

# SUPPLEMENTAL STAFF REPORT TO PLANNING COMMISSION

To: Manzanita Planning Commission  
From: Manzanita Planning Staff  
Subject: LUBA Remand Manzanita Lofts  
Date: June 9, 2023

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## I. BACKGROUND

- A. APPLICANT: Vito Cerelli.
- B. PROPERTY LOCATION: The property is located at the approximate southwest corner of Dorcas Lane and Classic Street. Classic Street borders the property along the east. The site address is 698 Dorcas Lane and the County Assessor places the property within Township 3 North; Range 10 West; Section 29D; Tax Lot #2100; and, Township 3 North; Range 10 West; Section 29DA; Tax Lot #2600.
- C. MAPPED AREA: Tax Lot #2100 - 3.42 acres; Tax Lot #2600 - 0.41 acres for 3.81 total acres.
- D. EXISTING DEVELOPMENT: The vacant subject area fronts two public streets and public services are available.
- E. ZONING: The property is zoned Special Residential/Recreation Zone (SR-R) and located within the Dune Overlay.
- F. ADJACENT ZONING AND LAND USE: Property to the north is zoned High Density Residential (R-3) and contains a mix of single-family homes. All remaining adjacent land is zoned SR-R and includes a golf course and residences to the west and south, and, residential development to the east.
- G. REQUEST: The applicant is requesting approval of a Planned Unit Development to construct a hotel complex upon remand from the Land Use Board of Appeals.
- H. DECISION CRITERIA: The review criteria for this application are MZO 3.030(4) and MZO 4.136(3)(c).
- I. REMAND ISSUES: The Planning Commission will review the application in accordance with the Oregon Land Use Board of Appeals' Final Opinion and Order dated February 27, 2023, and the City's Notice of a Public Hearing on the Remand of a Land Use Board of Appeals Decision published on February 27, 2023, issued May 8, 2023, which noticed the Planning Commission Hearing for May 30, 2023.

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## II. APPLICATION SUMMARY

- A. The applicant wishes to create a 34 Unit hotel complex on the subject property that will feature a combination of loft units and large and small cabins. The project will be developed over three phases:
1. Phase 1 is located at the north end of the site and will total 19 studio hotel rooms. There will be a total of 11 buildings with eight designed to contain two units and three single units. Each unit will be approximately 350 square feet in area. This Phase also includes a gathering space with a kitchen. This building will not contain a restaurant.
  2. Phase 2 will be located to the south of Phase 1, containing 9 hotel cabins, each approximately 1,000 square feet in area. These will be unattached and run perpendicular to the adjacent roadway.
  3. Phase 3 will be at the south end of the site and contain 6 small cottages, each approximately 350 square feet in area.
  4. A private roadway will run along the east side of the site, serving all three Phases. Required public facilities will also be located within this roadway. Appropriate levels of parking will be included for each Phase for a total of 53 parking spaces.
- B. Section 3.030(2)(h) permits a "motel, hotels, including an eating and drinking establishment therewith" in the Special Residential/Recreation Zone. In addition, Subsection (4)(c) requires the Planning Commission to use the Planned Development procedures in Section 4.136 when evaluating an application.
- C. This application and review are only considering the planned development layout, and not the individual buildings. While the applicant submitted photos and schematics identifying potential designs, this application does not include a design review for any structure. However, the layout does contain proposed building locations, and if approved, the Commission has the authority to condition their decision on the final layout substantially conforming to the proposal, including the relative size, position and design of the buildings.

D. Two items for clarification:

1. The zoning map on the City's website identifies a right-of-way where the subject property is located. This is in error. The County Assessor maps clearly show the two tax lots without an intervening right-of-way.
2. Phase 2 includes the 1,000 square foot cottages. The submitted plan partitioning of the property is not under consideration with the current proposal. Again, the request is to develop the site for a hotel complex.

### III. PROCEDURAL HISTORY

On March 21, 2022, the Planning Commission conducted a hearing on the application. The Commissioners were familiar with the site's location. Otherwise, no *ex parte* contacts, bias or conflicts of interest were declared. At the conclusion of the meeting, the Commission voted to continue the matter until the April 18, 2022, meeting, allowing the applicant to provide additional information regarding, traffic, wetlands and open space.

The Commission reconvened on April 18, 2022. The applicant was unable to submit the requested information to City staff to meet the April hearing deadline. To ensure a complete and proper review of the material, the applicant requested the Commission continue the matter to the May 16, 2022, Commission meeting. The Commission approved the continuation.

The Commission reconvened on May 16, 2022. At the May 16 meeting, the Commission reviewed the additional material, including traffic reports from the applicant and the City's review of said report, additional building details and landscaping information. At the conclusion of the meeting the Commission voted to continue the matter until the June 20 hearing to address the hotel's operations and vehicle parking.

The Commission reconvened on June 20, 2022. Prior to the June hearing, area property owners submitted written comments to the City and Planning Commission. Although the record was left open at that time only to review materials submitted by the applicant, the City agreed to comprehensively reopen the record to allow additional evidence, argument, and testimony. As a result, a new notice was mailed prior to the June 20 meeting indicating that public testimony will be accepted.

At their conclusion of the June 20 hearing, the Planning Commission voted to deny the application based on previous testimony and the submitted comments. The Commission found the proposal failed to comply with all applicable decision criteria for a Planned Unit Development contained in Manzanita Ordinance 95-4. Further, the Commission directed staff to prepare an Order for the Chair's signature. Notice of the decision was provided, and the applicant submitted a timely appeal to the City Council.

The City Council elected to conduct the appeal review on the record, and held a hearing on ... After hearing argument from the applicant and those opposed to the application, the City Council adopted the Planning Commission's findings, and denied the application.

The applicant then submitted a timely petition for review to the Oregon Land Use Board of Appeals ("LUBA") on August 8, 2022. Before LUBA, the applicant asserted eight assignments of error against the City's denial. LUBA resolved the petition in a Final Opinion and Order dated February 27, 2023 (the "Remand Order"), remanding the decision to the City for further consideration with respect to three of the assignments of error. Specifically, LUBA agreed with the applicant's arguments that:

1. "[T]he [C]ity erred in relying on [Manzanita Comprehensive Plan] provisions as a basis for the limited land use decision, and in particular as a basis to deny the application for failure to satisfy MZO 4.136(3)(c)(2)." Remand Order at p. 23.
2. "[R]emand is appropriate for the city council to adopt a reviewable interpretation of all of the relevant MZO provisions" MZO 1.030 and MZO 3.030(4)(a), and to determine "whether the Density Standard applies to the proposal." Remand Order at p. 25.
3. The City's decision was not supported by substantial evidence in the record with respect to MZO 4.136(3)(c)(5) in that the record did not support the Planning Commission's conclusions that "the project will generate 'more than 309 vehicle trips'" and that "many of the trips would be directed to downtown." Remand Order at p. 28.

On March 30, 2023, the applicant requested that the City begin remand proceedings to address the three issues on remand. This request started a 120-day time clock for the City to issue its final decision.

The City Council held a special meeting on April 12, 2023 at which it remanded these proceedings to the Planning Commission.

On April 14, 2023 the City issued a Notice of Remand Hearing in accordance with the City Council's decision outlining the remand issues to be resolved at a public hearing before the Planning Commission on May 15, 2023. On May 8, 2023, the City issued a new Notice of Remand Hearing postponing the Remand Hearing to May 30, 2023. On May 22, 2023, the City issued a Staff Report for the May 30, 2023 hearing.

On May 30, 2023, the Planning Commission met to consider evidence, testimony, and argument regarding the remand issues. After considering comments and submitted materials from the applicant, the Oregon Coast Alliance, which was the intervenor in the LUBA proceedings, and members of the public, the Planning Commission made preliminary findings with respect to the remand issues relating to MZO 4.136(c)(2), (3), and (5), as further discussed below. The Planning Commission then continued the hearing to June 16, 2023 to address the remand issue relating to MZO 3.030(4)(a). The Planning Commission left the record open for a period of seven days for the parties to present new evidence and argument as described in the City's Notice continuing the hearing to June 16, 2023.

The City's remand decision must be made in writing, with no further appeals available within the City's process, on or before July 28, 2023. The Commission Decision may be appealed to the City Council and the Council must render a final decision, in writing, by July 28, 2023. The Council decision may again be appealed to LUBA.

#### IV. PROCEDURE ON REMAND

As anticipated in the Notices of Remand Hearing issued on May 8, 2023 and May 31, 2023, the issues before the Planning Commission on remand are limited to the remand issues.

The materials on review before the Planning Commission include the existing record as was submitted to LUBA, including previous Staff Reports dated March 10, 2022 and June 10, 2022, finding that applicant's proposal complied with the applicable Planned Development criteria and recommending that the Planning Commission approve the application. The record also includes the Remand Order, applicant's request for a remand hearing, Notices of Remand Hearing, and Applicant's letter dated May 5, 2023, public comments received prior to the May 30, 2023 hearing and during the open record period from May 31, 2023 to June 7, 2023. Written responses to any submissions received during the open record period may be submitted until Friday, June 16<sup>th</sup> at 8am before the hearing and will also become part of the record. **Written responses must be emailed to [planning@ci.manzanita.or.us](mailto:planning@ci.manzanita.or.us).** The record is available at <https://ci.manzanita.or.us/planning-commission/>.

In accordance with the Notice of Remand Hearing, the applicant, as well as others who have participated in these land use proceedings to date will have the opportunity to submit argument in support or opposition of the application on the remaining remand issues as described in the May 31, 2023 Notice of Remand Hearing.

#### IV. PLANNED UNIT DEVELOPMENT PROVISIONS AT ISSUE ON REMAND

As reflected in the City's Notices of Remand Hearing of May 8, 2023 and May 30, 2023, the following issues were remanded for the Planning Commission's review and decision.

- A. LUBA ordered that the Planning Commission cannot consider the Manzanita Comprehensive Plan provisions in making its determination on the application on remand.**

**DISCUSSION:** LUBA has ruled that the decision on remand to the Planning Commission is a "limited land use decision," and accordingly, only the land use regulations themselves, here the MZO criteria, can be used in making a decision on the application. More specifically under Oregon law, by September 29, 1991, cities and counties were required to incorporate all comprehensive plan standards applicable to limited land use decisions into their land use regulations. If a city or county did not incorporate its comprehensive plan provisions into its land use regulations, "*the comprehensive plan provisions may not*

*be used as a basis for a decision by the city or county or on appeal from that decision.”*  
ORS 197.195(1).

**FINDINGS:** This issue does not present a decision-point for the Planning Commission. Instead, the Planning Commission must make its decision based solely on the Manzanita Zoning Ordinance provisions, without reference to the Manzanita Comprehensive Plan provisions.

**B. MZO 3.030(4) addresses density standards for development in the Special Residential/Recreational Zone, SR-R. In the SR-R zone the following standards shall apply:**

**MZO 3.030(4)(a) Overall density for the SR-R zone is 6.5 dwelling units per gross acre. Dwellings may be clustered on one portion of a site within the SR-R zone and achieve a maximum density of 13 dwellings per acre where at least 40% of the total lot or parcel area is reserved or dedicated as permanent open space as a public or private park area or golf course. The open space shall be so indicated on the Plan and zoning map, and deed restrictions to that effect shall be filed with the City.**

**DISCUSSION:** LUBA has accepted that the proposed use is a “hotel” and that the proposed use is therefore a permitted use in the City’s SR-R zone. The City’s Ordinance does not define the term “hotel.” For context, one Oregon law defines a hotel as follows:

“Hotel” or “inn” means a property, however owned and including a condominium under ORS chapter 100, in which rooms or suites of rooms generally are rented as transient lodgings and not as principal residences. (ORS 699.005(2))

“Transient lodging” means a room or suite of rooms that is not occupied as a principal residence:

(a) By persons for periods of less than 30 consecutive days; or

(b) With which the services normally offered by hotels, including but not limited to daily or bidaily maid and linen service, a front desk and a telephone switchboard, are provided, regardless of the length of occupancy of a person. (ORS 699.005(4)).

LUBA found that the City’s initial denial of the application “adopted an equivocal finding that [this] Density Standard could apply *if* the [hotel’s] units are ‘dwelling units’ as defined in MZO 1.030, without deciding whether the units are in fact dwelling units.” LUBA remanded this portion of the decision to the City to provide further interpretation, and determine whether the Density Standard in MZO 3.030(4)(a) applies to the application.

In his request for a remand hearing, applicant noted that he disagrees that the Density Standard applies to the hotel project. However, applicant has also stated in that letter that he is nonetheless “willing to reserve or dedicate 40% of the site for open space or public or private park area or a golf course, thereby increasing maximum density to 13 units per acre.”

On June 6, 2023, applicant submitted a proposed design describing the physical characteristics of the dedicated open space, to demonstrate how this criterion can be met. That document is available at the link provided above.

**FINDINGS:** In accordance with LUBA’s Remand Order, the proposed use is a hotel and is a permitted use in the SR-R zone. With respect to the requirement in MZO 3.030(4)(a) that “[t]he open space shall be so indicated on the Plan and zoning map, and deed restrictions to that effect shall be filed with the City,” Staff finds that “Plan” refers to the proposed use as a planned development (for context, see MZO 3.030(4)(c) requiring that proposals in the SR-R zone be assessed under the Planned Development procedures). If the use is approved, Staff will initiate a zoning map amendment to indicate the designated open space.

At the May 30, 2023 hearing, the Planning Commission:

- Because the applicant has agreed to meet the Density Standard, the Planning Commission can determine that this requirement is met, or can be met with a condition of approval, without making an interpretation about whether some or all of the hotel units are “dwelling units” for purposes of MZO 1.030, or whether the Density Standard in MZO 3.030(4)(a) applies to the proposed use.
- Requested additional information from the applicant at the hearing about the design and characteristics of the proposed dedicated open space, to determine whether the proposed use could meet the Density Standard requirement that “at least 40% of the total lot or parcel area is reserved or dedicated as permanent open space as a public or private park area.”
- The Planning Commission further left the record open for a period of seven days to allow all parties to submit evidence and argument relating to this issue.

At the continued hearing on June 16, 2023, the Planning Commission will accept argument from the parties, and will determine whether the applicant can meet this criterion with a condition of approval.

**C. MZO 4.136(3), addresses the Planned Unit Development Procedure. With respect to the issues on remand, the following procedures shall be observed in applying for and acting on a planned development:**

**MZO 4.136(3)(c) The Planning Commission shall consider the preliminary development plan at a meeting, at which time the comments of persons receiving the plan for study shall be reviewed. In considering the plan, the Planning Commission shall seek to determine that:**

**(2) Resulting development will not be inconsistent with the . . . zoning objectives of the area, particularly with regard to dune stabilization, geologic hazards and storm drainage.**

**DISCUSSION:** As discussed in Section A. above, in accordance with LUBA's ruling the City may not consider whether the application complies with Manzanita Comprehensive Plan when making its determination on this application.

LUBA also recognized that under MZO 3.030(2)(h) hotels are a permitted use in the SR-R zone.

**FINDINGS:** Ordinance 95-4 (and adopted zone map) established the SR-R zone, a zone which permits residential uses along with compatible commercial activities. And among these very limited commercial uses is a hotel, which is the subject of this application. In accordance with this and LUBA's Remand Order, the establishment of the hotel, a permitted use, is solely limited to compliance with the applicable development standards contained in Ordinance 95-4.

The proposed use is not in an area that affects dune stabilization and Staff is not aware of geologic hazards that would impact or be exacerbated by the proposed use.

Storm drainage is a potential concern regarding the proposed use. The Manzanita Storm Drain System is designed to handle street runoff and limited excess runoff from adjacent properties. The portion of the City stormwater drainage system that would serve this property is located on Dorcas Lane. Excess stormwater runoff could cause strain on the existing stormwater drainage system if not addressed onsite, and may limit or negatively impact future development in the area if future development must account for excess stormwater from this project.

However, properties are required to handle storm water onsite per the City's "Drywell and Infiltration System Standards" document. These standards are designed to prevent/minimize stormwater runoff from adjoining properties and the minimize impact on the storm drain system. .

Applicant has indicated to Staff that stormwater runoff will be handled onsite.

At the May 30, 2023, hearing the Planning Commission made a preliminary determination that this criterion could be met with a condition of approval requiring that stormwater runoff be addressed onsite per the "Drywell and Infiltration System Standards".



**(3) The area around the development can be planned to be in substantial harmony with the proposed plan.**

**DISCUSSION:** As discussed in Section A. above, in accordance with LUBA's ruling the City may not consider whether the application complies with Manzanita Comprehensive Plan when making its determination on this application.

With respect to this criterion, single-family residential development is the primary development activity in the vicinity along with the golf course located to the west. Site topography places most of the structures below residential uses to the east. The golf course tree canopy to the west provides additional separation and screening. The SRR zone also specifically lists hotels as a permitted use along with residential development.

On remand, applicant argued in his May 5, 2023, letter to the Planning Commission that the hotel, as an "outright permitted use that otherwise meets all applicable development standards cannot logically be inharmonious with the surrounding area."

As reflected in the record, opponents to the application have raised concerns that the proposed project is not in substantial harmony with the area surrounding the development. As reflected in the record, the opponents' arguments include that the proposed use is not in substantial harmony with existing development, including arguments that it is incompatible with the existing golf course for safety reasons, and that the proposed community center could create additional traffic and other offsite impacts.

**FINDINGS:** As the applicant acknowledges in his May 5, 2023 letter, the Council in prior proceedings appears to have interpreted this provision to require that the proposed use be compatible with the existing area around the development.

An alternative interpretation would be that this provision further requires the application meets this requirement with respect to future development.

At the May 30, 2023 hearing, the Planning Commission interpreted MZO 4.136(3)(c)(3), based on its plain meaning, to be forward-looking, in that it requires that the area around the proposed use can be planned to be in substantial harmony with the proposed use.

The Planning Commission then made a preliminary determination that this criterion was met.

**(5) The streets are adequate to support the anticipated traffic and the development will not overload the streets outside the planned area.**

**DISCUSSION:** LUBA determined that the City's denial was not supported by substantial evidence in the record with respect to MZO 4.136(3)(c)(5) in that the record did not support two of the Planning Commission's conclusions. First, LUBA noted that both the applicant's and the opponent's traffic engineers "estimated that the project would generate 'up to' 309 vehicle trips on the peak day, a Saturday in the summer," which did not support a finding that the project would generate "more than" 309 trips per day. Remand Order at 28. Second, LUBA found that there was no evidence in the record to support the City's conclusion that many of the trips would be directed to downtown.

LUBA remanded this portion of the decision to the City. In accordance with the City's Notice of a Public Hearing, the record is reopened to consider new evidence and argument relating to this remand issue.

The City of Manzanita's Transportation Engineer provided a scoping letter to the Applicant on **April 13, 2023** to provide an updated Transportation Impact Study (TIS) to address the issues raised in the Remand Order. This letter is posted as part of the packet for the May 30<sup>th</sup> hearing and is available at the web address above.

**FINDINGS:** There will be a single private driveway servicing the site. Neither Ordinance 95-4 or Ordinance 95-5 (Land Divisions) contains minimum driveway width and improvement requirements. To ensure two traffic lanes it is recommended the minimum width be 22-feet with paving acceptable to the Department of Public Works. Staff found in its initial Staff Report dated March 10, 2022, that the proposed use can comply with this criterion so long as these conditions are met.

On May 4, 2023 applicant submitted Transportation Impact Study Conducted by Mackenzie for Manzanita Lofts Hotel Dated May 3, 2023

On May 4, 2023 Lancaster Mobley, the City's Contract Traffic Engineer reviewed the findings from the Mackenzie Transportation Impact Analysis.

These materials are available and included in the Planning Commission Packet which can be found on the City's website: <https://ci.manzanita.or.us/planning-commission/>

After reviewing the record, and these additional materials, and with input from the City's Contract Engineer, Staff found that the TIS for Manzanita Lofts submitted on May 4, 2023 complies with the scoping letter provided to the applicant and demonstrates that impacts from the project will be minor, with all study-area intersections operating acceptably with the project in place.

On May 30, 2023, the Planning Commission made a preliminary determination that this criterion was met if the proposed trail through the site could provide safe access for pedestrians and bicyclists.

#### V. RECOMMENDATION AND CONDITIONS OF APPROVAL

If Planning Commission determines that the requirements of MZO 3.030(4)(a) can be met with conditions, Staff recommends the Planning Commission approve the application subject to the following Conditions:

- A. The approval shall be limited to the layout submitted and approved as part of this application. Any modification involving altering the phase boundaries, a change in proposed uses, increasing the proposed building footprints by more than 10% or similar modifications shall require a new application and review to proceed.
- B. Construction for individual buildings shall require a building permit review application and approval. The applicant has the option of submitting a building permit review application for each building, for a group of similar buildings or for all the buildings within a Phase.
- C. Engineering plans for the entire development will be submitted as part of the development of the Phase 1. The applicant shall have the option of installing public facility improvements for the entire project or only for each Phase. Unless otherwise modified by City Public Works, the minimum improved roadway width serving the development shall be 22-feet.
- D. Building permit review applications, and associated engineering plans, for Phase 1 shall be submitted within two years of the date of final approval of this application. Associated submittals for the remaining phases shall be submitted within five years from the date of final approval of the building permit review of Phase 1. Modification to the Phasing or time extensions shall require the review and approval of the Planning Commission.
- E. All stormwater runoff shall be addressed on the subject property. Applicant shall provide a stormwater runoff design plan for approval to the City during the building permit review phase of the project.
- F. Applicant shall reserve or dedicate 40% of the site for a private park. The applicant shall provide the City with a site plan that indicates the percentage, location, and specific use for the open space on the site. The open space shall be so indicated on the Plan deed restrictions to that effect shall be filed with the City.
- G. Prior to issuance of building permits, the developer shall submit evidence from Tillamook County that the proposed hotel complies with County regulations regarding the establishment and operation of a hotel/motel.
- H. Operations of the hotel shall continually comply with all necessary health and safety provisions of all State, County, and local regulations.
- I. Prior to issuance of Building Permits, the applicant shall submit evidence of the consolidation of the two parcels (Township 3 North; Range 10 West; Section 29D; Tax Lot #2100; Township 3 North; Range 10 West; Section 29DA; Tax Lot #2600) into a consolidated parcel.

- J. Prior to beginning construction, the applicant shall submit the current wetland analysis to the Department of State Lands (DSL) for review and approval. If the DSL requires changes to the layout, these revisions shall require review and approval by the Planning Commission.
- K. The site shall contain 53 vehicle parking spaces as identified on the site plan. Sufficient parking shall be required throughout the development commensurate with the requirements in Ordinance 95-4, Section 4.090.
- L. Applicant is required to clear vegetation west of the site driveway location to achieve at least 225 feet of intersection sight distance, measured from a point 14.5 feet behind the edge of the traveled way on Dorcas Lane, consistent with intersection sight distance requirements in A Policy on Geometric Design of Highways and Streets (AASHTO Manual).
- M. Prior to occupancy of any structure, the developer shall complete the following:
  - 1. Install and/or extend necessary public facility improvements, consistent with City and/or NBWA approved engineering plans.
  - 2. Install parking improvements and landscaping consistent with approved building and engineering plans.
- N. Unless otherwise specifically modified by this decision, development of the site shall continually comply with applicable provisions in Ordinance 95-4 including building height, setbacks, parking, lot coverage and other applicable provisions.
- O. Compliance with these conditions, the requirements of the Manzanita Zoning Ordinance, Nehalem Bay Wastewater Agency, Nehalem Bay Fire & Rescue, Tillamook County Environmental Health, Department of State Lands and applicable building code provisions shall be the sole responsibility of the developer.

## VI. PLANNING COMMISSION ACTION

- A. The Planning Commission has the following options:
  - a. Approve the application, adopting findings and conditions contained in the Staff Report;
  - b. Approve the application, adopting modified findings and/or conditions;
  - c. Deny the application, establishing findings as to why the application fails to comply with the decision criteria.
- B. Staff will prepare the appropriate document for the Chair's signature.