

**LINCOLN CITY PLANNING COMMISSION  
MINUTES  
January 21, 2020**

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

<b>Attendee Name</b>	<b>Title</b>	<b>Status</b>	<b>Arrived</b>
Lenny Nelson	Commissioner	Present	
Patti Kroen	Chair	Present	
Miles Schlesinger	Commissioner	Present	
Joshua Brainerd	Commissioner	Present	
Marci Baker	Commissioner	Present	
Kim Blackerby	Commissioner	Present	

**2. AGENDA CHANGES OR REVISIONS**

No changes to the agenda.

Planning Commission Chair, Patti Kroen, took a few moments to welcome Kim Blackerby, the newest member of the Planning Commission. Commissioner Blackerby introduced himself and his background.

**3. MINUTES**

**3.1. Planning Commission - Regular Meeting - Jan 7, 2020 6:00 PM**

<b>MOTION:</b>	
<b>MOVER:</b>	<b>Lenny Nelson, Commissioner</b>
<b>SECONDER:</b>	<b>Joshua Brainerd, Commissioner</b>
<b>AYES:</b>	Nelson, Kroen, Schlesinger, Brainerd, Baker, Blackerby
<b>RESULT:</b>	<b>Passed</b>

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

There are no final orders, final resolutions, or written communications. There will be, after the conditional use permit hearing, deliberation on the bluff ordinance hearing. Staff will likely ask for a motion to approve a final recommendation based on the deliberation.

**5. PUBLIC HEARINGS/DELIBERATIONS**

1. ZOA 2019-08

There is a request to continue the public hearing to March 17, 2020. It was previously continued from October 15, 2019. About the request to continue the hearing, Planning and Community Development Director Anne Marie Skinner said that she has found, when looking at getting the design standards right, that there are several things in the existing code in parking, landscaping, and processes that need to be changed for the design standard revision to go through correctly. She said that she would like to notice those changes so that the Planning Commission can hear

them concurrent with the design standards so that they flow together and we do not end up with a mishmash of inconsistencies.

After the motion and vote to continue the public hearing to March 17, 2020, Commissioner Blackerby asked what the design standards are for. Ms Skinner answered that the design standards are just for commercial development. They only apply to the General Commercial (GC) and Recreation-Commercial (RC) zones, and currently only when site plan review is required. There are many ways in the current code where the design standards do not apply, which is one of the things that we are trying to fix in the revision. There are a number of chapters where inconsistencies need to be removed in order for the design standards to be effective. We are trying to capture those inconsistencies in one go-around. There are currently no design standards in multi-family. These revisions add design standards for multi-family residential. Single-family residences require the use of at least two design features from a list, but there are not otherwise design standards for single-family residences. Chair Kroen added that the design standard revisions have been in process for a long time.

### 5.1.2.

<b>MOTION:</b>	<b>Continue the public hearing to March 17, 2020</b>
<b>MOVER:</b>	<b>Lenny Nelson, Commissioner</b>
<b>SECONDER:</b>	<b>Marci Baker, Commissioner</b>
<b>AYES:</b>	Nelson, Kroen, Schlesinger, Brainerd, Baker, Blackerby
<b>RESULT:</b>	<b>Passed</b>

## 2. CUP 2019-05 Devils Lake RV Park - addition of 4 RV spaces

Chair Kroen read the required statements. No ex-parte contacts were declared. There were no challenges to the qualifications of any of the commissioners to participate in the hearing. At the request of Chair Kroen, Ms Skinner read the applicable substantive criteria for the decision. All testimony must be directed to the substantive criteria. Chair Kroen summarized the public hearing procedures.

## 2. Staff Report

Ms Skinner presented the staff report for CUP 2019-05 Devils Lake RV Park. She described the site as the southwest corner of West Devils Lake Road and Highway 101. The site is in the Recreation-Commercial (RC) zone and is mostly surrounded by RC zone. A portion to the north and across Highway 101 is zoned General Commercial. To the southeast is residential and to the southwest is General Commercial. Ms Skinner described the notices sent and published. She reviewed the conditional use permit history of the development of the park. The applicant is seeking permission to add 4 more spaces - F, G, H, and I.

Ms Skinner read into the record the definition of Recreational Vehicle.

Ms Skinner described the conformance of the proposal with each of the criteria for approval of the conditional use permit.

**Condition 1** (*The proposal is in compliance with the comprehensive plan*): Staff finds that the criterion is met or not applicable. The Comprehensive Plan contains no directly applicable policies related to RV parks.

**Condition 2** (*The site for the proposed use is adequate in size and shape to accommodate the use*): Staff went through each of the requirements for the RV park.

- Surface drains were submitted and approved for the entire park in the original application. Public Works had no comments on surface drainage submitted for the added spaces.
- Square footage for each of the spaces exceeds the minimum required.
- Applicant-submitted materials show the paved pads 2 square feet short of the required 400 square feet. This is easily remediable.
- RVs must be separated by at least 10 feet. The submitted materials show that the new spaces will meet that requirement. With addition of accessory structures, it is likely that separation requirements will not be met.

There was some discussion between Ms Skinner and the commissioners about what is meant by accessory structures. Commissioner Blackerby clarified that Devils Lake RV Park is not a mobile home park and asked whether there are any RVs at the park semi-permanently. Ms Skinner deferred to the applicant to answer the question. Commissioner Nelson asked whether there is a law saying that you cannot prohibit someone from living permanently in an RV park. Ms Skinner explained that the Lincoln City Municipal Code does not clarify one way or the other. Commissioner Nelson asked how, if someone built a structure (at Devils Lake RV, referring to the conversation about accessory structures) without going through the planning department, we would know. Ms Skinner answered that it would not be any different than other structures that do not regularly require permits such as fences and other accessory structures.

- The four new spaces will provide asphalt spaces for off-street parking. Space F is shown with a driveway space that is four feet too short for the required 9x20 parking space, and would have to be increased as a condition of approval. Chair Kroen asked whether the extension of the driveway will affect the ingress/egress of the other sites. Ms Skinner answered that they may have to move the pad to the north or curve the driveway.
- Existing roads are over the required 30 feet in width, and no new roadways are proposed.
- Required fences were approved as part of the original approval and the outer boundary of the park is not being expanded. Commissioner Nelson pointed out that there is a note that three of the spaces are not inside the fencing. Ms Skinner answered that it is because the northeast corner of the park is a wetland area and fencing was precluded. Commissioner Nelson asked how the conflict between fencing being required and fencing not being allowed because of the wetland can be resolved. Ms Skinner replied that a possible remedy is making it a condition of approval that fencing go outside the wetland area.
- The number and location of required trash receptacles was met as part of the original approval, and the new application gives no indication of changes and does not suggest a need for additional ones.

- Park maintenance and a prohibition against outside storage remains a condition of operation of the park. This is something that would come under code enforcement and is part of enforcement being complaint-driven.
- Wetlands. There are two different types of wetlands that we look at - significant wetlands identified as part of the Comprehensive Plan, and jurisdictional wetlands. The natural resources map shows significant wetlands in the park area. However, based on previous approvals and conversations with the Department of State Lands (DSL), none of the existing wetland delineations show the areas mapped as significant wetlands as being wetlands at all. What should have happened previously was a revision to the map as part of a declaration of map error. Staff was not able to find anything in the files that made any reference to this being a significant wetland, and the original approval was before the wetland inventory. In 2018 AKS conducted a delineation and there was no wetland found in what is currently mapped as a "significant wetland" area.

Commissioner Kroen pointed out that it is difficult to determine where the RV park overlay is on the wetland delineation that was handed out. Ms Skinner replied by reading one of the recommended conditions for approval: “An application for natural resources development review, with the accompanying wetland delineation of the northeastern area south of the existing access driveway, shall be submitted for review prior to the site plan review meeting” and showing all of the areas of the spaces F, G, and H outside of the wetland. Following up on the claim of map error, the applicant submitted the wetland delineation yesterday [January 20, 2020] and Ms Skinner submitted it to DSL. The delineation shows no wetland in the area that we show as significant wetland and DSL did not make any comments about there being any wetlands. However, in a message that DSL left, they did additional digging and found something in 1994 about an unmapped mitigation wetland.

The wetland situation at this point in time remains murky, which is the reason for the recommended condition. If the applicant cannot verify that F, G, and H are outside the wetland, there will not be spaces F, G, and H. Site plan review is required for this project, so that is why the conditions are tied to site plan review. The use could be conditionally approved based on the wetland and natural resource review being approved prior to site plan review. Commissioner Schlesinger commented that he thinks the wetland is there, but that it is on the north side of the driveway into the park going up to the city property which has a pump station on it. Ms Skinner replied that there are wetlands in that location as well; that the entire north side is significant wetlands, and that the applicant originally wanted to expand in that direction and was precluded from it.

Ms Skinner showed the mapped significant wetlands in relationship to the proposal and said that she is working with DSL to get clarification, although the situation is not very clear at the present moment.

**Condition 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*): Access to the site is from West Devils Lake Road and has a traffic signal. This criterion is satisfied.

**Condition 4** (*The proposed use will have minimal adverse impact upon adjoining properties and the improvements thereon*): Notice was sent to property owners within 250 feet of the

site. No comments were received.

**Condition 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 contain any designated historic, scenic, or cultural attributes. This criterion is not applicable.

Chair Kroen asked Ms Skinner to explain the Natural Resource Overlay Zone. Ms Skinner explained that development in areas identified as part of the Natural Resource Overlay Zone is not allowed by default. There are two ways that development can be allowed in the Natural Resource Overlay Zone. One is a variance. The other way is through a claim of map error. Otherwise, if you have a significant wetland or significant riparian area on your site, you cannot develop in that area. Chair Kroen asked whether the development on the site is within the Natural Resource Overlay Zone. Ms Skinner replied that it is.

### **3. Applicant's Testimony**

The applicant, Robert Swan, addressed the Planning Commission, saying that he could add to what was said in the staff presentation. Regarding accessory structures, Mr Swan explained that there are several monthly residents in the park. There are several park model RVs that are used as vacation homes, and several that are permanent residences. These four spaces are planned for one-time installations of park model RVs. Most of the RVs are owned by individuals. The applicant prefers to rent spaces to renting the RVs. The spaces are easier to take care of.

Regarding the fence through the wetlands, Mr Swan explained that they have fence all around the property. He believes the point of the fence was to keep a buffer around the messy RV park. The fence stops where it is wetlands, but the vegetation is so thick there that you cannot see the RV park. It is pretty well hidden. Chair Kroen asked whether any trees will have to be taken down to add the new RV pads. Mr Swan responded that they will have to remove a few alders.

Chair Kroen asked whether the playground was required in the original permitting for the RV park. Mr Swan replied that he does not know - that the park had two previous owners. There is still a playground up now but it is in bad shape and needs to come out. It is rarely used.

Chair Kroen asked where runoff from the new pads will go, and whether it will run into the wetland. This led to discussion amongst the commissioners about management of storm water on the site.

Commissioner Blackerby asked whether sites F, G, and H will be permanently installed on piers? This led to a lengthy discussion about the potential implications of the requirements of HB 2333 2019. Both Ms Skinner and Mr Appicello pointed out that the application being considered by the Planning Commission is for the addition of 4 RV spaces, and that discussion of whether the RVs will be lived in permanently or not is irrelevant to the conditional use permit. Mr Appicello suggested that the applicant look at the house bill and talk to the building official because there are some triggers where there is the assumption that an RV has been converted to a residence and then triggers the building code. Commissioner Blackerby summarized the conclusion of the conversation, saying that if the Planning Commission approves the conditional use permit for 4 RV spaces and the applicant converts the RVs to structures, and the building official determines that they have been converted, it

would be both a building code enforcement and a planning code enforcement issue because the approval was for RV spaces.

Chair Kroen expressed that it feels clunky to approve something with a long list of conditions that may be more appropriately resolved before approving the conditional use. Mr Appicello replied that there is the additional step of the required site plan review, and that he thinks that the most appropriate process for resolving many of the issues is the site plan review process. Chair Kroen said that the Planning Commission could approve conditional use with conditions that are all going to need to be proving in the site plan review process. Mr Appicello responded, saying that he would not suggest that process if he did not think that there was enough information in the record suggesting that it would be feasible.

Commissioner Nelson said that it is problematic when you are doing something like this because you end up with equipment in the wetlands even if you are not filling, and that she would like to see a condition requiring wetlands be marked during construction to not allow any equipment or motorized vehicles in the wetland. Mr Appicello replied that it is a good condition, and any time you have development next to a wetland, unless you have a permit to fill it, you need to stay out of it, but that it is a stretch to add it as a condition of a conditional use permit and is more appropriate in the site plan review process. He suggested, however, that the condition could be part of satisfying the adequate space criterion as a way to show that they are not affecting existing wetlands by putting up barriers. Commissioner Nelson said that she was suggesting it as an addition to conditions 4 and 4a. Commissioner Blackerby supported Commissioner Nelson's suggestions, saying that he is concerned not only about equipment going into the wetland but also debris and soil and other things that can come about from the construction site. Mr Swan replied that he does not plan on filling and has no problem being required to mark off the wetlands. He will not be putting equipment in the wetlands.

Commissioner Nelson said that she still has a question about the fencing - that the point of the fencing was to close off the park from traffic going by. She asked the applicant what he proposes if a fence cannot be installed in the northeast corner. Mr Swan replied that he thinks that the point is that you cannot physically see the property from the road. Commissioner Nelson said that she would like to see as a condition of approval that the site-obscuring vegetation be left in place where the fence cannot be built.

There were no further questions for Mr Swan.

#### **4. Public Testimony**

##### **A. Testimony in Support**

There was no public testimony in support of the application.

##### **B. Neutral Testimony**

There was no neutral public testimony related to the application.

##### **C. Testimony in Opposition**

There was no public testimony in opposition to the application.

#### **5. Applicant Rebuttal**

There was no rebuttal.

**5.2.6.**

<b>MOTION:</b>	<b>Close the hearing and the record</b>
<b>MOVER:</b>	<b>Kim Blackerby,</b>
<b>SECONDER:</b>	<b>Miles Schlesinger,</b>
<b>AYES:</b>	Nelson, Kroen, Schlesinger, Brainerd, Baker, Blackerby
<b>RESULT:</b>	<b>Passed</b>

**7. Deliberation**

There was no request for continuance and no request for the record to be left open. The applicant waived the opportunity to submit final written argument after the close of the record.

Mr Appicello read the modifications to the recommended conditions, which included the addition of restricting activity in the wetland to proposed condition 4a, and the addition of condition 7 to leave the existing vegetation as a visual screen for spaces F, G, and H.

Chair Kroen asked about the commissioners' opinion on a prohibition on accessory structures. Commissioner Baker said that the suggestion makes sense - especially on the spaces that do not have the extra room. Commissioner Blackerby also agreed.

Chair Kroen said that the only other question is related to the Natural Resource Overlay Zone, and the clarification of the wetland mapping will take that into consideration. She said that it looks like there is construction proposed within the Natural Resource Overlay Zone. Ms Skinner replied that once the site plan is overlaid on what has been delineated so far, any work inside the Natural Resource Overlay Zone will not be allowed.

**5.2.8.**

Staff will prepare a final order for adoption at the next meeting.

<b>MOTION:</b>	<b>Approve CUP 2019-08 with conditions as stated</b>
<b>MOVER:</b>	<b>Lenny Nelson, Commissioner</b>
<b>SECONDER:</b>	<b>Joshua Brainerd, Commissioner</b>
<b>AYES:</b>	Nelson, Kroen, Schlesinger, Brainerd, Baker, Blackerby
<b>RESULT:</b>	<b>Passed</b>

**3. ZOA 2019-12**

Chair Kroen introduced the deliberations, which were continued from the public hearing held during the December 17, 2020 meeting of the Planning Commission. The record was left open for additional comment from the Siletz tribal planner and deliberations were continued to the January 21, 2020 meeting. Chair Kroen asked Commissioner Blackerby to review the video of that meeting so that he could participate in the deliberations. He reviewed the video. Mr Appicello asked the commissioners to take judicial note of a LUBA appeal on their table on the topic. That

decision is that for the bluff setback, the measurement must be made from the unaltered bluff line. There were two lines in the subject case, and the original Council decision was to allow measurement from the altered line. The LUBA decision was that the Lincoln City Municipal Code requires measurement from the unaltered line. There were a couple of other issues including the definition of "footprint," which includes cantilevering, which is something that both the petitioners caught and LUBA pointed out.

Mr Appicello went on to say that we want to make clear that the clarification in the draft ordinance (ZOA 2019-12) is not a change. In the land use context, if you adopt a new land use regulation after January 2007 an owner of residential property can file a claim for compensation (Measure 49). We are not adopting a new regulation. LUBA just said that the regulation we have is measured from the unaltered bluff. We are not changing from altered bluff to unaltered bluff. If that is what we were doing, it could result in a claim. LUBA has said that the existing code says the setback is measured from the unaltered bluff and that the City was wrong in measuring from the altered bluff. All we are doing is clarifying what the code already requires. Chair Kroen responded that we are going to clarify the ordinance and asked whether the LUBA opinion will be incorporated into that clarification. Mr Appicello replied that the recommendation still has to go to the City Council, but that the Planning Commission might add language suggesting that the ordinance is just a clarification of the existing situation based on the LUBA appeal.

Chair Kroen said that she is fine with going back and approving that way. She reminded staff that the draft ordinance in the packet does not reflect the change requested by the Planning Commission of "a registered engineer" to a civil or geotechnical engineer. Ms Skinner explained that staff did not change the draft ordinance because the public hearing had already been closed, and so the change will instead be made in the final recommendation from the Planning Commission and will be added to the draft ordinance that goes to and is noticed for the City Council.

### 5.3.2.

<b>MOTION:</b>	<b>Approve the final recommendation for ZOA 2019-12 with clarification and modified language</b>
<b>MOVER:</b>	<b>Lenny Nelson, Commissioner</b>
<b>SECONDER:</b>	<b>Marci Baker, Commissioner</b>
<b>AYES:</b>	Nelson, Kroen, Schlesinger, Brainerd, Baker, Blackerby
<b>RESULT:</b>	<b>Passed</b>

### 5.3.3.

<b>MOTION:</b>	<b>Authorize the chair to sign final order when prepared</b>
<b>MOVER:</b>	<b>Lenny Nelson, Commissioner</b>
<b>SECONDER:</b>	<b>Kim Blackerby, Commissioner</b>
<b>AYES:</b>	Nelson, Kroen, Schlesinger, Brainerd, Baker, Blackerby
<b>RESULT:</b>	<b>Passed</b>

**6. OLD BUSINESS**

Commissioner Nelson referred to the question asked of the commissioners during the 2020 Work Plan discussion at the January 7, 2020 meeting about removing single-family residential structures from the General Commercial zone. She explained that such a change would immediately turn anyone with a single-family residence in those zones into an existing nonconforming use, and so is not in favor of it. Commissioner Baker added that she also thought some about the question but wondered what the benefit would be. Ms Skinner replied that if she presumed to guess the reasoning behind the original question it would probably be to encourage residential use in residential zones and save the commercial zones for commercial use. Chair Kroen responded that such encouragement might be appropriate in new development, but that it would be hard for existing properties, given the fact that so much of the city is cobbled together.

**7. NEW BUSINESS**

No new business

**8. PLANNING COMMISSION TRAINING**

Have planned training but are holding off in the hopes of having a new planning commissioner seated soon.

**9. REPORTS & COMMENTS**

No reports and comments

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

The next meeting is on February 4, 2020. There is a hearing for a conditional use permit and a combined site plan review for the Northwest Natural Resource Center on NE 36th. There will be a number of items involved. The Planning Director has the ability to elevate site plan review from the SPR Committee to the Planning Commission. This is a large enough project, and with its proximity to residential on the east and south, she said that she is more comfortable with the Planning Commission making the decision on requests for modifications that have been asked for to the design standards.

There is also an appeal to a VRD land use decision scheduled for the February 4, 2020 meeting. At the January 7, 2020 meeting the appeal hearing was mistakenly identified as occurring at tonight's meeting.

**11. ADJOURN**

Respectfully submitted,

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James White  
Assistant Planner

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Patti Kroen  
Chair