

**LINCOLN CITY PLANNING COMMISSION  
MINUTES  
December 7, 2021**

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

<b>Attendee Name</b>	<b>Title</b>	<b>Status</b>	<b>Arrived</b>
Robert Vincent	Commissioner	Present	
Mellissa Sumner	Commissioner	Present	
Marci Baker	Chair	Late	6:18 PM
Kim Blackerby	Commissioner	Present	
Lenny Nelson	Commissioner	Present	
Miles Schlesinger	Commissioner	Present	
MacNeale Smith	Commissioner	Present	

Vice Chair Blackerby called the meeting to order and continued to preside over the meeting since Chair Baker arrived late.

**2. AGENDA CHANGES OR REVISIONS**

None.

**3. MINUTES**

**3.1. Planning Commission - Regular Meeting - Nov 16, 2021 6:00 PM**

<b>MOTION:</b>	<b>To approve the minutes from November 16, 2021.</b>
<b>MOVER:</b>	<b>Robert Vincent, Commissioner</b>
<b>SECONDER:</b>	<b>MacNeale Smith, Commissioner</b>
<b>AYES:</b>	Vincent, Sumner, Blackerby, Nelson, Schlesinger, Smith
<b>ABSENT:</b>	Marci Baker
<b>RESULT:</b>	<b>Passed</b>

**4. FINAL ORDERS, RESOLUTION, & WRITTEN COMMUNICATIONS**

None.

**5. PUBLIC HEARINGS/DELIBERATIONS**

**5.1. PUD 2021-02 SUB 2021-01 Lincoln Palisades VI - a 32-lot subdivision/planned unit development**

At 6:12 PM, Commissioner Blackerby opened the public hearing. Commissioner Blackerby asked the Planning Commissioners if they had received any ex-parte communications. No Commissioners had.

Planning & Community Development Director Skinner presented the staff report. Ms. Skinner provided a geographical overview of the subject property, noting neighboring streets and property

owners. The areas to the north, south, and west are developed; the area to the east is undeveloped and comprises wetlands and steep slopes. Alpha Building Ventures (Applicant) submitted this application on January 14, 2021. Initially, Applicant submitted for 36 lots. The public hearing was initially scheduled and held on November 16, 2021, and was continued to this meeting due to Applicant revising their development plans. Applicant reduced development plans from 36 lots to 32 lots to meet minimum requirements of the R-1-7.5 zone. The revised plans are available on the City website. The staff report was updated to reflect the revised plan, and additional public comments were received from Joyce and Tim Stoelb (included in the packet) and Pat Dunne. Mr. Dunne's comments were submitted after the packet was produced. Ms. Skinner summarized Mr. Dunne's comments as follows:

- Mr. Dunne noted there would be no contribution to affordable housing.
- Mr. Dunne questioned the traffic counts at NE Port Lane.
- Mr. Dunne has concerns with storm runoff and drainage.
- Mr. Dunne has concerns regarding emergency access for North Lincoln Fire.
- Mr. Dunne has concerns about steep slopes, old growth trees, and extra traffic impacting emergency evacuations from the area.

Ms. Skinner received comments from Lesley and Don Suba on December 6, 2021. They agreed with Mr. Dunne's comments. Further, they are opposed to the establishment of any HOA.

Ms. Skinner relayed comments from City public works staff to the Commissioners. The City maintains storm water facilities that serve the right-of-way, but does not maintain storm water facilities in common tracts dedicated by developers. If the developer wanted to dedicate the additional land differently, the City would require storm water to be altered, being discharged to public property to the north as originally designed. City public works staff said that deferring sidewalk construction until houses are constructed has led to sidewalk gaps in the past, and sidewalks should be built before house construction. Street lights will be required. A traffic impact analysis is not required for this phase of development. The City recently paid for safety improvements on NE Port but did not have funds for the sidewalk. Evacuation plans are not required by City code. Concerns with proposed street names could be brought up with the City Council. The revised plan meets all City code requirements for the R-1-7.5 zone, including landscaping. The City's recommended conditions of approval are listed at the end of the staff report.

Commissioner Smith said there wasn't a tree protection plan. Is one required? Ms. Skinner noted that it appears none of the site trees will remain so there is no need for a tree protection plan.

Commissioner Blackerby asked about applicant's narrative mentioning a small open space area adjacent to the open space previously dedicated to the city. Ms. Skinner advised that the question needs to be addressed with the applicant.

City Attorney Appicello noted that this hearing was not a time to suggest changes to the existing City Code; rather, the existing code must be applied in this hearing.

Chair Baker asked about a condition to use West Devils Lake Blvd for access during construction. Ms. Skinner noted this wasn't currently a condition, but could be added as a

condition by the Planning Commission. Commissioner Blackerby said that it is noted by Applicant in the applicant's narrative that they would agree to that condition.

Hayden Wooton and Dave Reece with Reece and Associates presented on behalf of Applicant. Applicant agreed with the comments presented in the staff report but would like to make a few changes to the conditions of approval. Applicant wishes to remove the need for an HOA. To do this, Applicant needs conditions 8 and 9 to be removed.

Commissioner Blackerby asked about the small open space area. Mr. Wooton said that "open space" was a poor choice of words. It's actually the landscaped common lot between lots 21 and 22. Mr. Wooton said the developer might want to add this area into lots 21 and 22 as additional lot space, or as a community garden with access via an easement.

Commissioner Blackerby asked about whether an HOA already existed. Mr. Wooton responded that Applicant believed there was an HOA in force. It has come to light in this process that the CCRs have been revised and not turned over to the homeowners. Those CCRs are related to previous developments and wouldn't be enforced here if Applicant could remove conditions of approval 8 and 9. Commissioner Blackerby asked if Applicant was not in favor of having an HOA; Mr. Wooton stated that was correct, provided conditions of approval 8 and 9 could be removed. Mr. Wooton said that not having an HOA would benefit property owners and neighbors.

Commissioner Baker asked what triggers the need for an HOA. Ms. Skinner replied that in this instance conditions of approval 8 and 9 were noted because the revised plan set included a common landscaped area and a common storm water tract. The City would not maintain these, so an HOA would be required to maintain them. If Applicant wants to remove conditions 8 and 9, Applicant needs to address what they will do with those common lots. Applicant said they would put the common landscaped area back into the adjacent lots, and would provide an easement to the City for storm water. Applicant noted this has been done with previous phases of Lincoln Palisades.

Commissioner Sumner asked how we get a guarantee about the proposed changes in conditions of approval. Ms. Skinner said that this is a preliminary approval. A final master plan will need to be submitted and approved. City Attorney Appicello noted the City doesn't have to accept the dedications and asked why this issue hadn't been dealt with previously. City Attorney Appicello noted Applicant should have come forward with additional information, and Applicant should request a continuance to submit extra information.

Ms. Skinner agrees with Mr. Appicello about the need for a continuance, noting the need for Public Works to review storm water changes.

David Reece said that conditions of approval can be deleted, revised, or added during a Planning Commission hearing. Mr. Reece said it was his suggestion to remove the storm water tract and he also noted the difficulties in having a landscaped common area between lots 21 and 22. Mr. Reece said that the property owners could set up a landscaped common garden area later on without that being a condition of development approval. Mr. Reece said Applicant was trying to simplify the process.

Commissioner Blackerby noted that this is a complicated issue that shouldn't be decided on a whim. Commissioner Blackerby doesn't think that Applicant has consulted with neighbors of the development. Commissioner Blackerby has seen a lot of citizen participation with this particular development. Commissioner Blackerby agrees with Mr. Appicello and Ms. Skinner that the current conditions of development should remain in effect and Applicant should request a continuance if they want to change those conditions. Commissioner Blackerby noted that the issues are not just common landscaped lots but also involve storm water.

Commissioner Sumner agrees with Commissioner Blackerby. The conditions need to stay.

Mr. Reece is not opposed to coming back but noted that tonight's hearing is seeking a preliminary approval. The code is written to allow flexibility and latitude to adjust the conditions of approval.

Ms. Skinner noted that conditions require Applicant to build to City's storm water standards regardless of whether Applicant retains a storm water tract or uses an easement to turn storm water management over to the City.

Commissioner Nelson noted that only a few lots within any development are developed by the original developer, so any conditions the City wants to apply must be in writing.

Commissioner Blackerby asked for testimony in support of the application. None was received.

Commissioner Blackerby asked for neutral testimony about the application.

Tim Stoelb provided neutral testimony. Mr. Stoelb asked the Commissioners to use common sense in reviewing the development. Mr. Stoelb said that it's a good thing that Applicant is willing to make adjustments to the storm water tract. Mr. Stoelb commented that homeowners would not want to maintain storm water that doesn't serve them. Mr. Stoelb also spoke in support of removing the landscaped common area (Tract B). Mr. Stoelb said that constructing the sidewalks ahead of development would lead to sidewalks being damaged during construction and broken apart for driveway access. Mr. Stoelb said that property owners shouldn't have to pay for street lighting. Mr. Stoelb said that the 2020 emergency evacuation from the area was a mess, with traffic being backed up on NE Port Lane. Adding more homes and traffic would make these issues worse. Mr. Stoelb said that there are no alternate ways in and out of the proposed development, asking if some of the streets could be connected instead of being cul-de-sacs.

Patrick Dunne provided testimony against the application. Mr. Dunne asked if the Commissioners had received 6 images that he had provided to Planning Director Skinner. Commissioner Blackerby confirmed they had. Mr. Dunne summarized his previously-submitted written comments. Mr. Dunne noted that the final plan is not open to the public for public comment.

Margaret Powell testified in opposition of the application. Ms. Powell said that no one answered Mr. Dunne's question regarding whether the final plan is not open to the public for public comment. If it is not, then Ms. Powell would support a continuance. Ms. Powell said there is not an HOA in this area. Ms. Powell said there are too many unanswered questions and this matter needs a continuance to allow for more public comments.

Ms. Skinner confirmed that the final master plan approval does not include a public hearing.

No testimony from public agencies was received.

Ms. Skinner said that the City pays for street lights monthly. Developers pay for the initial installation of street lights. Homeowners in an HOA do not pay for street lighting.

Commissioner Vincent asked Ms. Powell about her main concerns. Ms. Powell said her main concern was this was the final public hearing for this matter. Ms. Powell said she is concerned about the HOA since she purchased in the area because there isn't an HOA and she was told there would not be one. Ms. Powell is also concerned about the storm drainage. Ms. Skinner said the City as a whole has storm water design standards and all developments have to follow those. Many projects don't require public hearings and are still built to those City design standards. Ms. Skinner said the public can rest assured that the City has a full storm water design standard manual by which each project has to abide.

Mr. Dunne said that West Devils Lake Road had very high floodwater during the recent heavy rains, expressing concern that storm water from this new development would make that worse. Mr. Dunne said he was concerned that an assisted living home going into this area would get flooded.

Mr. Blackerby asked Applicant if they wanted to rebut any of the public comments. Mr. Reece requested a continuance to remove a couple of the conditions of approval. City Attorney Appicello asked Applicant to include in the covenants and restrictions how enforcement will be handled if storm water is retained in easements on individual lots. Mr. Reece said he'd be happy to do that.

Mr. Reece said he'd like to rebut the assisted living home issue on West Devils Lake Boulevard raised by Mr. Dunne. Mr. Reece said he was sure that the assisted living home was fully vetted during the building permit process to establish that it is above the base flood elevation for that particular area. Mr. Reece said that any storm water in that area was an anomaly, and not the norm. Mr. Reece said he's studied this area for 18 years from a storm water management standpoint. Mr. Reece wants to go on the record to say that sometimes there are plugged catch basins and pipes with storm water systems, and you might get caught in that condition; however, he would find it extremely unusual if a building permit was issued to a building that might get flooded due to storm water runoff.

Mr. Appicello asked Applicant if January 4 was an acceptable continuance date. Applicant said that it was.

Mr. Appicello reminded Commissioners not to participate in any ex-parte communications.

<b>MOTION:</b>	<b>To continue the public hearing for PUD 2021-02 SUB 2021-01 Lincoln Palisades VI - a 32-lot subdivision/planned unit development to January 4, 2022.</b>
<b>MOVER:</b>	<b>Marci Baker, Commissioner</b>
<b>SECONDER:</b>	<b>Robert Vincent, Commissioner</b>
<b>AYES:</b>	Vincent, Sumner, Baker, Blackerby, Nelson, Schlesinger, Smith
<b>RESULT:</b>	<b>Motion to Continue - Passed</b>

**6. OLD BUSINESS**

None.

**7. NEW BUSINESS**

**7.1. 2022 meeting schedule**

Director Skinner asked for a motion to approve the proposed 2022 Planning Commission meeting schedule.

Director Skinner said that there were no action items on for Tuesday, December 21, 2021, and asked if the Commissioners wished to cancel the meeting. All Commissioners unanimously agreed to cancel the meeting for December 21, 2021.

<b>MOTION:</b>	<b>To approve the 2022 meeting schedule</b>
<b>MOVER:</b>	<b>Robert Vincent, Commissioner</b>
<b>SECONDER:</b>	<b>MacNeale Smith, Commissioner</b>
<b>AYES:</b>	Vincent, Sumner, Baker, Blackerby, Nelson, Schlesinger, Smith
<b>RESULT:</b>	<b>Passed</b>

**8. PLANNING COMMISSION TRAINING**

None.

**9. REPORTS AND COMMENTS**

None.


**10. FUTURE AGENDA ITEMS & NEXT MEETINGS**

None.

**11. ADJOURN**

The meeting was adjourned at 7.26 p.m.

Respectfully submitted,

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Anne Marie Skinner  
Planning & Community Development Director

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Marci Baker  
Chair