kinds of residential development that is allowed in the RM zone, and correctly observes that the RC zone would allow all of them, with the only difference being that a multi-family development would require a conditional use permit in the RC zone, but would be allowed outright in the RM zone. This is a distinction that means nothing in terms of the availability of land for multi-family development. So in fact, the rezoning would not remove any land from the available supply of land zoned for multi-family residential development and it will continue to be available for such development if owners should choose to do so.

8. Aesthetic Goal

"To develop a livable and pleasing city which enhances man's activities while protecting the exceptional aesthetic quality of the area."

The staff report says this goal either is not applicable or not satisfied. I generally agree with the first, that it's not applicable, with the exception of the existence of a significant aesthetic area at SW 3rd Street.

LCMC 17.48.020 says development in areas of significant aesthetic resources must not reduce the scenic character of the area or substantially alter the natural vegetative cover. The comprehensive plan provides a means for ensuring the aesthetic character of the area is protected when development is proposed. As noted in the application materials, the comprehensive plan requires development within 100 feet of a significant aesthetic resource to be subject to a planning commission review, which is to consider:

- How the activity will maintain natural vegetation.
- If vegetation is removed, how the activity will restore and protect the site from erosion and other negative results.

- If necessary, how the activity should be screened to protect the scenic view.
- The number, size, and design of signs associated with the activity.
- The extent [of] natural materials and design to be employed in the activity.
- The balance between the activity and other surrounding developed areas.
- How wildlife habitats and environmental quality will be protected.

The staff report says "While the applicant states that 'this extensive and detailed report will provide the city, through a decision by the Planning Commission, the means to ensure that development or redevelopment on the property will not adversely affect the aesthetic character of the area,' without a statutory development agreement, no mechanism is provided through a rezone application to make such a promise. Actually the opposite is true. This requirement will give strong control over development adjacent to the 3rd Street aesthetic area. And should a time come when a multi-family development is proposed for the area, the fact that it would be a conditional use rather than an outright use would give the city, through the planning commission, the power to impose appropriate conditions of approval protecting aesthetic resources, and even requiring a statutory development agreement that addresses that issue.

Also important from an aesthetic standpoint is the fact that any commercial development in the RC zone is subject to design review under the city's commercial design standards.

Finally, should the city want even more aesthetic protection it can negotiate a development agreement when development is proposed. Right now, no one is proposing development of any kind. But in a nutshell, the rezoning would provide aesthetic protections well beyond those the property currently bears and would be consistent with the aesthetic goal.

9. Transportation Goal

"To provide a safe, convenient and rapid transportation network to facilitate the movement of goods and people."

The staff report says there are no bicycle paths and only sporadic sidewalks in the area of the rezoning, and then concludes that the rezoning would make the transportation goal not met for pedestrian and bicycle traffic. Nowhere does the staff report provide any evidence indicating how that might be true. In the future, any new development will be required to install sidewalks – and they will do so at the time of development. But

there is no requirement for existing development to go back and put in sidewalks or bicycle routes.

The city's transportation system plan has the city responsible for sidewalk infill along SW Ebb between 101 and SW 9th. It says the city will be the primary funding source for the sidewalks and puts them in what it calls Package 4, which is the lowest priority package of transportation improvement projects. In other words, the city, through the TSP, has determined that there is no glaring need for sidewalk improvements in this area at this time, but should funding become available, the city will put them in. Meanwhile, if any new development is proposed, sidewalks will have to be a part of that development.

Likewise, the TSP has a bicycle project for the rezoning area, consisting of pavement markings/signage (e.g., sharrows), designating SW Ebb Ave from US 101 to SW 6th St, and then winding around to Bard Road, as a shared roadway for bikes and cars. Again, this is shown as a city responsibility, and a low priority, again being in package 4.

10. Energy Goal

"To conserve energy."

The staff report says Goal 10 is "partially satisfied," but nowhere does it provide any indication of in what manner it might be unsatisfied, or, more accurately, in what ways the rezoning might not be consistent with the energy goal. The applicant's narrative provides abundant evidence that while there is no impact on the energy goal from the act of rezoning. Any future development, regardless of zoning, will be required to comply with the building code's energy conservation requirements (such as insulation levels), thus complying at that time with the energy goal.

Statewide Planning Goals

Finally I turn to the issues raised in the staff report regarding whether the proposed rezoning is consistent with the Statewide Planning Goals. The sections are numbered in accordance with the numbers of the specific goals. These goals mirror the city's comprehensive plan goals in large measure so the discussions are brief and incorporate the discussions of the appropriate comprehensive plan goals by reference. It is noteworthy that neither the Department of Land Conservation and Development nor the Oregon Department of Transportation has raised any issues regarding conformity with the Statewide Planning Goals.

Goal 2 Land Use Planning

Like the comprehensive plan's Goal 1, Statewide Planning Goal 2 is procedural. It sets how to develop a plan and how to revise it. It sets out procedures to be followed. The staff report first says "Review of this proposed rezoning in accordance with the Lincoln City Comprehensive Plan and the applicable zoning ordinance provisions establishes conformance with this goal." In other words, going through the land use planning process is what this goal requires. That's what this hearing is about and it demonstrates conformance to this goal.

But then the staff report says, "The proposed amendment does not further compliance with existing policies to stabilize and protect existing residential neighborhoods from incompatible uses." There is nothing in the staff report that explains how this conclusion was reached or why it is applicable under Goal 2. A hint comes from the staff report's incorporation of the discussion of the city's Goal 1 into this goal's explanation. The supposed issue there was that the change from RM to RC is a major change and therefore somehow not allowed. In response to that argument, I incorporate my response to the city's Goal 1 here.

I'll add that Statewide Goal 2 says plans "shall be reviewed and, as needed, revised on a periodic cycle to take into account changing public policies and circumstances." That is what this application is about. Change per se is not only not banned, it's recognized as appropriate. Statewide Planning Goal 2 also contains exactly the same language as Lincoln City's Goal 1 regarding what constitutes a major change. Then, under the topic of major changes, it says, "The plan and implementation measures should be revised when public needs and desires change and when development occurs at a different rate than contemplated by the plan." That is what is being done here. The procedures for doing that are being followed and accordingly the proposed comprehensive plan amendment and zone change are consistent with Goal 2.

Goal 5 Open Spaces, Scenic and Historic Areas and Natural Resources

We agree that Goal 5 generally is not applicable, but do note the existence of the significant aesthetic area in the SW 3rd Street right-of-way. I incorporate my discussion of the city's Goal 8 here in this regard.

Goal 6 Air, Water and Land Resource Quality

The staff report says this goal is not applicable. To the extent it might be applicable we have addressed it in the other application materials.

Goal 7 Areas Subject to Natural Disasters and Hazards

The staff report says the site is “in the Bluff Erosion and Tsunami Evacuation Zones. The findings concerning the Comprehensive Plan’s Natural Hazard Element are incorporated herein by this reference.” It then concludes that the proposed rezoning is not consistent with Goal 7. In other words, merely because the site is in these two hazard areas the proposed rezoning is not consistent with the Goal. As was shown above under the comprehensive plan Goal 5, this is not the case. The responses to the City’s Goal 5 are incorporated here by reference. . In a nutshell, the existence of the hazards does not preclude the rezoning or potential redevelopment of the site, erosion protection procedures are in place, and a slow walk will get you out of the tsunami zone.

Goal 10 Housing

The staff report says the proposed rezoning is not consistent with Goal 10. We disagree. The staff report says “Current multiple-family residential zoning would allow the existing residences to remain, as well as allowing for new development of multi-family dwellings on the undeveloped tax lots or a redevelopment of the entire site into a large multi-family complex.” Largely true, except for a quibble on the idea of a “large” multi-family complex, for the reasons described at the outset including the small size of the properties, their long and narrow configuration, and the high value of this oceanfront land.

The staff report goes on to say, “A change of zoning to the RC zone would allow the same number of units currently allowed, but would require conditional use permit approval for such.” The implication is that a conditional use is a bad thing, but from the city’s standpoint it is good in that it gives appropriate controls that are not available with an outright use.

The staff report then says, “Zoning to the RC zone also allows for unlimited use of the existing dwellings as vacation rental dwellings, thus removing them from the available housing stock for permanent residences.” There are six houses there. Three of them already are VRDs. Frankly this is a perfect place for VRDs: at the oceanfront and surrounded by commercial zoning. Allowing this area to have VRDs would in fact take some of the pressure off other areas where VRDs are not so compatible. The applicant’s arguments regarding the City’s housing goal are incorporated here by reference.

As the staff report notes elsewhere, the Housing Needs Assessment says that over the next 20 years there will be a need for 1,484 new dwellings, including second homes and VRDs. There is abundant residential land in the city and the UGB, and this site would accommodate less than one-half of one percent of the estimated demand. VRDs are part of the demand for housing and this site can accommodate a part of that VRD demand.

Goal 12 Transportation

The staff report says, "Neither bicycle lanes or sidewalks exist on the streets." Then it concludes that the zone change is consistent with Goal 12 for vehicular traffic, but not for pedestrian and bicycle traffic. No explanation is given for the pedestrian and bicycle conclusion other than a reference to the staff report findings concerning the City's Transportation goal. In fact the proposed rezoning is consistent with the statewide transportation goal for the reasons I have given under the city's transportation goal. It is relevant that ODOT has not objected to the proposed rezoning on this or any other grounds.

Moreover, the transportation goal is focused on transportation system planning, and the city, working with ODOT, recently adopted a TSP that complies with this goal. Future development will have to comply with the TSP. As demonstrated in the application, the rezoning will not result in any significant increase in vehicle trips or any other significant impact on the existing transportation system.

Nowhere does the staff report provide any evidence explaining how the current lack of sidewalks and bike routes makes the proposed rezoning inconsistent with the goal. As was said above under the city's transportation goal, in the future, any new development will be required to install sidewalks – and they will do so at the time of development. But there is no requirement for existing development to go back and put in sidewalks or bicycle routes. In any event, through the TSP the city already has a plan for putting in sidewalks and marking the street pavement for a bike route. Notably the TSP does not identify any need for a major transportation facility in this area.

Conclusion

As shown here and in the application materials, the proposed rezoning is consistent with the comprehensive plan and the statewide planning goals. The evidence and conclusions in the staff report are insufficient to support a contrary conclusion. There is no opposition from the community or any public agencies, and the only comments submitted have been supportive of the rezoning.

It is a small area that is proposed for rezoning, it is unsuitable for apartment development, and it tidies up the interface between residential zoning and commercial zoning. It would be difficult to find a place where commercial zoning would have a lesser impact on nearby residential zoned lands.

Respectfully submitted,



Richard Townsend

Townsend Planning & Design LLC



**PLANNING COMMISSION STAFF REPORT
MEETING DATE: March 3, 2020**

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

Ex parte and quasi-judicial training

Ex parte and quasi judicial (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, prejudgment, 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.