

FINAL ORDER 2019-06

**BEFORE THE PLANNING COMMISSION
CITY OF LINCOLN CITY, LINCOLN COUNTY, OREGON
December 17, 2019**

In the Matter of Approval of a Conditional Use Permit Application)
[CUP 2019-04] for a Transitional Housing Facility in the GC) **FINDINGS OF FACT**
(General Commercial) Zone on Property Located at 3454 NE) **CONCLUSIONS OF LAW**
Hwy 101 and 2201 NE 34th St, Lincoln City, Oregon) **AND ORDER**

Applicant: City of Lincoln City
Owner: Hayden Peters, Trustee, for the Gary L. Peters Trust

I. NATURE OF PROCEEDINGS

This matter comes before the Planning Commission for the City of Lincoln City for *de novo* consideration of a Conditional Use Permit application for operation of a transitional housing facility on property located at 3454 NE Hwy 101 and 2201 NE 34th St, Lincoln City, Oregon. The property subject to this application totals approximately 30,599 square feet.

The application materials were received on November 7, 2019, and deemed complete on November 8, 2019.

Notification of the December 3, 2019 public hearing before the Planning Commission was mailed, pursuant to Chapter 17, Lincoln City Municipal Code to area property owners within 250 feet of the site on November 12, 2019. The *News Guard* published the public hearing notice on November 20, 2019.

On December 3, 2019, the Planning Commission conducted a public hearing and considered the oral and written testimony presented, the staff report and the record as a whole. The hearing was closed, and the record was closed. Based on the evidence presented at the public hearing on December 3, 2019, including the staff report, all properly submitted evidence and argument, the Planning Commission voted to approve the application with conditions. Based upon the evidence in the record, the Commission makes the following findings of fact and conclusions of law:

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II. FINDINGS OF FACT

- 1) The Nature of Proceedings (Section I) set forth above is true and correct and is specifically incorporated herein by this reference.
- 2) The subject of the above-referenced conditional use permit application is real property located within the City of Lincoln City ("City"), and described in the County Tax Assessor's maps as Tax Map 07-11-02-CC-00500 and 07-11-02-CC-00300 (the "Property"). The street address of the Property is 3454 NE Hwy 101 and 2201 NE 34th St, Lincoln City, Oregon. The site consists of approximately 30,599 square feet and contains two existing buildings, square footages unknown.
- 3) The Comprehensive Plan and Zoning designation for the property is of General Commercial (G-C) and a zoning classification of General Commercial (GC).
- 4) The surrounding Land Uses and Zoning are as follows:

North: house, offices; GC; northeast: houses; R-1-7.5
South: hotel, businesses; GC
East: apartments; GC
West: Highway 101, west of Highway 101 offices, residential; GC
- 5) The applicant is:

City of Lincoln City
801 SW Hwy 101
Lincoln City, OR 97367
- 6) The Property is owned by:

Peters, Gary L. Trustee Estate
PO Box 909
Neskowin, OR 97149
- 7) The relevant substantive criteria include the following:

LCMC Chapter 17.32 General Commercial (GC) Zone

LCMC Chapter 17.60 Conditional Uses

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LCMC Section 17.60.020 gives the Planning Commission authority to approve, approve with conditions, disapprove, or revoke conditional use permits subject to the provisions of LCMC Chapter 17.60.

- 8) The background in the staff report is incorporated herein and is accepted as true and correct.

III. FINDINGS APPLYING APPLICABLE CODE CRITERIA

- 1) The Planning Commission finds and determines that the relevant approval criteria are found in or referenced in the Lincoln City Municipal Code, principally Title 17, Chapter 17.60 (Conditional Uses), and LCMC 17.32 (General Commercial) Zone.
- 2) Chapter 17.32 (General Commercial Zone) Section 17.32.040.S lists emergency shelter as a conditional use. Emergency shelter is defined as:

“Emergency shelter” means a facility consisting of dwelling units, dormitories and/or yurts which provides necessary counseling services for 50 or fewer homeless persons for a period not to exceed 180 days per person and which includes associated cooking and sanitation facilities necessary to accommodate the maximum occupancy of the facility. [LCMC 17.08.010]

- 3) Title 17 does not define transitional housing, nor list it as permitted or conditionally permitted. The proposed definition put forth in a pending zoning ordinance amendment is:

“Transitional housing” means a facility that is designed to provide housing and assist with obtaining appropriate supportive services, such as social or psychological therapy or vocational rehabilitation, to homeless persons to facilitate movement to independent living; wherein the facility manager or supervisor determines the length of housing term for each individual on a case-by-case basis in accordance with the terms of that facility’s program.”

- 4) A director’s interpretation administrative decision issued on October 21, 2019 determined that the proposed use of a transitional housing facility must receive conditional use permit approval, finding that the proposed use is similar to the conditional use of an emergency shelter in the GC zone.
- 5) Notice of the director’s interpretation administrative decision was mailed to property owners within 250 feet on October 21, 2019 and again on October 24, 2019. No appeals were received on the decision.
- 6) The request for a transitional housing facility in the GC zone as a conditional use is proceeding based upon the director’s interpretation administrative decision.

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3) Chapter 17.60 (Conditional Uses), Section 17.60.050 provides:

17.60.050 Action by planning commission.

A. Within 60 days after the filing of the application, a public hearing shall be held and the commission shall render its decision. The decision of the planning commission shall be final unless appealed to the city council.

B. The planning commission may approve, approve with conditions or disapprove the conditional use permit application by the entry of a planning commission order, in open meeting, which order shall describe the basis for the decision and state the specific circumstances, findings of fact and evidence presented requiring the application of conditions to the approval.

C. Findings of Fact. In order to grant any conditional use, the planning commission must find, based upon evidence, both factual and supportive, provided by the applicant, that:

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

D. Conditions of Approval. In permitting a conditional use, the planning commission may impose, in addition to regulations and standards expressly specified in this title, other conditions found necessary to protect the best interests of the surrounding property or neighborhood, or the city as a whole. These conditions may include, but not be limited to, the following:

- 1. Increasing required lot size, yard dimensions, open spaces or buffer areas;**

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2. Requiring fences, walls or landscape screening and/or buffering where necessary to reduce noise, glare and maintain the property in a character in keeping with the surrounding area;
3. Requiring landscaping and maintenance thereof;
4. Increasing street widths, controlling the location and number of vehicular access points to the property for ingress/egress;
5. Requiring means of pedestrian/bicycle access pathways to serve the property;
6. Increasing the number of off-street parking and loading spaces required; surfacing and proper drainage of parking areas;
7. Limiting size, location and number of signs;
8. Limiting the location, coverage or height of buildings because of obstruction to view and reduction of light and air to adjacent property;
9. Limiting or prohibiting openings in sides of buildings or structures;
10. Enclosure of storage areas and limitation of outside display and/or storage of merchandise;
11. Requiring maintenance of grounds;
12. Regulation of noise, vibration, odors, etc.;
13. Regulation of time for certain activities;
14. Establishing a time period within which the proposed use shall be developed;
15. The requirement of a bond for removal of such use within a specified period of time;
16. Increase the size, type or capacity of any or all utility services, facilities or appurtenances;
17. Requirements under which any future enlargement or alteration of the use shall be reviewed by the planning commission and new conditions imposed;
18. The planning commission may require that an applicant furnish the city a performance bond with a contractual agreement to assure its share of the

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development of streets, curbs, gutters, sidewalks, water, sanitary sewers, storm sewers or other necessary and essential public improvements to city standards;

19. The planning commission may also require that site plan committee review and approval is necessary in any particular situation to accomplish the purposes and objectives of this title;

20. And such other conditions as will make possible the development of the city in an orderly and efficient manner and in conformity with the intent and purposes set forth in this chapter. (Ord. 92-3 § 2; Ord. 84-2 § 6.050)

To address the applicable criteria, the LCMC 17.60.030 requires, among other things:

F. Statement and supportive evidence indicating the precise manner of conformance with each of the applicable provisions of this title together with any other data pertinent to the findings prerequisite to the granting of a conditional use permit as listed in LCMC 17.60.050(C);

The burden is on the applicant [17.60.070]:

The specific findings made by the planning commission in granting a conditional use permit must be factual and supported by substantial evidence. The burden of producing substantial evidence to support the requisite findings is on the applicant seeking the approval of the conditional use. If no evidence is produced concerning any of the findings listed in LCMC 17.60.050(C), the application may be denied based upon improper or inadequate findings. All evidence produced must be recited in the findings for approval of any conditional use permit application.

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

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

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

The written Staff report provides:

The City of Lincoln City Comprehensive Plan (Comprehensive Plan) provides a general commercial district for a wide range of commercial, retail, professional offices, and

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personal services at a compatible scale. The City of Lincoln City (City) adopted the Zoning Ordinance (Title 17) in compliance with the Comprehensive Plan. Within Title 17 is the GC zone. The general commercial zone (GC) accommodates a wide range of retail commercial uses...as well as convenience service/retail uses...also permitted as conditional uses...and other limited service facilities as listed. Emergency shelters are among the uses allowed in the GC zone as a conditional use. A director's interpretation administrative decision issued on October 21, 2019 determined that transitional housing is similar to emergency shelters. Staff concludes, therefore, once approved as a conditional use and operating in conformance with all conditions, that the transitional housing facility complies with the Comprehensive Plan. This criterion is satisfied. Staff concludes, therefore, once approved as a conditional use and operating in conformance with all conditions, that the emergency shelter complies with the Comprehensive Plan. This criterion is satisfied.

The Applicant's "statement and supporting evidence" states the city will notice property owners within 250 feet of the site and will publish notice of the hearing in the paper, continuing with noting the site is connected to sewer and water and a stormwater system. The Applicant notes the site is within the City's school district, public library system, and is serviced by the Police Department and North Lincoln Fire & Rescue District #1. The Applicant continues by citing Housing Policy 1 which states the City shall encourage a wide range of housing types. The Applicant also references the Economic Opportunities Analysis and Housing Needs Analysis of April 2017 for Lincoln City which lists housing objectives to encourage the development of affordable and workforce housing and that ORS 197.307 cites "needed housing" as including government-assisted housing. The Applicant's program is a non-profit program operating with government assistance.

The Planning Commission finds and determines that both the Staff's and the Applicant's findings that this criterion is met has not been subject to any adverse testimony. Staff is correct in that once an approval is granted with conditions, the Plan's implementation mechanism (the Code) is fully met. Staff, however, stated in the verbal staff report at the hearing that the Comprehensive Plan contains no directly applicable policies which can be applied directly to the proposed use. Accordingly, the Planning Commission finds and determines that the Comprehensive Plan contains no directly applicable policies which can be applied directly to the proposed use. Accordingly, this criterion is met or is not applicable.

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

The Staff report provides:

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Maximum occupancy is determined by the building and fire code through the building permit process. The applicant has not stated the number of individuals proposed in each facility, so it is assumed the maximum occupancy allowed by building and fire code will be utilized. Accordingly, the size of the buildings will be adequate as maximum occupancy requirements will be followed. Both buildings are existing. No new construction or additions to the buildings are proposed. A building permit will be required, however, to change the occupancy classification to the applicable classification required by the building and fire code.

There are no requirements for spaces, walls or fences in the GC zone.

The site has an existing gravel parking lot that can be utilized for parking. Section 17.56.040 requires off-street parking spaces shall be provided and maintained at the time a new building is erected; an existing building is enlarged to the extent that the cost of construction exceeds 50 percent of the market value of the building or to the extent that the building's capacity is increased by more than 50 percent in terms of units listed in LCMC 17.56.050; or the use of an existing building is changed and the building enlarged. In this case, no new buildings are being erected nor are the existing buildings being enlarged. Accordingly, the off-street parking space requirement is not applicable.

Landscaping requirements in LCMC 17.52.100 apply when previously developed lots are improved by 50 percent or more of the assessed value of the existing improvements. In this case, the assessed value of Tax Lot 500 is \$335,920. If the project valuation for the improvements to Tax Lot 500, as determined by the building code, are \$167,960 or more, then landscaping will need to be installed to satisfy LCMC 17.52.100. The assessed value of Tax Lot 300 is \$207,890. If the project valuation for the improvements to Tax Lot 300, as determined building code, is \$103,945 or more, then landscaping will need to be improved to meet the requirements of LCMC 17.52.100.

LCMC 17.64.040 requires upgrading elements of nonconforming development that affect the appearance of a site. Subject to the other provisions of Chapter 17.64, when the owner of a use or structure located on a commercially-zoned lot that contains nonconforming site development elements converts to a different use, the owner also shall alter the nonconforming site development elements to conform to standards in LCMC Chapter 17.74 at 25 percent of the project value. The following elements shall be made compliant with commercial design standards in LCMC Chapter 17.74: pedestrian circulation; materials and colors; pedestrian spaces; screening and parking area landscaping; water quality; exterior lighting; transparency; and landscaping.

In addition to the code requirements of landscaping improvements and upgrading nonconforming elements, the planning commission may impose conditions found

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necessary to protect the best interests of the surrounding property or neighborhood, or city as a whole. With application of the code requirements as well as conditions of approval from the planning commission, this criterion is, or can be, met.

The Applicant's "statement and supporting evidence" provides:

The site is in the General Commercial zone which does not have any yard setback requirements unless the site is abutting a residential zone. In this case, the only portion of the site abutting a residential zone is the northeast corner of Tax Lot 300. Accordingly, all structures must be at least 10 feet from the portions of the property lines abutting residential. No new structures are proposed. The existing structure is approximately 69 feet from the southwest property corner of Tax Lot 300. Walls and fences aren't required for this use. No common area or open spaces are required for this use. No loading is required for this use. The site contains a paved parking lot to meet the parking requirement. The site contains mature landscaping. No site plan review is required since there will be no expansion of the buildings, no change to on-site traffic circulation, and no addition of parking spaces. No design review is required since no site plan review is required.

The buildings for the residents are existing. No changes will need to be made to the buildings except a building permit for a change of occupancy classification from commercial to residential. Each building will contain bedrooms, a kitchen, a living room, a laundry room, and bathrooms. The west building will also contain three offices – one for the facility manager, one for the case manager, and one for the crisis manager. The west building is 6,396 square feet in area. The east building is 2,296 square feet in area. Both buildings are large enough to accommodate the future residents as well as the three offices in the west building.

The applicant does not indicate the number of residents proposed, but does note the necessity for a building permit to change occupancy classification. Staff notes that the proposed use must meet building and fire code requirements.

The Planning Commission finds and determines that the staff analysis correctly identifies the fact that the code lacks specific standards like "yard" or "area" requirements for the proposed use, but only mentions in passing that a conditional use relies on the Planning Commission's imposition of site and use specific conditions to protect the best interests of the surrounding property or neighborhood.

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The Planning Commission finds and determines that the proposed site comprising 30,599 square feet, is only made adequate with the building and fire code requirements for a change in occupancy classification. The site area must also include a play area for children of families living at the facility, as such an area is necessary to mitigate adverse impacts on the neighborhood (see conditions of approval).

The Planning Commission finds and determines that with the imposition of conditions (see paragraph 4 below), this criterion is met.

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

The Staff report provides:

The proposed transitional housing facility likely will not add a significant amount of vehicular traffic. The residents typically do not have vehicles. The site has an existing gravel parking lot to accommodate the parking of employees and the few residents who may have vehicles. The site has access from NE 34th Street, via Highway 101. Should the project value exceed 50 percent of the assessed value, LCMC 17.52.230 requires infrastructure improvements. This criterion is satisfied with application of the code requirements.

Similarly, the Applicant's statement indicates vehicular access is adequate.

The Planning Commission finds and determines that the streets and highways are of adequate width to handle the vehicular traffic to the facility. This criterion is met.

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

The Staff report provides:

The site is a developed site with existing improvements consisting of two vacant buildings, a vehicular approach, an existing gravel parking lot, and mature landscaping. The applicant notes that the existing buildings, landscaping, and parking area will remain, but any barbed wire fencing will be removed. The applicant states that no changes are needed to the current vehicular egress/ingress and internal circulation, pedestrian access, fences,

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landscaping, screening, exterior lighting, or signage other than removing all existing signage and all existing barbed wire fencing.

The site has previously been used for commercial uses, and is now vacant. This request is not adding any new buildings or improvements to the site that don't already exist. No new construction or additions are proposed. The site is in the GC zone. The sites to the south, east, west, and northwest are also in the GC zone. The only portion of the site that is adjacent to Single-Family Residential R-1-7.5 is the east 59 feet of the north property line of Tax Lot 300. The nearest portion of the existing building on Tax Lot 300 to the R-1-7.5-zoned lot is 69 feet from the building's northeast corner to the southwest property corner of the R-1-7.5-zoned lot to the northeast. The existing use to the east is an apartment complex. The proposed use includes residential housing.

Property owners within 250 feet of the subject site received notice of the requested conditional use permit for a transitional housing facility. No written comments were received from property owners within 250 feet. However, comments were received from North Lincoln Fire & Rescue District #1 and the Lincoln City Public Works Department.

North Lincoln Fire & Rescue District #1

Re: Question 2, "If the application is complete for conditional use permit review (not building permit review), please reply to this email indicating the application is complete."

Applicant's statements acknowledge that a building permit will be require "a change of occupancy classification from commercial to residential." (Page 5 of 16)

An on-site review of the structure(s) suggests that egress requirements for the building(s) may be insufficient for the number of occupants and the amenities proposed. Only bona fide remodeling plans, approved by the building official, will determine egress requirements. Therefore, it may be premature to draw the same conclusion as the applicant: "The only thing that is changing is the specific use inside the buildings, which doesn't trigger or necessitate any changes to the exterior set-up of the site." (Page 7 of 16)

Lincoln City Public Works Department

See Lincoln City Public Works comments below in regards to permitting the proposed conditional use.

- (1) The Conditional Use Permit Application notes that the parking lot is paved with Asphalt Concrete. This is inaccurate as the parking area is currently ~80% gravel. The parking area need to be paved to address Conditional Use Requirement 17.60.050 (D)(6)
- (2) Storm water system is noted as "existing". There is no known storm water system for the building, nor for the unpaved area. Current roof drainage exits to the curblin on NE 34th. The parking area and roof will require paving & drainage to the fronting storm water system per Conditional Use Requirement 17.60.050 (D)(6). City standards for water quality and detention will apply to any new impervious parking area.

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- (3) *Sidewalks should be installed along NE 34th St to address the pedestrian & public transit access requirements put forward in 17.60.050 (D)(5). Construction should tie into the planned sidewalk improvements along HWY 101. See draft construction drawings attached.*
- (4) *Existing water and sewer facilities were not constructed for the use being described. Applicant is responsible for verifying that water and sewer service meets current requirements for the increased occupancy and fixture count.*

The applicant states the site is a developed site, that the existing buildings and landscaping will remain, and that no new buildings or structures are proposed. The applicant states existing barbed wire fencing will be removed, but no changes are needed to the current vehicular egress/ingress and internal circulation, pedestrian access, fences, landscaping, screening, exterior lighting, or signing other than removing all existing signs and existing barbed wire fences. The applicant further indicates

Property owners within 250 feet of the subject site received notice of the requested conditional use permit for a transitional housing facility. No written comments from property owners were received as a result of the mailings.

In addition to conditions deemed prudent by the Planning Commission, staff suggests some conditions of approval as follows:

1. Prior to issuance of the certificate of occupancy for the transitional housing facility, install a 6-foot tall solid wood fence along the north property lines of Tax Lots 500 and 300 and the east property line of Tax Lot 300 to provide a buffer and screening between the uses to the north and east and the proposed use on the site. The 6-foot tall solid wood fence shall also be installed on the north 50 feet of the west property line of Tax Lot 300.
2. Prior to issuance of the certificate of occupancy for the transitional housing facility, create a play area for use by the children of the families living at the facility.
3. For the safety of the residents, to ensure clear demarcation of parking spaces and drive aisles for facility employees and residents who have vehicles, and to enhance the aesthetic visibility of the site, the parking area shall be improved to meet all requirements of Chapter 17.56, excepting the number of spaces required, which shall be the number that can be provided while accommodating the spacing and drive aisle size requirements of Chapter 17.56.

The applicant relies heavily on the surrounding commercial uses to conclude that there will be no adverse impact.

The Planning Commission finds and determines that the staff analysis correctly identifies conditions of approval (with some modification) for the proposed shelter use which will mitigate some of the adverse impacts on the surrounding properties and neighborhood.

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The Planning Commission finds and determines that the following additional condition is necessary to mitigate adverse impacts on the surrounding property and neighborhoods:

4. Installation of landscaping on the south property line, excepting clear vision areas and the driveway approach.

With the imposition of conditions listed above or incorporated herein, the Planning Commission finds and determines (concurring with staff) that this criterion can be met.

- 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 subject site is not in one of these designated areas. This criterion is not applicable.

V. ORDER

In sum, the Planning Commission for the City of Lincoln City finds and determines that the requested Conditional Use Permit Application meets the approval criteria in LCMC 17.60.050.C. but only with the imposition of conditions referenced or incorporated herein. Accordingly, based on the above Findings of Fact and Conclusions of Law, and based upon the evidence in the whole record, the Planning Commission hereby APPROVES the requested Conditional Use Permit contained in CPA 2019-04, with the conditions set forth or referenced herein.

Lincoln City Planning Commission



Patti Kroen, Chair

Signature authorized and approved by the full Commission this 17th day of December, 2019.