

City of La Pine
16345 Sixth St
PO Box 2460
La Pine OR 97739

(541) 536-1432

Receipt No: 9.003011

Aug 12, 2024

PA-24-0007
First Cabin Investments
723 NW Negus Pl
Redmond OR 97756

Previous Balance:	.00
Comm. Dev. Payments - Comm. Dev. Payments- Appeal Application	250.00
<hr/>	
Total:	250.00
New Balance:	250.00-
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Check/Money Order Check No: 1230	250.00
Payor: First Cabin Investments	
Total Applied:	250.00
<hr/>	
Change Tendered:	.00
<hr/>	

08/12/2024 1:26 PM



Community Development Department
 PO Box 2460 16345 Sixth Street
 La Pine, Oregon 97739
 Phone: (541) 536-1432 Fax: (541) 536-1462
 Email: info@lapineoregon.gov

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Appeal Application *to Planning Commission* ^{AKI}

PLEASE NOTE: INCOMPLETE APPLICATIONS WILL NOT BE ACCEPTED

Original File Number # _____

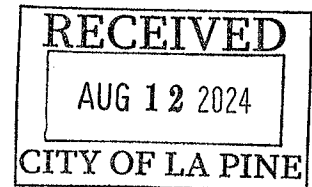
^{\$250.00 AKI}
~~Fee \$ 50% of Application Fee~~

File Number # 07PA-24

PERSON FILING APPEAL: FIRST CABIN INVESTMENTS LLC MILFORD MILLS, MANAGER
 ADDRESS: 723 NW NEGUS PL
 CITY: REDMOND STATE: OR ZIP: 97756
 PHONE: 503-504-9977 EMAIL: mel_mills@yahoo.com

IN ORDER TO APPLY FOR AN APPEAL:

1. THE FILER MUST HAVE SUBMITTED TESTIMONY AT THE HEARING, OR MUST HAVE SUBMITTED WRITTEN TESTIMONY PRIOR TO THE HEARING, OR MUST BE A PERSON TO WHOM NOTICE WAS TO BE MAILED AND TO WHOM NO NOTICE WAS MAILED.
2. IF A HEARING WAS HELD, A TRANSCRIPTION OF THE MAGNETIC/CD TAPE RECORD MUST BE SUBMITTED BY THE APPLICANT. FAILURE TO SUBMIT THE TRANSCRIPTION WITHIN TEN DAYS AFTER THE NOTICE IS FILED SHALL RENDER A NOTICE OF APPEAL INSUFFICIENT.
3. A BURDEN OF PROOF STATEMENT MUST BE ATTACHED. THE BURDEN OF PROOF SPECIFIES THE GROUNDS FOR THE APPEAL AND ADDRESSES ERRORS WITHIN THE ADOPTED FINDINGS OF FACT DOCUMENT.





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4. THE FILING FEE MUST ACCOMPANY THE APPLICATION FOR APPEAL.

I AM APPEALING THE STAFF REPORT / FINDINGS OF FACT OF THE PROPERTY KNOWN AS:

T-15 R-13 SECTION 21-10366 TAX LOT 1400

REFERENCED IN OTPA-24 (FILE NUMBER)

First Cabin Investments LLC Milford Mills, manager August 12, 2024
 SIGNATURE DATE
Mil Men, manager

FOR OFFICE USE ONLY

Date Received: 8/12/24
 Rec'd By: Amanda Metcalf
 Fee Paid: \$ 250.00
 Receipt #: 9003011



BURDEN OF PROOF

FILE NUMBER 07PA-24

August 12, 2024

NOTICE OF APPEAL: Applicant First Cabin Investments LLC(FCI) appeals the Land Use Decision in application 07PA-24

BACKGROUND: In the fall of 2023 FCI started to analyze buying a couple lots in the Cagle neighborhood that could be partitioned into 3 lots each. As part of my evaluation I looked at the three land use decisions that were similar to what I wanted to accomplish. Two were done in 2019 (02PA-19 and 03PA-19) and one completed in 2022-23 (01PA-22). No street improvements were required on these lots and the transportation plan was the same as today. In early 2024 FCI purchased two lots in the Cagle Subdivision and hired a civil engineer and surveyor to begin the process of subdividing. The Engineer confirmed my due diligence that there would be no road improvements required because of the precedence already set. I believe that a prudent man would say that we did a thorough and responsible evaluation given what was publicly available.

Myself and the Engineer were surprised when we received the land use approval and it required :”“*Prior to final plat approval, applicant shall prepare and design engineered stamped construction plans to construct 29 foot wide asphalt pavement on Skidgel Road (two 11 foot travel lanes and one 7 foot parallel parking lane) along the project frontage, 6 foot wide concrete sidewalk on Skidgel Road project frontage, drainage swales on Skidgel Road frontage, street trees at an average of 35 foot spacing....* “. We estimate that this requirement will add at least \$30K to \$50K per created lot. A cost that makes the project prohibitive.

We met with City Staff and they said that their position is absolute and this was later confirmed through the City Manager level.

THE PINE DRIVE ROAD ROW IMPROVEMENTS ARE NOT BASED ON CLEAR AND OBJECTIVE STANDARDS. The Oregon legislature adopted changes to Oregon’s land use laws in 2022 including “needed housing statutes.” ORS 197.307 requires that local government may only impose clear and objective standards, conditions, and procedures regulating the development of housing, including needed housing. LUBA has rejected approval standards as not “clear and objective” if they impose subjective, value-laden analyses that are designed to balance or mitigate impacts of the development on (1) the property to be developed or (2) the adjoining properties or community. The standards, conditions, and procedures subject to needed housing may include, but are not limited to, provisions regulating density and height of development. In short, development standards may not have the effect, either in themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay.

The City’s ROW conditions for this application are not based on clear and objective standards. Given the prior approvals of similar applications it is clear that the City has imposed the conditions in an ambiguous, arbitrary, unclear and inconsistent fashion.

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The City's decision does not even clearly identify what the standards are that City of LaPine Engineering is relying on to impose these cost-prohibitive conditions. It just cites the engineer's comments. However, City ordinance 15.90.020's "inadequate existing streets" standard is not clear and objective, and to the contrary is the kind of value-based standard that is prohibited under ORS 197.307. It provides:

"Inadequate existing streets. Whenever existing streets, adjacent to, within a tract or providing access to and/or from a tract, *are of inadequate width and/or improvement standards, additional right-of-way and/or improvements to the existing streets may be required.*"

This standard is improper and cannot be applied to the application under Oregon law. Applicant provides notice of its intent to seek an award of attorney fees under ORS 197.835(10)(b) if an appeal to the Oregon Land Use Board of Appeals becomes necessary.

In summary, the City's ROW conditions are not based on clear and objective standards and have the effect of deterring and discouraging needed housing.

BENEFIT IS NOT PROPORTIONAL TO COST. In McClure v. City of Springfield, the Oregon Land Use Board of Appeals found that the City could not require exactions (right-of-way and sidewalk construction in that case) without making specific findings that the exactions were roughly proportionate to the impacts caused by the development, and that by simply just referring to the City's code saying the improvements/dedications were required is insufficient. In my case, my civil engineer asked for a waiver of the street improvements. This was not addressed in the decision, and it should be, so we are left to wonder why they included it. Shouldn't the City at least give a written reason as to why they declined our request for a waiver? Based on the McClure case (and ORS 197.307), you cannot just say the code calls for it which was the City's verbal response.

The Cagle Subdivision has approximately 33,000 feet of gravel/dirt road. There would be little value added to those using the subdivision roads by having intermittent 165 foot lengths of paved road. Outside of marginal dust abatement the 3 lots created would get little benefit or value added. I am all for paving the roads but it should be done in an intelligent manner so that there is contiguous pavement for a reasonable distance with a fair financing option that includes all lots.

FAIRNESS. I believe that the requirement is unfair. There have been at least 3 lots partitioned in the City that were not required to do any roadway improvements. One as recent as last year. When we saw these precedents that no road work was required it made a lot of sense. A few patches of pavement in a subdivision with 6 miles of gravel roads would look out of place. Why now to implement such a requirement that adds almost zero value to the neighborhood? I reviewed what my intentions were with buying a lot and partitioning it with City Staff prior to buying the lots and no one mentioned that the City was going to start requiring street improvements.

CONFLICT OF INTEREST. In reviewing the approved application I realized that in the 01PA-22 partition (Oak Drive) that the City Engineer, Huffman, was working for Oak Drive owner at the same time Huffman was working for the City and inputting to the City on the plan requirement. During initial discussions with the Oregon Ethics Commission this appears to have impropriety. Would the approved plan for Oak Drive have included the street



improvements if another engineering firm had done the work? If so, we would have determined that our project was not economically feasible before any investment was made.

Here are the fuzzy optics which I think the City of LaPine should be concerned with. On their website Becon Engineering states they do work throughout the Northwest. The owner of Oak Drive has been an engineer for the cities of Bend and Redmond. Yes, it could be a coincidence that Oak Drive picked Becon. None of the applications referenced in this burden of proof used Becon other than Oak Drive. Regardless, should the City Engineer work both for the City and the Land Use Applicant?

ECONOMIC IMPACT OF DOING THE PARTITION I believe that the City is being short sighted by requiring this massive cost per lot for little benefit. In 2017 FCI partitioned a lot to 3 in the City of LaPine. Today the tax revenue for those three lots is \$7,864 per year. A non-partitioned lot next door brings in \$853 (includes cabin). Granted the City does not get all the tax revenue but it is all for the local good of the City's citizens. If a financing option such as a local improvement district was used for financing road improvements the three properties would contribute more than if a single house is placed on the property.

EQUAL HOUSING OPPORTUNITY. We continually hear the need for low cost housing. The City of Lapine has a whole web page dedicated to this. The design of the lots in my application will go a long way in making a house affordable to the first time buyer. Each lot will accommodate up to a 2,000 square foot house and up to an 800 square foot accessory dwelling unit plus room for a small outbuilding/shop. My intent was to encourage first time home buyers to build the ADU structure and live in it until you get enough equity to build the main house. A low cost lot will never be feasible with a requirement to spend tens of thousands of dollars on an insignificant layer of roadway that benefits no one.

OTHERS DIRECTLY IMPACTED NEED A VOICE. I made contact with the other two lot owners that were running parallel to my application, 04PA-24 and 01PA-24. None us are big developers that are trying to shirk their responsibility to pay reasonable development fees. Since time is of the essence in filing this response I did not have time to get statements from them. They have agreed to either write one or show up at this hearing. I ask that you give them the courtesy to give their input as well. They deserve what I am asking for.

IN SUMMARY. LaPine is a great little city located in a beautiful state. Whether we like growth or not, people continue to come here. I think it is incumbent on us all to make lodging as cost effective as we can. Look out your front window. If the road to the right and left were all gravel for a quarter mile... would a strip of asphalt in front of your house add much value? Do you want to live in a city with high ethics and integrity? If so, I think your response to this request to drop the transportation improvements on file number 06PA24 will be confirmed. Thank you for listening.

