

**LINCOLN CITY PLANNING COMMISSION
MINUTES
January 4, 2022**

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

Attendee Name	Title	Status	Arrived
Robert Vincent	Commissioner	Present	6:00 PM
Mellissa Sumner	Commissioner	Present	6:00 PM
Marci Baker	Commissioner	Present	6:00 PM
Kim Blackerby	Commissioner	Present	6:00 PM
Lenny Nelson	Commissioner	Late	6:38 PM
Miles Schlesinger	Commissioner	Present	6:00 PM
MacNeale Smith	Commissioner	Present	6:00 PM

Commissioner Smith was present for the entire meeting, but he did not participate after Case PUD 2021-02 SUB 2021-01. Richard Appicello, city attorney, interrupted the meeting after the staff report was given for VAR 2021-03 to announce that Commissioner Smith's term ended on December 31, 2021, and Mr. Appicello was unable to find a rule in Chapter 2.06 that allowed for the continuance of the term while waiting for City Council's appointment decision on January 10, 2021. Accordingly, Commissioner Smith stayed in the meeting but did not participate for the remainder of the meeting.

2. AGENDA CHANGES OR REVISIONS

There were no changes or revisions to the agenda.

3. MINUTES

3.1. Planning Commission - Regular Meeting - Dec 7, 2021 6:00 PM

MOTION:	Moved to accept the minutes as written.
MOVER:	Robert Vincent, Commissioner
SECONDER:	Miles Schlesinger,
AYES:	Vincent, Sumner, Baker, Blackerby, Schlesinger, Smith
AWAY:	Lenny Nelson
RESULT:	Passed

4. FINAL ORDERS, RESOLUTION, & WRITTEN COMMUNICATIONS

There were no final orders, resolutions, or written communications.

5. PUBLIC HEARINGS/DELIBERATIONS

5.1. PUD 2021-02 SUB 2021-01 Lincoln Palisades VI (continued from December 7, 2021)

Commissioner Baker introduced the case and asked staff for the applicable substantive criteria. Anne Marie Skinner, planning and community development director, stated that Title 16, Chapter 17.16, and Chapter 17.77 contain the applicable substantive criteria for the case.

Ms. Skinner presented the verbal staff report. The hearing was originally held on November 16, 2021, continued to December 7, 2021, and continued again to tonight's hearing of January 4, 2022. There have been several plan revisions from the original plan that was submitted. The plan now is to subdivide the 7.57-acre site into 32 lots for future construction of detached single-family dwellings. The site will be developed as a planned unit development and a subdivision, noting that the planned unit development portion is because the code requires it since the site is over 2 acres in size. Usually planned unit developments are done when the applicant is asking for flexibility in one of the standard requirements, but in this case the applicant is not requesting any flexibility. Rather, the applicant is meeting all the requirements for the subdivision.

Ms. Skinner's staff report noted that the revised plans eliminated the common lot for landscaping and the common lot for stormwater. The landscaping lot was combined into the adjacent residential lots, and the stormwater design was redone to accommodate not having a stormwater tract. The project will not have a homeowners' association. The preliminary plan set was reviewed by applicable staff and determined that all information required for a preliminary plan set is present and staff recommends approval of the project with the recommended conditions of approval in the written staff report.

Ms. Skinner noted the comments received from the past hearings and that they are included in the agenda packet. Ms. Skinner noted that comments were received for this hearing from Patrick Dunne and they are included in the published packet. Ms. Skinner noted that comments were received from Tim Stoelb and that they were forwarded to the Planning Commission, noting that Mr. Stoelb is present tonight to read his comments into the record. Ms. Skinner stated that Joyce Sherman submitted comments pertaining to the recent flooding. Ms. Skinner stated that this project will have no impact on drainage to the area referenced in Ms. Sherman's comments, that instead the drainage for the project will be designed to drain away from the site and Sal-La-Sea.

Commissioner Blackerby wondered if this is the final phase of the entire Lincoln Palisades project. Ms. Skinner responded in the affirmative, that Phase VI is the final phase.

Commissioner Baker asked about the CC&Rs for Phase VI. Ms. Skinner replied that the initial CC&Rs submitted for the preliminary submittal were the CC&Rs for Phase II and don't have anything to do with Phase VI. Anything pertaining to Phase II is not pertinent to tonight's hearing because tonight's hearing is all about Phase VI. The applicant will need to submit a final set of CC&Rs specifically for Phase VI as part of the final master plan/final plat submittal and that is a condition of approval.

Commissioner Vincent wondered if the final draft of the CC&Rs would be presented to staff for review and approval and would not come back again to the Planning Commission. Ms. Skinner stated that, yes, the CC&RS would be submitted to staff for review and approval, but not approval of the content. Staff doesn't approve the content, the enforcement or lack thereof, or what they say or don't say. Staff just approves that they have been submitted and that they will be recorded as part of the final plat recording.

Commissioner Blackerby asked how the CC&Rs are being enforced for Phase II. Ms. Skinner replied that nothing pertaining to Phase II is being discussed tonight. Tonight's hearing is regarding Phase VI.

Commissioner Baker asked about a comment regarding the water courses not being shown on the plans. Ms. Skinner replied that her review showed the plans contained water courses and flow arrows showing the direction of flow of those water courses.

Hayden Wooten with Reece & associates, inc., at 321 1st Ave E, Suite 3A, Albany, OR 97321, and David Reece, also with Reece & associates, inc., presented for the applicant. Mr. Wooten thanked Anne Marie for helping him through the process and answering questions. Mr. Wooten stated that Anne Marie covered most items in her staff report and reiterated that the changes for tonight's hearing are the elimination of the two common lots and that area was incorporated into private lots. Mr. Wooten said that they have reviewed the staff report and recommended conditions of approval and have no comment or disagreements with anything contained therein. Mr. Wooten stated that final CC&Rs, specific to Phase VI, will be submitted along with the final master plan and final plat for this project. Mr. Wooten stated he was happy to answer any questions about the project.

Chair Baker wondered about page 6, letter D, of the revised narrative, which states that there are no water courses on the site. Ms. Baker wondered if that is accurate. Mr. Wooten responded that it is accurate. There are no water courses on the site itself, but there are water courses nearby. When the initial lot lines for the various Lincoln Palisades phases were laid out, the layout was determined to avoid the water courses and adjacent wetlands. When it comes to this specific property being developed, there are no water courses.

Commissioner Blackerby wanted to reiterate the previous agreement indicated at the December 7th hearing by the applicant regarding no construction traffic off of the intersection of Port Lane and Logan Road. Mr. Wooten has no issue with that condition. Mr. Reece noted that he didn't think it should be a condition of approval for land use; rather, it would be a condition of the public works permit. When final plat conditions are met, there is no way to respond to show on paper how that condition of approval is met. Mr. Reece agrees with the condition but stated that it usually follows as part of the public works permit. The public works permit will list that Port Lane will not be used for construction traffic. Commissioner Blackerby responded that he would be okay with that as long as Anne Marie is okay with it. Anne Marie stated that she does not have a problem with the condition being part of the public works permit.

Chair Baker asked about Lot 22. The staff report had a note that it is the only lot large enough to be subdivided. Ms. Baker wondered if it could still meet the depth requirements based off of its shape. Mr. Wooten stated that it could be divided again based on the area; however, they looked at that as part of the combination of Lot 22 with the previous landscape common lot and determined that it would need an adjustment to meet the lot depth requirements. Ms. Skinner confirmed that she reached the same conclusion when reviewing the preliminary plat.

Chair Baker asked for testimony in support of the application. There was none.

Chair Baker asked for testimony in a neutral position.

Tim Stoelb provided testimony in a neutral position. Mr. Stoelb referred to the statement he emailed to Anne Marie Skinner "the other day" and noted that it focused mainly on concerns with the CC&Rs. He found that the latest revision from January 2021 had a note on it from page 9 and 10 that said that those CC&Rs were to cover all phases of the Lincoln Palisades. Mr. Stoelb wondered how that works - to require a set specifically for phase VI doesn't there have to be something that cancels out what is on file now? Mr. Stoelb also asked about doing away with the

HOA requirement for just phase VI and what about the rest of us? Ms. Skinner stated that those are questions Mr. Stoelb needs to ask the applicant and developer.

Mr. Stoelb continued with his testimony noting that traffic impact on Port and Logan will be more than what is being assumed with adding these 32 lots. The last actual study was done in 2013, which has been almost 9 years ago now. Mr. Stoelb thinks the traffic volume has probably changed since then and that the numbers in the narrative are estimates not actual figures. Mr. Stoelb hopes the Commission will take into consideration the actual volume of traffic. Port and Logan Rd have a lot more traffic than Voyage. People going to work in the mornings take Port, not Devils Lake Road and 101. Traffic volume on those two streets or roads is a lot more than what is being anticipated here. Mr. Stoelb asked the Planning Commission to look at that and get some better figures. He reiterated that he is still concerned about 51st ending as a cul-de-sac and that folks have no way of getting out as a dead-end street. He hopes that there aren't any plans to change the name of 51st because that would be a lot of paperwork for him.

Chair Baker asked for any additional neutral testimony. There was none.

Chair Baker asked for testimony in opposition.

Patrick Dunne spoke in opposition. Mr. Dunne stated his concerns with his testimony that was submitted on December 29th and that the applicant has not given any answers to the eight questions he posed in that testimony. He hoped the commissioners have had the chance to read his questions and reiterated that this is the last chance for the public to testify, that the final provision doesn't go before the public. He stated that he knew most of those in the room here know that. He stated again that this is the public's last chance. Ms. Skinner asked for Mr. Dunne to read his questions.

"1. Revised Narrative 12172021.pdf, page 6 III.3.d. is incorrect as watercourses exist and the standard does apply, and page 18 V.6.d. existing watercourses are not identified; the standard is not met. If Commissioners approve this application, will staff's recommended conditions of approval be changed to correct these inaccuracies?"

2. What assurance do Commissioners have, following a comment by the applicant earlier in the hearing regarding flood plain and permitting for the 48th street build and having incorrectly ignored watercourses, that a combination of Lincoln Palisades V and VI concentrated storm water runoff from streets, roofs, and yard landscaping will not have far reaching impact as we have recently seen on the Devils Lake shoreline and D River overflowing and resulting flood of SE 2nd Court if the application is approved without further conditions stipulated?"

3. Have Commissioners been assured the 48th street property is beyond the notification distance criteria and if not, the owner has been notified as required?"

4. In order to eliminate reference to a homeowners association, why has Tract A, Stormwater Facilities at 3.061 and Lot 1 at 7.851 been combined and labeled 10.913 on Sheets 1.0, 3.0, and 3.1 without apparent attention to detail (correct addition)?"

5. Sheets 1.0 through 4.7 are dated 11/19/2021; however, revised plans 12162021.pdf show no updated revision date in the legends. How will Commissioners be assured plans, if approved, are the correct plans to be followed?"

6. *Have Commissioners determined the retaining wall depicted with lots 22 and 23, Sheets 3.0, 3.1, 4.0, 4.5, and 4.6 subject to any Lincoln City code regarding child safety and falling hazard? NOTE: dimensions are 2' x 4' x 42.4' and 76'. Contour lines on the 42.5' side range 144 – 116 = 28' to 144 – 126 = 18' and on the 76' side range 142 – 110 = 32' to 142 – 120 = 22' depending on magnification of the drawings.*
7. *Does how the 39.0' circle radius of NE 51 Loop on Sheet 3.0 comply with North Lincoln Fire and Rescue turning radius criteria been explained to Commissioners?*
8. *Does the naming of NE 51 Loop on Sheet 3.0 and others meet naming standards as the street is not connected to the stub street that is signed NE 51 Loop further south along Voyage Avenue?*
9. *Regarding CCRs, Exhibit 6, I recommend Commissioners require the following changes:*
- a. *4.5 – Delete all; ORS, Lincoln County and Lincoln City Statutes adequately cover this topic (I was Lincoln County Sheriff's Animal Control Officer 2000-2001). If not deleted, Board and Board of Directors need to be defined and explained.*
 - b. *4.7 add "a driveway," between of and an on line 3.*
 - c. *4.16 Delete "...so long...properties." And add "or approved structure."*
 - d. *6.2 Define "Class A members" and "Turnover" [cited (8.2) at the beginning (1.1), but not present in 8.2] and define in 8.3 "Turnover Meeting."*

Ms. Skinner responded to Mr. Dunne's comments. Ms. Skinner noted that the plans are preliminary and that they are not reviewed against the public works design standards because this is not the time for that review. It is standard procedure in all jurisdictions to submit the preliminary plat and preliminary plans that provide preliminary details on how the project will provide infrastructure and utilities. The finer details and making sure it complies with all public works design standards takes place during the final engineering.

Ms. Skinner noted that North Lincoln Fire also reviews the final plans to make sure that all the street lengths, grades, etc. meet their code requirements. Errors in the plans with dates are irrelevant to what is being approved. The preliminary plans that were recently submitted are the ones that will be approved. As long as there is no change to the general layout, meaning an increase in the number of lots, then it is okay to adjust lot lines and lot dimensions in the final plans to meet lot dimensions. The site is not in a flood plain, so there are no flood plain requirements. All of the storm drainage has to meet the city requirements and that isn't a public commenting items for this or any other project. Notification was done properly. What is in the CC&Rs or not in the CC&Rs is not within the city's purview and those questions need to be addressed with the applicant. Regarding water courses, the applicant has stated there are no water courses on the site and that the plans that Ms. Skinner reviewed showed the identified courses off the site with the flow arrows for direction. If some were missed on the preliminary plan, then they will need to be shown on the final plan.

Mr. Dunne emphasized again that this was the public's final chance to comment.

Chair Baker asked for any additional testimony in opposition. There was none. Chair Baker asked if any other testimony had been received via email. Ms. Skinner stated that she just checked her email and no additional testimony was received.

Chair Baker asked if there was any additional testimony from others or public agencies. There was none.

Chair Baker stated that this is now the time for rebuttal from the applicant.

Hayden Wooten stated that Anne Marie Skinner covered most of Mr. Dunne's comments, but that he would cover them as well. He stated that he already addressed #1 previously in the hearing when he stated that there are no water courses on the site. The water courses are located and mapped off site. Storm water management must and will comply with Lincoln City storm water standards and that will be demonstrated through the final engineering plans. Additionally, flood plain location and permitting for off the site or other developments is not a part of this application and not relevant to the decision criteria tonight.

Mr. Wooten stated that Anne Marie already stated that notice was performed correctly, so the affected property owners were noticed. There was a comment about the area of Lot 1. Rounding becomes a factor with odd-shaped lots, of which Lot 1 is, so the computer program rounded, and Lot 1 is the area shown on the submitted plans. Condition of approval #9 will ensure that the correct plans will be followed and staff will have an opportunity to review the final engineering, final master plan, and final plat.

Regarding the two retaining walls mentioned tonight, individual property owners will deem what is safe and appropriate for their needs and desires. Additionally, depending upon their size, they may have permits associated with them and they would need to be engineered. Accordingly, comments and concerns will be addressed when appropriate. A vehicular circulation was performed to confirm that a fire apparatus can successfully turn around in the cul-de-sac as designed. If changes are made, they will be discussed with Lincoln City public works and the appropriate fire marshal. Mr. Wooten noted that they do no plan on changing any street names. They plan on continuing what has already been established by previous development applications. Finally, final CC&Rs will be submitted with both the final master plan and final plat, although the contents of those is not under tonight's consideration. Construction and design of structures will be addressed during the building permitting process.

Mr. Dunne asked who is the declarant on the CC&Rs. Ms. Skinner stated that she will email Mr. Dunne the applicant's email address and that any questions pertaining to the CC&Rs need to be addressed to the applicant.

No one requested a continuance. No one requested that the record remain open for additional evidence or testimony. The applicant waived the opportunity to present final argument.

Commissioner Blackerby moved to close the public hearing and the record. The motion was seconded by Commissioner Vincent. The motion passed unanimously by voice vote.

The Planning Commission deliberated. Commissioner Schlesinger stated he would be likely to vote against the proposal if it weren't for much-needed housing in Lincoln City because the traffic jam out of Pacific Palisades is going to overwhelm the two exits - Port Lane and West Devils Lake Road - until there is an obvious route by the proposed high school to Highway 101. However, in lieu of our need for housing, he stated that he will support the Planning Director's recommendation of approval.

Commissioner Vincent stated he would support the recommendation also because he thinks Anne Marie, staff, Mr. Appicello, and the applicant have done an amazing job of explaining everything and answering every question, including the ones he had that weren't asked.

Commissioner Blackerby noted that he agreed with Commissioner Schlesinger's comments regarding traffic patterns. However, based on the comments made by the public works director in the training that was held last year, which included the education received on how traffic studies were done answered a lot of questions in that regard and secondly a long-range traffic study was done for projected future growth and all the traffic patterns. He thinks there are still flaws to that, but that we need to go with the traffic studies that have been done and given to us.

Commissioner Smith noted that the project meets the substantive criteria and that staff has done a great job of making sure all the "I"'s are dotted and "T"'s are crossed, but that city-wide we don't know enough about how traffic patterns have changed over the years. The project meets all the requirements but there are things we need to know more about. Commissioner Blackerby followed up Commissioner Smith's comments by noting that the public works director did recognize the issues at Port Lane and Logan Road in the training last year and is going to investigate steps to improve that intersection. Commission Sumner said that everything was answered, that she still has concerns about traffic and fire vehicle safety, but she is going to trust that staff will review everything appropriately and make sure that everything is safe. Ms. Skinner followed up Commissioner Sumner's comment to reiterate that our fire marshal, Ed Ulrich, is an outstanding person when it comes to making sure that every permit and every development when it comes in meet the requirements. Ms. Skinner also reiterated that Stephanie Reid noted in last year's training that we already know the intersections are failing, so we don't need traffic studies to tell us that. The main purpose of the traffic study is to identify if an intersection is failing or will fail with the project, and to prevent that failure what can be done. The Logan Road/Highway 101 intersection is failing and improvements are needed. However, there is no nexus or proportionality for this project to make those improvements, and this project is not adjacent to that intersection. Improvements cannot be required or right-of-way dedicated for property that is not part of the project.

Chair Baker noted that we all understand traffic concerns, but that we need to adhere to the criteria for approval. Commissioner Nelson commented that the improvement of Sal-la-Sea needs to take place and to encourage public works to work on that project.

MOTION:	APPROVE PUD 2021-02 SUB 2021-01 Lincoln Palisades VI (continued from December 7, 2021) with the conditions as written in the staff report
MOVER:	Robert Vincent, Commissioner
SECONDER:	Marci Baker, Commissioner
AYES:	Vincent, Sumner, Baker, Blackerby, Nelson, Schlesinger, Smith
RESULT:	Passed

5.2. VAR 2021-03 Northwest Coastal Investments - variance for garage entrance minimum setback requirement

Commissioner Baker introduced VAR 2021-03 and asked for the applicable substantive criteria. Anne Marie Skinner listed Chapter 17.08 Definitions, Chapter 17.16 Single-Family Residential (R-1-5) Zone, and Section 17.77.140 Variance as the applicable substantive criteria. Commissioner Baker directed that all testimony and evidence must be directed to the applicable

substantive criteria and noted the adopted public hearing procedures. Commissioner Baker asked for the staff report.

Anne Marie Skinner gave the staff report. Ms. Skinner noted that the subject property is currently undeveloped. A building permit for a new 3,050-square-foot detached dwelling with an attached garage was submitted on February 2, 2021. A former Planning staff member reviewed the application on March 2, 2021, and requested a plan revision to show a reduced building height of 35 feet or less. The applicant submitted the requested revised plans on August 17, 2021. A former Planning staff member reviewed and approved the revised plans and Permit 521-21-000070 was issued on October 6, 2021. The application workflow history for the permit is attached to the staff report. Both the original plans and the revised plans show the garage entrance setback as less than the required minimum 20 feet.

With the issued permit, the applicant proceeded to site preparation. This included clearing and grading, as well as setting the footings for pouring the foundation. The applicant requested the required setback inspection on December 1, 2021. The purpose of the setback inspection is to ensure compliance with the minimum setback requirements prior to construction of the foundation. A current Planning staff member was assigned the setback inspection of the footings. The current Planning staff member observed that the minimum 20-foot garage entrance setback was not met, and subsequently, the setback inspection was denied. The inspection history for the permit is attached in the packet of information. The applicant was informed that the garage entrance as proposed did not meet the required 20-foot minimum setback from the property line. Subsequently, the applicant submitted an application for a variance of the setback to what is shown on both the original and revised plans, namely approximately 14 feet at the south corner and approximately 16 feet at the north corner.

Ms. Skinner noted that the definition of setback is the minimum or maximum distance required between a specified object and another point. Specifically, a setback refers to the minimum or maximum distance from a building or structure to a specified property line. Garage/carport entrance setback means the distance from the property line to the garage/carport entrance. Ms. Skinner noted that the definition is significant because the measurement is taken from the property line, not the back of sidewalk, not the right-of-way line, but the property line - that is the definition of setback. In most instances the right-of-way line and property line are the same, sometimes the back of sidewalk can also be the same and sometimes not. In this case it is not. In the R-1-5 zone, the minimum garage entrance setback is 20 feet as identified in 17.16.070 of the code.

There were no comments received with the exception of one from public works dated December 7, 2021. The full comment is attached to the staff report but generally notes that, if the variance is approved, the additional public works standard of 20 feet from the back of the sidewalk to the face of the garage would still be met.

Ms. Skinner noted that there are four criteria for approving a variance and that she would read them. The first criterion is that exceptional or extraordinary circumstances apply to the property which do not apply generally to other properties in the same zone or vicinity and result from lot size or shape legally existing prior to the date of the ordinance codified in this title, topography, or other circumstances over which the applicant has no control. Ms. Skinner noted that the applicant submitted plans showing contours, that the site has slopes that are steeper along the eastern portion than the western portion and that the site's steep eastern slopes are steeper than

those on either the north or south adjacent lots and that the existing topography of the eastern portion of the site is a circumstance over which the applicant has no control.

Ms. Skinner stated that the second criterion is that the variance is necessary for the preservation of a property right of the applicant which is substantially the same as owners of other property in the same zone or vicinity possess. Ms. Skinner explained that the site's R-1-5 zone allows a detached dwelling, subject to applicable requirements, either attached or detached, as an accessory use. Detached dwellings and garages are allowed uses on anyone's property in the R-1-5 zone. Title 17 does not require construction of a garage as part of a detached dwelling, but any property owner that owns property zoned R-1-5 has the right to construct a garage as an accessory use to the dwelling provided the minimum requirements are met.

Ms. Skinner noted that the third criterion is that the variance should not be detrimental to the surrounding properties. Ms. Skinner stated that the site is surrounded on all sides by properties in the R-1-5 zone and that most of the surrounding properties either already contain detached dwellings or are platted for future construction detached dwellings and that most of the surrounding sites contain garages. Ms. Skinner stated that a review of the aerial photo shows that some of the surrounding sites have garages that don't meet the required minimum setback. Ms. Skinner noted that allowing the garage to be closer to the front property line than the required 20 feet will not negatively impact any of the surrounding properties. Ms. Skinner added that the impact will be to the site itself as it will limit the driveway length such that the required off-street parking spaces will need to be contained in the garage.

Ms. Skinner read the final criterion, which is that the variance requested is the minimum variance which would alleviate the hardship. The hardship in this case is providing the required 20-foot-minimum setback from the west property line to the garage entrance. The applicant is requesting the minimum, which is approximately 14 feet at the south end and approximately 16 feet at the north end.

Commissioner Blackerby asked about the other driveways in the area that are shorter that were referenced in Ms. Skinner's staff report and wondered why those driveways were shorter. Ms. Skinner responded that she didn't have a good answer for that and that she had the same question when she was reviewing. Ms. Skinner stated that the minimum 20-foot has been in place since the initial adoption of the zoning code, so she didn't know. Commissioner Blackerby followed up with a question regarding the public works comment. Ms. Skinner explained that the face of garage must be a certain distance from back of sidewalk which is different than the zoning setback requirement and that there is more than enough space with the proposed 16-foot setback in combination with the space to back of sidewalk to meet the public works requirement. In other words, public works doesn't need the 20-foot setback from the property line that the zoning code requires.

Commissioner Sumner wondered about the purpose of the distances if the 20 feet is not needed. Ms. Skinner responded that typically the purpose of the distance is because of the off-street parking requirement and that the depth of the required off-street parking space is 20 feet. The garage entrance is 20 feet back so the driveway can be 20 feet deep and two off-street parking spaces required for houses that are over 1,000 square feet in size. The proposed house is over 3,000 square feet, so two off-street parking spaces are required. By definition "off street" is not the right-of-way, so if the driveway is 14 feet deep then someone parking in the driveway that isn't 20 feet deep, then they are encroaching in the street, which doesn't meet the requirement of off-street parking. Ms. Skinner explained that is why she referenced in the [written] staff report

that the garage will need to be kept clear and used for parking and not storage. Commissioner Sumner remarked that she doesn't know why a variance would be offered.

Mr. Appicello interrupted the meeting at approximately 7:30 PM to state that he could find no provision in the code for allowing Commissioner Smith to participate in the meeting since his term ended December 31, 2021, by extending his term until appointments were made by Council at their first meeting and asked that Commissioner Smith not participate. Mr. Appicello thought there was a rule that would extend his service until the appointment was made, but he can't find it in Chapter 2.06. He asked Commissioner Smith to recuse himself and not participate and that Council would make an appointment decision next week. Commissioner Smith asked if anyone had a problem with him staying in the meeting but not participating. No one had a problem with that, so Commissioner Smith turned off his video and muted his microphone and did not participate in the remainder of the meeting, just listened.

Commissioner Vincent noted that this area is the bluff above Mo's and that the area of the lots is not the same as normal lots, explaining that this could be the reason why the variance is being requested.

Amy Bogran, president of Northwest Coastal and Picture Book Properties, testified as the applicant. Ms. Bogran agreed with the recitation of the facts and added that there were errors on both sides that necessitated the request for the variance because there is no way to address a correction any other way. Ms. Bogran said they need the variance because they can't alter anything on the stamped approved plans. Ms. Bogran further noted that the driveway will be about 30 feet long and the house will be farther back than any other house in the area. She stated that they have already expended about \$250,000 on the development to this point.

No testimony in support, neutral, or in opposition was given. No emailed comments were received. No one was present in Council chambers, and there was no testimony from public agencies. Ms. Bogran had no final rebuttal or statements. No continuances were requested.

Commissioner Blackerby moved to close the public hearing and the record, seconded by Commissioner Vincent. The motion passed unanimously with a voice vote.

The applicant waived the right to submit final argument.

Richard Appicello, city attorney, stated that estoppel cannot arise from an action of a local government official who purports to waive a mandatory requirement. The commissioners should not put any weight on that in determining if the standards for a variance have been met. Participants in the process are responsible to ascertain for themselves what is required from the code and not rely on city staff. If city staff makes a mistake, there is no special duty owed to the applicant because staff is not the applicant's consultant. Staff's mistake is not a criterion. No staff member is allowed to waive a mandatory requirement of the code, so that can't be looked at when considering the variance approval. Mr. Appicello also noted that the distance from the paved surface to the front of the garage is talking about public right-of-way so it's relevant how much extra driveway there may be in the right-of-way because people aren't allowed to use right-of-way for personal purposes. Any encroachments in right-of-way require purchasing a license, so the length of the driveway is not relevant.

Commissioner Sumner noted that she didn't see the point in allowing the variance since it would severely impact that street with a limited driveway length. Chair Baker wondered that, if a mistake hadn't been made, would a garage have been able to be approved and does the slope on the east side constitute the unique situation that is outside the control of the applicant so even without the mistake would a variance have been needed anyway because of the eastern slope. Commissioner Sumner said that 20 feet has always been the rule and she was taught to "always measure twice." Chair Baker did reiterate that it is the applicant's responsibility to know the code, but her concern is the criteria and is there an undue hardship that is outside of the owner's control, does it violate the intent of the code to allow the variance, does it alleviate the hardship?

Ms. Skinner noted that, yes, there is a steep slope, but the question is would they have been able to move the garage back the additional six feet and still have a garage with extra engineering and design. If not, that would be an exceptional circumstance, but if grading, structural engineering, soils reports, etc. could have been done, then the slope would not be an exceptional circumstance.

Chair Baker wondered about the staff report where staff stated that the request did meet the exceptional circumstance and how did staff reach that conclusion. Ms. Skinner began to respond and was stopped by Mr. Appicello, with him stating that would be introduction of new evidence and that the finding is in the record that staff believes that the slope creates an extraordinary circumstance resulting from the topography, but Chair Baker's point is that you can still build on a slope so he thinks that you can disagree with staff that the topography causes the hardship. The topography is outside of the applicant's control, but the building design is not so commissioners could find that they don't agree with staff on this issue. Mr. Appicello stated that he feels Chair Baker was trying to ascertain from staff if you could still build on that slope and that those things are for the Commission to decide and that it's possible. Commissioner Sumner wondered how it could be guaranteed that parking would take place in the garage if the variance is granted, wondering if that's just a code enforcement issue. Chair Baker said she thought it would be.

Commissioner Vincent said that he reviewed the property and that it would take a huge amount of money and engineering to build on that slope, and that it's a hard drop down. In his opinion, it is not going to impinge on any neighbors or anybody.

Commissioner Blackerby started to talk about a previous case, and Mr. Appicello interrupted him to say that new facts could not be introduced. Commissioner Blackerby responded that he is not introducing new facts, simply relating a scenario where a previous Commission had a similar scenario and in that scenario mistakes were made and what he learned is that those mistakes are not the things to be taken into consideration. He understands things better now and code is code.

Commissioner Nelson said they needed to consider if the Planning Department took everything into consideration. If the driveway is shortened, will they be backing out into traffic. If backing out into traffic, that is a very highly-used intersection, and that she knows because she uses it a lot. Commissioner Vincent responded back that she doesn't use it a lot. Commissioner Nelson quickly stated that she does use it a lot, that Commissioner Vincent may know where she lives but not where she hangs out. Commissioner Nelson wondered about backing out straight and if it would interfere with something across that street and that it would and that it would create a potential safety problem, and the other thing is the busy street. Ones have been granted before that opened onto empty streets, but when opening onto a very busy street Commissioner Nelson is not sure it's a great idea.

Chair Baker wondered if the property right being looked at is the right to have a garage. Commissioner Nelson said that shortening a driveway does not qualify with what the planning department said.

Chair Baker said they needed to go through the four requirements and see if all four can be checked. Commissioner Vincent asked if this was at the corner of Beach and Coast. Commissioner Nelson stated that they don't cross but that they turn into each other. Commissioner Vincent said this is the lot above Mo's. Ms. Skinner and Commissioner Nelson stated that it is not. Mr. Appicello noted the vicinity map as page 174 in the packet. Ms. Skinner stated that Beach runs north-south and Coast runs north-south and ends in a tee. Commissioner Vincent said he is 10 houses away. Mr. Appicello prompted Chair Baker to step through the criteria and she responded that she is headed in that direction but wanted to give the commissioners an opportunity to discuss first.

Mr. Appicello said that he would go through them and read the first criterion. Then he stated that the planning director said the property topography is a circumstance over which the applicant has no control, but also heard some of the Commissioners question if this is an extraordinary circumstance given that other properties in the area have slope. Given that looking at page 173 of the packet, there are definitely contours on that page along several properties. The other issue is whether or not those circumstances are beyond the applicant's control. It can be altered. Is this the only lot that has these extraordinary circumstances?

Moving to the next criterion, is the variance necessary for the property right. Mr. Appicello wondered if the Commission is saying that the garage is a property right. Mr. Appicello noted that the planning director indicated that detached dwellings and garages are allowed, and thought he heard stated that other properties in the area have garages, but is the garage a property right? Generally a garage is accessory to the single-family dwelling use and most people are going to say that the single-family dwelling is the property right. Garages are generally considered accessory, so there is an issue there. If you believe that the garage itself is a property right then you would find that. If you don't think that having a single-family home with a garage is different than one without one, the important part there is the home - then you could find that it's not necessary for the preservation of the property right.

Mr. Appicello proceeded to discuss the third criterion noting that statements have been made that the code is the code but the Commission also needs to look at properties in the vicinity to see if they are impacted. If the whole neighborhood is full of variances, does that have an overall detrimental impact?

Then the fourth criteria – is the variance the minimum that would meet the hardship. Mr. Appicello wondered about the nature of the hardship – is it not having the garage the size that you want it or not having to spend additional money to redesign? The request is for the distance from the right-of-way to the house of 14 feet versus the required 20 feet.

Chair Baker said the Commission needs to identify which factor is out of control that existed before our code, which property right is being preserved by the variance, and what the hardship is that is being alleviated. Commissioner Vincent noted that he has map in front of him, that there is no intersection, it's eight houses from his, it's on the bluff above Mo's, and there is new construction across the street from it. Mr. Appicello interrupted him to tell him not to introduce new evidence because the record is closed at this point. Mr. Appicello said the Chair is on the right track. Planning staff is saying the topography meets the first criterion, but is the topography

generally something that doesn't apply in the vicinity. That's where he sees the issue. Is it unique to this property or does it apply to other properties in the vicinity?

Commissioner Nelson pointed out that she was the one who introduced the bad directions for the house, so she doesn't think Commissioner Vincent should be stopped from correcting her. Chair Baker stated that we do all have maps in the record. Commissioner Vincent thanked Commissioner Nelson.

Chair Baker stated that she doesn't feel enough evidence has been presented to show that the unique circumstance exists. She stated that it is the duty of the applicant to show that all of these circumstances have been met. She doesn't feel having a garage is a property right, and that it's allowed but not every house has one. Chair Baker stated that not enough evidence has been presented to show that it is a right that is being denied at this particular instance. Commissioner Sumner agreed. Commissioner Blackerby stated that, based on earlier comments and Mr. Appicello's advice about mistakes or no mistakes, doesn't feel it meets the criteria for approval of a variance under any of the four. Chair Baker agreed. Commissioner Nelson also agreed and wondered about continuing the hearing. Chair Baker noted the hearing has closed and asked Mr. Appicello. He stated that the Commission is not required to reopen, but can it be reopened? Yes, that can be done. The Commission can also take whatever action and then the applicant has the right to file an appeal. Mr. Appicello concluded by stating that the applicant has the burden to provide proof, the applicant hasn't requested additional time, and the Commission has identified two, maybe three, criteria that haven't been met. Typically appeal hearings are de novo.

After the vote was taken, Commissioner Vincent stated that he has lived there for five years and doesn't see how, physically walking the lots, that they would have been able to meet requirement. The slope is enormous, and he can't see how they could physically make it work without spending more than the house is worth. He added that's it's not a busy place and that there are only four or five houses around there.

MOTION:	DENY VAR 2021-03 Northwest Coastal Investments - variance for garage entrance minimum setback requirement
MOVER:	Melissa Sumner, Commissioner
SECONDER:	Lenny Nelson, Commissioner
AYES:	Sumner, Baker, Blackerby, Nelson, Schlesinger
NAYS:	Robert Vincent
RECUSED:	MacNeale Smith
RESULT:	Passed

5.3. ZOA 2021-06 Authorization to Initiate Type IV Amendments

Chair Baker opened the public hearing, introduced the case, and explained the public hearing procedures. Anne Marie Skinner, planning and community development director, explained that the last sentence reads "by the city" and it really should have said by city council by motion or the director. This was an inadvertent omission, and this amendment proposes to rectify the omission. Richard Appicello, city attorney, noted that the ordinance used to give the director the authority to initiate and he, Mr. Appicello, inadvertently struck it out when the ordinance was revised. This ordinance corrects that error.

Commissioner Vincent moved to close the public hearing and record. Commissioner Schlesinger seconded the motion. The motion passed unanimously by voice vote.

MOTION:	Recommend APPROVAL to City Council of ZOA 2021-06 Authorization to Initiate Type IV Amendments
MOVER:	Robert Vincent, Commissioner
SECONDER:	Miles Schlesinger, Commissioner
AYES:	Vincent, Sumner, Baker, Blackerby, Schlesinger
AWAY:	Lenny Nelson
RECUSED:	MacNeale Smith
RESULT:	Approved

5.4. ZOA 2021-07 Sign ordinance amendment to allow electronic message centers at schools

Chair Baker opened the public hearing and explained the procedures. Anne Marie Skinner, planning and community development director, gave the staff report noting that it's not a complicated request. Currently, the code prohibits changeable copy signs, electronic message centers, and signs that are internally illuminated in the R-1-5, R-1-7.5, R-1-10, R-1-RE, RM, RR, VR and NP-NCR zones, straight out prohibited. There has been a request to amend that ordinance to allow changeable copy signs, electronic message centers, and signs that are internally illuminated in residential zones. Specifically, Taft High School is wanting to install an electronic message center. For that to happen the code needs to change. Staff has presented a draft ordinance with two options. The first option would allow the sign outright in residential zones, with a number of provisions, but only for public and private schools. The second option would allow the signs for any use in the residential zones provided a conditional use permit approval is request for the sign. Staff's preferred option is the second one to eliminate any discrimination or bias on use. By having a conditional use permit process available for anyone to apply for one of those signs in one of those zones, it puts everyone on a level playing field. Both options have been presented to the Planning Commission to consider and give a recommendation to City Council for one or the other.

Commissioner Blackerby wondered about the history as to why this was prohibited in the past. Richard Appicello talking about residential zones. Signs are typically accessory. In residential zones, things are approved through the conditional use permit process, including schools, so you can have uses in a residential zone that are not residences that need signage. The conditional use permit option might be appropriate. A combination of the two options if you have conditional use permit approval to amend would be through the conditional use process but if the thing you want to add is not allowed at all in the zone, then you won't get over that hurdle so you may want to combine the two options. Ms. Skinner explained that she has worked on numerous projects over the past 24 years in her planning career in Oregon, Washington, and Idaho, and that it's fairly typical that electronic message centers require conditional use permit approval in residential zones.

Chair Baker wondered what the other uses are in residential zones that require conditional use approval. Mr. Appicello read the list from Chapter 17.16 and Ms. Skinner read the list from Chapter 17.20. Chair Baker wondered about the additional requirements and if they are the same for the general commercial zones. Ms. Skinner responded that 17.72.110 illumination and 17.72.120 standards for electronic messages centers apply to any zone that allow these types of signs. The additional requirements are specific to conditional use permit approval in the residential zones and that is because these are residential zones and the other zones are not, so those additional items are specific to this ordinance amendment.

Chair Baker wondered about the animation prohibition. Ms. Skinner said that animation is not specifically prohibited in the other zones. Commissioner Blackerby wondered about the reason for prohibiting animation. Ms. Skinner stated that those additional restrictions were added with feedback from the sign people from ODOT and DLCD with the rationale being that these are residential zones, and thus the signs will create more of a nuisance to houses than commercial uses. Ms. Skinner also stated it's almost mute, since animation has to move to be animation and the code already states that electronic signs have to be static for an hour at a time.

Commissioner Schlesinger wondered if this was for signage for football games with clapping clowns for a touchdown. Ms. Skinner stated it doesn't have anything to do with content, just the type of sign as an electronic message center. Commissioner Nelson followed up that Commissioner Schlesinger was probably wondering if it was intended to be used as an outdoor display at sporting events, and Ms. Skinner responded no.

Commissioner Sumner wondered about the city using more reader boards in emergency situations. Ms. Skinner stated that in a case of an emergency it's a completely different situation and temporary reader board signs can be set up anywhere in the case of an emergency. Commissioner Sumner wondered if we could make a condition in the conditional use permit that, in the case of an emergency, the city could use the school's reader board. Ms. Skinner stated that this is an ordinance amendment, and that would be something to discuss as part of approval of a conditional use and this is not the place to have that discussion.

Sue Graves, safety coordinator for Lincoln County School District, provided testimony in support of the proposed amendment. Ms. Graves stated the school is very eager to have permission to have an electronic reader board at Taft High School. The school is in a residential zone, but there are no residences anywhere in view of the school. Ms. Graves offered to share her screen to show where the sign would be placed along with examples of what the sign would look like. Chair Baker noted that this is an ordinance so not to dive too deeply. Ms. Graves noted that there was an electronic reader board that was there in the past, and the school would like to have it again. Ms. Graves explained that there are so many good uses for the reader board and noted that the sign would be used in the case of emergencies absolutely. (The screen sharing option was not working, so the screen was not shared.)

Karen Gray, 5410 NW Meander Avenue, Newport, Oregon, introduced herself as the superintendent for Lincoln County School District. Ms. Gray explained that the sign is a really important project to the school and reiterated again that there used to be an electronic reader board in this position and that there is no residential next to it. She stated that all of our high schools have an electronic reader board and they are all in residential areas because that where we put our schools. She stated that the conditional use permit process will be followed, as will whatever is required by the city, but they really need the reader board. Ms. Gray stated that communication to parents is important and that it's really a matter of pride to Taft High School to display their information to the public. She clarified that it's not a scoreboard, that they have a scoreboard. Ms. Gray noted that Sue Graves enjoys an excellent relationship with fire and police across the county. Ms. Gray also noted that Taft High School was originally used as an evacuation place during the wildfire, that they are part of the team, and want an opportunity to buy a reader board.

Nick Lupo, the principal of Taft High School, emphasized the importance of getting information to the community. Mr. Lupo reiterated that the site is not near any residential areas and that it's unique in that the high school, college, and elementary school are all near each other. The

community uses our schools. The fire and police use the schools. The schools support local events as well as school events. Communication in English and Spanish is another important piece. Mr. Lupo noted that they want to advertise as a home place for our school and students. The pole already exists there, along with the electricity and wiring.

Commissioner Blackerby had a question of the applicant and began to address Sue Graves. Ms. Skinner noted that Lincoln City is the applicant and that this is not a request for a sign for Taft High School. Rather, it's a request to change the ordinance. Commissioner Blackerby wondered about restrictions on sizes. Ms. Skinner noted that Chapter 17.72 has sizing requirements. Sites are allowed one free standing sign based upon linear street frontage, up to a maximum of 100 square feet in size. Of that, if there is enough linear frontage for the 100-square-foot maximum, then no more than 30 square feet of that 100 square feet can be used as an electronic message center and must be part of a free standing sign.

Commissioner Vincent wondered how the ordinance affects the city. Ms. Skinner explained that is why the two options are presented and that staff is in favor of the second option. There are a number of conditional uses that can be applied for and approved in any of these residential zones. The first option limits the signs to public and private schools only, but permitted outright. The second option requires a conditional use no matter what for allowed conditional uses and that is how it impacts the whole city. Rather than allowing it just for public and private schools it would require a conditional use for any conditional use in any of those zones. Chair Baker said that we aren't looking at this as a sign for the school because right now they are not allowed at all, so right now we are looking at making it an option as a conditional use. This hearing is to change the ordinance to give them the option to apply for a conditional use permit, and then the conditional use permit application would follow if the ordinance is amended.

Commissioner Vincent moved to close the public hearing and record, and it was seconded by Commissioner Sumner. The motion to close the public hearing and record passed unanimously by voice vote.

Chair Baker said that she is not opposed to any of those conditional having reader board signs. She feels it helps to grow and foster the community and is in favor of the amendment using the second option. She would like to add the condition that the sign be an accessory use. Commissioner Blackerby feels message signs build community and is in favor of the second option. Commissioner Sumner agreed with both Chair Baker and Commissioner Blackerby. Commissioner Vincent stated he also likes option two because he doesn't want it to turn into Las Vegas. Commissioner Nelson agreed.

Sumner moved and Nelson seconded to recommend approval to City Council of the second option of the ordinance amendment with the addition that the sign be accessory to an allowed conditional use. Motion passed unanimously with a roll call vote.

Karen Gray wondered about the City Council Date. Ms. Skinner noted that it is scheduled for City Council on February 14, 2021. Ms. Gray wondered about the next steps, and Ms. Skinner recommended that Ms. Gray call at the office to discuss the next steps.

MOTION:	Recommend APPROVAL to City Council of ZOA 2021-07 Sign ordinance amendment to allow electronic message centers at schools with the 2nd option and as accessory to an allowed conditional use
MOVER:	Melissa Sumner, Commissioner
SECONDER:	Lenny Nelson, Commissioner
AYES:	Vincent, Sumner, Baker, Blackerby, Nelson, Schlesinger
RECUSED:	MacNeale Smith
RESULT:	Approved

5.5. ZOA 2022-01 Annexation Procedure Amendment

Chair Baker opened the hearing, introduced the case, and reviewed the public hearing procedures.

Anne Marie Skinner, planning and community development director, gave the staff report. Ms. Skinner explained that this is fairly straight forward. Staff is proposing to add two items to the existing ordinance – two application items to be added to property-owner initiated annexation applications and the ability for City Council to initiate annexation requests. The city-initiated option was inadvertently omitted when this ordinance was put into place last year and this is correcting that inadvertent omission.

Commissioner Vincent moved, and Commissioner Blackerby seconded to close the public hearing and record. The motion passed unanimously by voice vote.

MOTION:	Recommend APPROVAL to City Council ZOA 2022-01 Annexation Procedure Amendment
MOVER:	Kim Blackerby, Commissioner
SECONDER:	Robert Vincent, Commissioner
AYES:	Vincent, Sumner, Baker, Blackerby, Schlesinger
AWAY:	Lenny Nelson
RECUSED:	MacNeale Smith
RESULT:	Approved

5.6. ZOA 2022-02 UGB Adjustment

Chair Baker opened the public hearing at 9:05 PM, introduced the case, and reviewed the hearing procedures. Anne Marie Skinner, planning and community development director, gave the staff report. Ms. Skinner stated that this has been ongoing since approximately 2017, explaining that it was initially discovered by Sandy Gruber, the GIS Coordinator. Ms. Gruber was approached by citizens who were adamant that their property was not in the UGB, even though the City's mapping showed otherwise. Ms. Gruber met with county and state staff, as well as staff from the Oregon Department of Land and Conservation Development. A summary is included in the agenda packet. Ms. Gruber's research culminated in late February 2020 with a conversation with Lisa Phipps, the City's DLCD representative, then things shut down because of COVID.

The issue was resurrected late last year and the conclusion was a Zoom meeting held February 8, 2021, with several city staff members, as well as two members of DLCD and concluded that yes, in fact, our map showing our UGB is incorrect and the areas in the south end of the town are in fact not part of the UGB. This action is to rectify that situation and essentially it would make us

match what the County has adopted. Both maps should be the same, and this action will accomplish that, make everything consistent, and match what was actually adopted and not be what we think has been a mapping error over the years.

Alison Robertson, urban renewal and economic development director, provided testimony by stating that it's really a housekeeping item to make sure our map matches the county and the county's map has DLCD's stamp of approval which is why we are matching their map. This action would confirm that line and boundary to correct the mapping error that has been perpetuated through the years.

Commissioner Blackerby moved and Commissioner Schlesinger seconded to close the public hearing and record. The motion passed unanimously by voice vote.

Commissioner Schlesinger wondered about development in the area. Commissioner Nelson said there are some homes. Ms. Skinner confirmed the area has some homes and the rest of the area is undeveloped.

MOTION:	Recommend APPROVAL to City Council of ZOA 2022-02 UGB Adjustment as written
MOVER:	Lenny Nelson, Commissioner
SECONDER:	Melissa Sumner, Commissioner
AYES:	Vincent, Sumner, Baker, Blackerby, Nelson, Schlesinger
RECUSED:	MacNeale Smith
RESULT:	Approved

6. OLD BUSINESS

None.

7. NEW BUSINESS

City Council should be appointing the next Planning Commissioner on January 10, 2022, so at the next Planning Commission meeting the election for the chair and vice chair for 2022 will take place.

8. PLANNING COMMISSION TRAINING

None

9. REPORTS AND COMMENTS

Commissioner Schlesinger wondered about recruiting of staff in the planning department. Anne Marie Skinner, planning and community development director, responded that one individual will be starting January 24, 2022, and that individual will be the clerk for the Planning Commission and taking minutes. Another individual started on January 10th, Austin Hull, and he will be doing more of the VRDs and plan review for single-family residences. The senior planner position is remaining open.

Commissioner Vincent thanked Ms. Skinner for the hard copy packet and everything she does.

10. FUTURE AGENDA ITEMS & NEXT MEETINGS

The Final Orders and Final Recommendations from this meeting will be on the next meeting's agenda. No other cases are scheduled. It's possible that a schedule for public outreach for the comprehensive plan will be discussed. Chair Baker wondered about training, and Ms. Skinner stated training might take place.

11. ADJOURN

Respectfully submitted,

Anne Marie Skinner
Director

Chair