

FINAL ORDER 2024-01

**BEFORE THE PLANNING COMMISSION
CITY OF LINCOLN CITY, LINCOLN COUNTY, OREGON
March 19, 2024**

In the Matter of CUP 2023-02, applications)
for Conditional Use Permits for a sewer line) **FINDINGS OF FACT**
extension and for placement of fill in an) **CONCLUSIONS OF LAW**
Open Space Zone East of NE Wave Lane and) **AND ORDER**
NE 51st Loop, and for Modification of an)
approved master plan)

I. NATURE OF PROCEEDINGS

This matter comes before the Planning Commission for the City of Lincoln City for consideration of a Conditional Use Permit application for (1) to extend a sanitary sewer line in city-owned land zoned Open Space, (2) to place fill on city-owned land zoned Open Space to support a street, and (3) to revise an approved planned development master plan by reducing the number of dwelling units from 32 to 29 and break the project into two phases.

The application materials were received on December 4, 2023, and deemed complete on December 22, 2023.

On January 2, 2024 staff mailed notification of the March 5, 2024, public hearing before the Planning Commission, pursuant to Chapter 17.76, Lincoln City Municipal Code, to area property owners within 500 feet of the site. *The News Guard* published the public hearing notice on Tuesday, January 23, 2024.

On March 5, 2024, the Planning Commission conducted a public hearing and considered the oral and written testimony presented, the staff report, and the record as a whole. The hearing was closed, and the record was closed. Based on the evidence presented at the public hearing on March 5, 2024, including the staff report and all properly submitted evidence and argument, the Planning Commission voted to APPROVE the request, with conditions.

Based upon the evidence in the record, the Commission makes the following findings of fact and conclusions of law:

COMMISSION FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER
FO 2024-01 for CUP 2023-02

II. FINDINGS OF FACT

- 1) The Nature of Proceedings (Section I) set forth above is true and correct and is specifically incorporated herein by this reference.
- 2) The subject of the above-referenced conditional use permit application is real property located within the City of Lincoln City ("City"), and described in the County Tax Assessor's maps as Tax Maps 06-11-35-CD-00100 (City property) and 06-11-35-CD-00102 (applicant's property) Both of these Properties are unaddressed in Lincoln City, Oregon. The City property is 14.79 acres and the applicant's property is approximately 7.57 acres.
- 3) The Comprehensive Plan designation for the City property is Open Space (OS) Zone, and Residential Urban Low Density (RULD) for the applicant's property. The zoning classification of the City property is Open Space (OS) Zone and Single-unit Residential (R1-7.5) for the applicant's property.
- 4) The surrounding Land Uses and Zoning are as follows:

North: Single-unit dwellings; R1-7.5
South: Single-unit dwellings; R1-7.5
East: Undeveloped land; OS
West: Single-unit dwellings; R1-7.5
- 5) The applicant is:

Alpha Building Ventures
15350 Hidden Hills Court
McMinnville, OR 97128
- 6) The Property is owned by:

Alpha Building Ventures
15350 Hidden Hills Court
McMinnville, OR 97128

And

City of Lincoln City
801 SW Hwy 101
Lincoln City, OR 97367

- 7) The relevant substantive criteria include the following:
- LCMC Chapter 17.43 Open Space (OS) Zone
 - LCMC Chapter 17.16 Single-unit Residential (R1-7.5) Zone
 - LCMC Section 17.76.050 Type III Procedure
 - LCMC Chapter 17.77.060 Conditional Use Permit
 - LCMC Section 17.77.110 Modification of approved applications, plans, or conditions
- 8) The background in the staff report is incorporated herein and is accepted as true and correct.

III. FINDINGS APPLYING APPLICABLE CODE CRITERIA REGARDING SEWER EXTENSION

- 1) The Planning Commission finds and determines that the relevant approval criteria are found or referenced in the Lincoln City Municipal Code, principally Title 17, Chapter 17.43 Open Space (OS) Zone, and Section 17.77.060 (Conditional Uses).
- 2) Chapter 17.43 Open Space (OS) Zone lists public utilities and drainage facilities as a conditional use.
- 3) Chapter 17.77 (Applications), Section 17.77.060 provides in relevant part:

D. Approval Criteria. In order to grant any conditional use, the Planning Commission must find, based upon evidence, both factual and supportive, provided by the applicant, that:

1. The proposal is in compliance with the comprehensive plan;
2. The site for the proposed use is adequate in size and shape to accommodate the use and all required setbacks, common spaces, retaining walls, parking and loading areas, landscaping, and other features required by this title;
3. The site for the proposed use relates to streets and highways adequate in width and degree of improvement to handle the quantity and kind of vehicular traffic that would be generated by the proposed use;
4. The proposed use will have minimal adverse impact upon adjoining properties and the improvements thereon. In making this determination, the review authority shall consider, but not be limited to, the proposed location of the improvements on the site, vehicular egress/ingress and internal circulation, pedestrian access, setbacks, height and mass of buildings, retaining walls, fences, landscaping, screening, exterior lighting, and signage;

5. In areas designated as requiring preservation of historic, scenic or cultural attributes, proposed structures will be of a design complementary to the surrounding area.

E. Conditions of Approval. Pursuant to LCMC 17.76.120, the Planning Commission may impose, in addition to regulations and standards expressly specified in this title, other conditions found necessary to protect the best interests of the surrounding properties or neighborhood, or the city as a whole. . . .

4) The Commission finds that it has received all information necessary to make a decision based on the entire record, including the staff reports, exhibits, application materials, public hearing testimony, and other materials received. Except where conflicting findings are made herein, the Commission adopts and specifically incorporates the findings as articulated by the Planning Department staff report, as the basis for the decision on the requested conditional use permit.

5) The Planning Commission finds and determines, and adopts as its own, the following findings concerning the applicable criteria in Section 17.77.060:

1. The proposal is in compliance with the comprehensive plan;

The written staff report notes that the zoning code enacts the comprehensive plan and with compliance with the zoning code there is compliance with the comprehensive plan. As shown in the findings above, the request is in compliance with all of the required criteria from Chapter 17.43.

The Planning Commission finds that this criterion is met based upon the written and verbal staff reports.

2. The site for the proposed use is adequate in size and shape to accommodate the use and all yards, spaces, wall and fences, parking, loading, landscaping and other features required by this title;

The written staff report provides:

The submitted site plan shows the location of the proposed sanitary sewer line. The amount of land to be used for the sewer line is minor and there are no required setbacks, common spaces, retaining walls, parking and loading areas, or other such other features. If approved, the affected portions of the property will be required to be restored and revegetated. There are no issues of adequate room relating to the proposed sewer line extension.

The Planning Commission finds that this criterion is met based upon the staff report and testimony from the applicants given during the public hearing.

3. The site for the proposed use relates to streets and highways adequate in width and degree of improvement to handle the quantity and kind of vehicular traffic that would be generated by the proposed use;

The staff report provides:

The project consists simply of a sewer line extension and connection. The project by itself will not generate any traffic. There will be no streets or highways affected by the project. The housing development it relates to earlier was determined to have an adequate road system.

The Planning Commission finds that this criterion is met based upon the staff report and evidence submitted by the applicant.

4. The proposed use will have minimal adverse impact upon adjoining properties and the improvements thereon. In making this determination, the commission shall consider, but not be limited to, the proposed location of the improvements on the site, vehicular egress/ingress and internal circulation, pedestrian access, setbacks, height and bulk of buildings, walls and fences, landscaping, screening, exterior lighting and signing;

The staff report provides:

The sewer extension's only adverse impact on surrounding properties will come from the visual impact of the disrupted natural vegetation on the site of the excavation for the sewer line. If the site is properly re-vegetated upon completion of the sewer line the impacts will be minor and short-lived. Conditions of approval addressing re-vegetation of the site will result in criterion 4 being met.

The Planning Commission finds that this criterion is met based upon the staff report and evidence submitted by the applicant.

5. In areas designated as requiring preservation of historic, scenic or cultural attributes, proposed structures will be of a design complementary to the surrounding area.

The site does not have any historic or cultural attributes, but, as open space, does have scenic attributes. But since the applicant is not proposing to construct any structures as a part of this project, this requirement is not applicable. Criterion 5 is not applicable.

**IV. FINDINGS APPLYING APPLICABLE CODE CRITERIA
REGARDING PLACING FILL ON OPEN SPACE LAND**

- 1) At the public hearing the applicant stated that in developing the project the applicant would not place fill on the city's Open Space land.
- 2) Upon the Planning and Community Development Director's question asking if he were withdrawing the part of his application dealing with the placement of fill on the city's Open Space land, the applicant stated that he was withdrawing that portion of the application.
- 3) The Planning Commission finds and determines that with the applicant having withdrawn the portion of his application dealing with the placement of fill on the city's Open Space land there is no need to address approval criteria dealing with that portion of the application.

**V. FINDINGS APPLYING APPLICABLE CODE CRITERIA
REGARDING MODIFICATION OF APPROVED MASTER PLAN**

- 1) The Planning Commission finds and determines that the relevant approval criteria are found or referenced in the Lincoln City Municipal Code, principally Title 17, Section 17.77.110 Modification of approved applications, plans, or conditions.
- 2) LCMC 17.77.110.B specifically authorizes modification of planned developments through this modification process. The scope of review of a modification application is limited by LCMC 17.77.110.E to just the matters raised in the modification request. The approval criteria for a modification request are set out in LCMC 17.77.110.F.
- 3) Chapter 17.77 (Applications), Section 17.77.110 provides in relevant part:

F. Approval Criteria. To approve modification application, the review authority shall make findings of fact, based on evidence provided, that the following criteria are satisfied:

1. The location, size, and functional characteristics of the modified development can be made reasonably compatible with, and would have a minimal impact on, properties surrounding the subject site; and
2. New elements are provided that functionally compensate for any negative effects caused by the requested modification(s). New elements used to compensate for a negative effect shall be of at least equal value to the elements proposed to be changed.

3. The criteria in subsections (F)(1) and (F)(2) of this section shall be applied only to the area and/or lots within the development that are affected by the proposed modification.

4. The proposed modification shall demonstrate compliance with the approval criteria of the original application.

4) The Commission finds that it has received all information necessary to make a decision based on the entire record, including the staff reports, exhibits, application materials, public hearing testimony, and other materials received. Except where conflicting findings are made herein, the Commission adopts and specifically incorporates the findings as articulated by the Planning Department staff report, as the basis for the decision on the requested conditional use permit.

5) The Planning Commission finds and determines, and adopts as its own, the following findings concerning the applicable criteria in Section 17.77.110:

1. The location, size, and functional characteristics of the modified development can be made reasonably compatible with, and would have a minimal impact on, properties surrounding the subject site

The staff report provides:

The proposed modifications (i.e. reducing the number of lots and developing in two phases) do not change the compatibility with or impacts on surrounding properties from Lincoln Palisades Phase VI in any substantially negative way. This criterion is met.

The Planning Commission finds that this criterion is met based upon the staff report and evidence submitted by the applicant.

2. New elements are provided that functionally compensate for any negative effects caused by the requested modification(s). New elements used to compensate for a negative effect shall be of at least equal value to the elements proposed to be changed.

The staff report provides:

The requested modifications do not result in any substantially negative effects. Consequently no new elements are needed to compensate for negative effects. This criterion is met.

The Planning Commission finds that this criterion is met based upon the staff report and evidence submitted by the applicant.

3. The criteria in subsections (F)(1) and (F)(2) of this section shall be applied only to the area and/or lots within the development that are affected by the proposed modification.

The staff report provides:

The criteria named are applied to the entirety of Lincoln Palisades Phase VI since the requested modifications apply to the full Phase VI. This criterion is met.

The Planning Commission finds that this criterion is met based upon the staff report and evidence submitted by the applicant.

4. The proposed modification shall demonstrate compliance with the approval criteria of the original application.

The staff report provides:

The proposed modifications do not change Lincoln Palisades Phase VI in any substantive manner. The proposed modification to reduce the number of lots from 32 to 29 does not change area to be included in Lincoln Palisades Phase VI. All it does is make some minor adjustments to the proposed lot lines. Otherwise everything else remains essentially the same. Similarly, the proposed modification to break Lincoln Palisades Phase VI into two smaller phases does not affect the findings made earlier. The findings made for the approval of the preliminary master plan for Lincoln Palisades Phase VI regarding compliance with the approval criteria of the original application remain true for the proposal as proposed to be modified. Those findings, are set out in the Staff Report Revised Dec 27, 2021 PUD 2021-02 SUB 2021-01, which as attached as Exhibit A and incorporated herein. This criterion is met.

The Planning Commission finds that this criterion is met based upon the staff report and evidence submitted by the applicant.

VI. ORDER

The Planning Commission for the City of Lincoln City finds and determines:

- 1) That the application for a Conditional Use Permit regarding the extension of the sanitary sewer line in the city's Open Space lands meets, or can meet with conditions, the approval criteria in LCMC 17.77.060.D. Accordingly, based on the above Findings of Fact and Conclusions of Law, and based upon the evidence in the whole record, the Planning Commission hereby APPROVES WITH THE CONDITIONS BELOW the requested Conditional Use Permit contained in CUP 2024-02.

- 2) That the application for a conditional use permit regarding the placing of fill in the city's Open Space lands was withdrawn and accordingly there is no need to address that portion of the original application.
- 3) That the application for modification of the approved master plan for Lincoln Palisades Phase VI meets the approval criteria in LCMC 17.77.110.F. Accordingly, based on the above Findings of Fact and Conclusions of Law, and based upon the evidence in the whole record, the Planning Commission hereby APPROVES the requested modifications.

VII. CONDITIONS OF APPROVAL REGARDING SEWER EXTENSION

General

1. Approval of the conditional use permit applied for in this application does not amount to permission to enter the property of the City of Lincoln City or to perform any of the work described in the application on the city's land. Before entering onto the city's land or conducting any activity that affects the city's land the applicant/property owner must obtain permission from the city to enter onto and use the city's land and must pay any rent or other fees relating to the applicant/property owner's use of the city's land.
2. The applicant/property owner/developer shall be responsible for full compliance with all applicable city, state, and federal codes, rules, regulations, and standards.
3. The applicant/property owner/developer shall route construction vehicles to NE Devils Lake Boulevard rather than through NE Port Lane and the established neighborhood to the west.

Planning and Public Works

1. All conditions of approval contained in Lincoln City Planning Commission Final Order No. 2022-01 remain in full force and effect.
2. In installing the sanitary sewer line described in the application, the applicant/property owner must limit disturbance of the ground to the minimum practicable. In determining what the minimum practicable disturbance is the applicant/property owner shall consult with and defer to the decision of the Lincoln City Public Works Department, whose decision itself shall be based on consultations with the Lincoln City Planning & Community Development Department and the Lincoln City Parks & Recreation Department.
3. Before installing the sanitary sewer line described in the application, the applicant/property owner must prepare a grading plan and submit it to the Lincoln City Public Works Department for approval. The applicant/property owner shall not begin any land clearing, grading, or excavation for the sanitary sewer line before the Lincoln City Public Works Department has approved the plan, which approval shall be based on consultations with the Lincoln City Planning & Community Development Department and the Lincoln City Parks & Recreation Department.
4. Before installing the sanitary sewer line described in the application, the applicant/property owner must prepare a slope stabilization plan and submit it to the

Lincoln City Public Works Department for approval. The applicant/property owner shall not begin any land clearing, grading, or excavation for the sanitary sewer line before the Lincoln City Public Works Department has approved the plan, which approval shall be based on consultations with the Lincoln City Planning & Community Development Department and the Lincoln City Parks & Recreation Department.

5. Before installing the sanitary sewer line described in the application, the applicant/property owner must prepare a restoration and revegetation plan and submit it to the Lincoln City Public Works Department for approval. The applicant/property owner shall not begin any land clearing, grading, or excavation for the sanitary sewer line before the Lincoln City Public Works Department has approved the plan, which approval shall be based on consultations with the Lincoln City Planning & Community Development Department and the Lincoln City Parks & Recreation Department. The restoration and revegetation plan must address, among other things, placement and stabilization of appropriate amounts and types of topsoil, and planting, establishment (and, as needed, replacement), maintenance of appropriate kinds and numbers of native plants, and prevention of the establishment of invasive such as Scotch broom.

Fire

1. The project shall meet the current Oregon Fire Code requirements for access and water supply, as reviewed by North Lincoln Fire & Rescue District #1 through the structural permitting process, and structural permits shall not be issued until compliance with the current Oregon Fire Code requirements is shown in the submitted plans.

Lincoln City Planning Commission



Kim Blackerby, Chair

ATTEST:



Richard Townsend
Planning Director

Signature authorized and approved by the full Commission this 19th day of March, 2024.