

Time Extension Staff Report for Planning Commission Public Hearing on July 5, 2022 Case File VAR 2022-03

Date: June 28, 2022
Case File: EXT 2022-01 The Cove
Property Owners: Nandina & Co, LLC
Situs Address: Unaddressed
Location: South side of SE 16th St/SE Marine Ave, approximately 630 feet east of Hwy 101
Tax Map and Lot: 07-11-22-AA-06800-00

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

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

Site Size: 3.41 acres

Proposal: Request to extend preliminary and final master plan/preliminary plat approval

Surrounding Land Uses and Zones:
North: Undeveloped; R-M
South: Apartments; R-M
East: Undeveloped, houses; R-1-7.5
West: House, North Lincoln Sanitary Service; R-M, PI

Authority: Lincoln City Municipal Code (LCMC) 17.76.020 states that all land use applications and approvals shall be decided by using Type I, II, III, or IV procedures. The procedure types govern the decision-making process for that application. Table 17.76.140-1 lists a time extension for a case that was originally a Type III procedure as a Type III procedure with the Planning Commission as the review authority.

Procedure: The application was received on May 31, 2022. The application was deemed complete on June 7, 2022. On June 14, 2022, pursuant to LCMC 17.76.050.E, the Planning and Community Development Department mailed a notice of public hearing to property owners within 250 feet of the subject property. The *News Guard* published the public hearing notice on June 21, 2022.

Applicable Substantive Criteria: LCMC Section 17.76.050 Type III Procedure
LCMC Section 17.76.150 Extension of Decision



BACKGROUND

The subject property (site) is identified as Assessor's Map 07-11-22-AA-06800-00, unaddressed, and located on the south side of SE 16th St/SE Marine Ave approximately 630 feet east of Hwy 101. The site is undeveloped.

The site does not contain any bluff erosion hazards, aesthetic resource, floodway, flood hazard areas, or natural resource overlay zone. The site does contain wetlands, but they are not significant so there are no city requirements for these wetlands. The Oregon Department of State Lands has jurisdiction over non-significant wetlands.

North of the site is a platted subdivision for attached single-unit dwellings, with six lots containing dwellings and the remainder of the lots undeveloped. The area to the south is developed with residential uses, as is the area to the southeast. The area to the northeast is owned by the Siletz Tribe and is undeveloped. The area to the west is developed with either housing or North Lincoln Sanitary Services.

In 2020, the request for preliminary and final master plan/preliminary plat approval of PUD 2020-01/SUB 2020-01 The Cove was received and processed. The Planning Commission denied the request. Subsequently, the property owners appealed the denial, and City Council held a public hearing on the requested appeal on September 21, 2020. City Council approved the appeal request, thereby approving PUD 2020-01/SUB 2020-01. One of the conditions of approval was that the project was to be developed in one phase, with completion of required infrastructure and final plat recording by October 12, 2022. To date, no construction of the required infrastructure has commenced, nor has the final plat been submitted for review.

On May 31, 2022, the property owners submitted a completed time extension application to request approval of the one-time allowed time extension of the approved PUD 2020-01/SUB 2020-01.

COMMENTS

No comments were received.

ANALYSIS

Chapter 17.76 Procedures

17.76.050 Type III procedure

- A. General Description. Type III procedures apply to quasi-judicial permits and applications. Decisions on quasi-judicial permits and applications are made by either the planning commission or city council, and require substantial exercise of discretion and judgment in applying approval criteria. Type III procedures require public notice and one or more public hearings.*
- B. When Applicable. Table 17.76.020-1 identifies Type III applications. Applications not listed in Table 17.76.020-1 may be identified as Type III by the director based on the general description in this section.*
- C. Pre-Application Conference. A pre-application conference is not required prior to application submittal of a Type III application, but is strongly encouraged. Guidelines for pre-application conferences are set forth in LCMC 17.76.090.*
- D. Application Requirements. Type III applications shall:*
 - 1. Be submitted on application forms provided by the department and shall include all information, exhibits, plans, reports, and signatures requested on the application forms.*
 - 2. Be accompanied by the required fee as adopted by city council resolution.*
 - 3. Be subject to the completeness review procedure set forth in LCMC 17.76.110(D) and (E).*

Finding: The required application forms and materials were submitted, along with the required fee. The application was deemed complete in accordance with LCMC 17.76.110.D and E.

E. Notice of Public Hearing.

1. *After a Type III application has been accepted as completed under LCMC 17.76.110(E), the department shall mail a written public notice to the following:*
 - a. *The applicant and applicant's representative;*
 - b. *Owner of record of the subject property;*
 - c. *Property owners of record within 250 feet of the perimeter property line of the property or properties subject to the application, using the most recently provided property tax assessment roll of the Lincoln County assessor's office as provided to the city to determine property owners of record; and*
 - d. *Any neighborhood or community organization or association recognized by the governing body and whose boundaries include the site.*
 - e. *At the discretion of the application, the department also shall provide notice to the Oregon Department of Land Conservation and Development.*

Finding: The Planning and Community Development Department mailed the public notice of a public hearing to the parties noted in LCMC 17.76.050.E.1.a through e.

2. *The notice of public hearing shall include the following:*
 - a. *A brief description of the request;*
 - b. *A list of the applicable criteria from the ordinance and the comprehensive plan that apply to the application at issue;*
 - c. *The street address or other easily understood geographical reference to the subject property;*
 - d. *The date, time, and location of the hearing;*
 - e. *A statement 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. *The name of a department staff member to contact and the telephone number where additional information may be obtained;*
 - g. *A statement 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;*
 - h. *A statement 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*
 - i. *A general explanation of the requirements for submission of testimony and the procedure for conduct of hearings.*
3. *The failure of a property owner to receive notice does not invalidate the land use action if the notice was sent.*

Finding: The public notice of hearing contained all the information required in LCMC 17.76.050.E.2.a through i.

F. Public notices for Type III applications shall be mailed a minimum of 20 days prior to the first evidentiary public hearing.

Finding: The public hearing is scheduled for July 5, 2022. The public notice was mailed on June 14, 2022.

17.76.140 Expiration of decision

- A. *Unless a different period of time is established within the decision, or under subsection (D) of this section, a land use action or permit granted pursuant to this chapter expires and becomes void automatically as provided under Table 17.76.140-1 unless one of the following circumstances has occurred:*

1. *Substantial construction, which includes required infrastructure construction, has begun and is actively in progress in compliance with the land use action or permit approval; or*

Finding: Substantial construction has not begun.

2. *The approved land use has commenced and is in active operation in compliance with any applicable conditions of approval; or*

Finding: The approved land use has not commenced.

3. *An extension application has been filed pursuant to LCMC 17.76.150; or*

Finding: The required extension application was filed pursuant to LCMC 17.76.150 on May 31, 2022.

4. *A copy of the recorded final plat has been submitted to the department within one year of approval of a partition or subdivision or a copy of the recorded survey map has been submitted to the department within one year of approval of the property line adjustment.*

Finding: A copy of the recorded final plat has not been submitted.

- B. *If multiple applications are processed concurrently, the review authority shall specify in the notice of decision a uniform expiration period for the concurrent applications.*

Finding: The final order gave an expiration date of October 12, 2022.

- C. *If a final local decision is on appeal, the effective date of the decision and corresponding valid period before expiration shall begin when the final decision is issued on the appeal.*

Finding: The final decision was issued in October 2020.

- D. *A comprehensive plan amendment, map amendment, or zone change processed under LCMC 17.77.150 is not subject to expiration or extension.*

Finding: This is not applicable since the project is not a comprehensive plan amendment, map amendment, or zone change.

Table 17.76.140-1: Decision Expirations and Extensions

	<i>Decision Expiration</i>	<i>Extensions Allowed</i>	<i>Review Authority</i>
<i>Type I</i>	<i>1 year</i>	<i>None</i>	<i>Not applicable</i>
<i>Type II</i>	<i>2 years</i>	<i>One extension for 2 years</i>	<i>Director</i>
<i>Type III</i>	<i>2 years</i>	<i>One extension for 2 years</i>	<i>Planning commission</i>
<i>Type IV</i>	<i>None</i>	<i>Not applicable</i>	<i>Not applicable</i>

Finding: PUD 2020-01/SUB 2020-01 was a Type III procedure. Per Table 17.76.140-1, a time extension for a Type III procedure is also a Type III procedure with the Planning Commission as the review authority. The allowance is for one time extension of 2 years. The final order of PUD 2020-01/SUB 2020-01 gives an

expiration date of October 12, 2022. If the time extension request is approved, the new expiration date would be October 12, 2024.

17.76.150 Extension of decision

- A. *Written Request for Extension Required. A request for an extension of the expiration date of a decision must be submitted to the department, on the appropriate form provided by the department, prior to the expiration date of the decision.*

Finding: Final Order 2020-03 states that the project shall be completed in one phase, with completion of required infrastructure and final plat recording by October 12, 2022. To date, installation of required infrastructure has not commenced, nor has the final plat been submitted for review. The property owners completed the required time extension application form and submitted it on May 31, 2022, which is prior to the expiration date. This requirement is met.

- B. *Extension. One extension request may be granted for the applicable period of time as specified in Table 17.76.140-1. If granted, an extension is vested against any code changes adopted since the original decision. The extension is subject to the following approval criteria:*
1. *The extension is necessary because it is not practicable to begin development within the allowed time for reasons beyond the applicant's reasonable control; and*
 2. *The previous land use decision will not be modified in design, use, or conditions of approval.*

Finding: Table 17.76.140-1 allows for one extension. The extension moves the expiration date to October 12, 2024. The applicant states the following in the submitted application:

“The Applicant met with City staff to discuss this project in May of 2019 and submitted a land use application to the City of Lincoln City on February 18, 2020; just a few weeks before the governor of Oregon declared a state of emergency due to the COVID-19 pandemic and issued a stay-at-home order. Believing the pandemic would be over shortly, the Applicant proceeded with the project and it was approved in October 2020. However at the time of the approval, there were still many COVID-19 restrictions in place and the pandemic was creating unforeseen economic impacts (business closures, market uncertainty, and supply chain issues to name a few) that were being felt throughout the state. Because of these unforeseen circumstances, the project has been delayed.”

Staff concurs with the statements issued by the applicant. In addition, staff notes that the economy is in a state of unrest with inflation and increased interest rates. The war between Ukraine and Russia has contributed to the economic unrest. Other projects in the city have been delayed or significantly changed due to increased costs in construction materials, so this project is not alone in the impacts of COVID-19, the war, economy, etc.

RECOMMENDATION

Staff recommends that the Planning Commission hold a public hearing on the time extension request, take public testimony, close the public hearing, deliberate, and determine whether the time extension request complies with the criteria for granting approval of the request or doesn't comply with the criteria.

Staff feels the criteria for granting approval have been met and recommends approval of the request.