



STAFF REPORT

- FILE NUMBER:** 02A-24
- APPELLANT:** First Cabin Investments
723 NW Negus Pl
Redmond, OR 97756
- OWNER:** First Cabin Investments
723 NW Negus Pl
Redmond, OR 97756
- LOCATION:** The subject property is located at 52510 Pine Drive, La Pine, Oregon 97739. The Tax Lot number is 1400 on Deschutes County Assessor's Map 21-10-36C.
- REQUEST:** The appellant submitted a timely appeal for a 3-parcel partition (07PA-24) that was approved by staff on August 1, 2024. The appellant raised multiple reasons for the appeal which are addressed within this staff report.
- STAFF CONTACT:** Rachel Vickers, Associate Planner
Email: rvickers@lapineoregon.gov
Phone: (541) 280-5680
- RECOMMENDATION:** Approve applicant's appeal, in part, and adopt the following revised decision for 07PA-24.

I. APPLICABLE STANDARDS, PROCEDURES, AND CRITERIA

City of La Pine Development Code

Article 7. Procedures

Chapter 15.204, Application Procedures

Section 15.204.020, Type II Procedure

Section 15.204.030, Type III Procedure

Chapter 15.212, Appeals

Section 15.212.010, Who May Appeal

Section 15.212.020, Filing Appeals

Section 15.212.030, Notice of Appeal

Section 15.212.040, Consolidation of Multiple Appeals

Section 15.212.050, Scope of Review

Section 15.212.060, Hearing on Appeal

II. BASIC FINDINGS

ZONING: The subject property is zoned Residential Single Family with no overlay zones.

PARCEL SIZE: The subject property is 1.14-acres in size.

LOT LEGALITY: The subject property was platted as Lot 8 within Block 2 of the Cagle Subdivision Plat No 1.

PUBLIC NOTICE:

- Mailed Notice: August 14, 2024
- Published Notice: August 18, 2024
- Posted Notice: August 20, 2024

PROPOSAL: The appellant has appealed staff's administrative approval of a 3-parcel partition (07PA-24) on the subject property. Reasons for the appeal are included in the record and set forth below. Staff addresses each argument raised, in turn, herein.

III. STAFF RESPONSE TO NOTICE OF APPEAL

Below, staff addresses each item the appellant raises in its notice of appeal.

Appellant Item #1, Background

In the fall of 2023, FCI [First Cabin Investments] 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.

STAFF COMMENT: In response to the appellant's statement, staff references the following LUBA holding.

There is no requirement local government actions must be consistent with past decisions, but only that a decision must be correct when made. Indeed, to require consistency for that sake alone would run the risk of perpetuating error. (Okeson v. Union County, 10 Or LUBA 1, 5 (1983))

The appellant states that, since staff did not impose similar right of way requirements on a prior applicant, that sets a precedent, and requires City to condition appellant's development in the same way, regardless of why the prior decision differs from appellants. Staff relies upon this LUBA holding to support conditioning appellant's partition application (07PA-24) differently than prior, possibly similar, applications. For this reason, the appealed ROW improvement conditions may be required by the City if appropriate under applicable criteria, as evaluated below.

To the extent appellant claims that his due diligence included conferring with staff as a basis for his pre-purchase conclusion that no ROW improvements would be required, staff points to La Pine Development Code Section 15.202.070.

Any informal interpretation or determination, or any statement describing how a property may be used for [development], made outside the procedures described in this article shall be deemed to be a supposition only. Such informal interpretations, determinations, or statements shall not be deemed to constitute final city action effecting a change in the status of a person's property or conferring any rights, including any reliance rights, on any person.

Staff has no record of telling the appellant's private engineering firm, formally or informally, that ROW improvements would not be required. Staff finds that appellant's pre-purchase due diligence and conclusion that no ROW improvements would be required was not based on communications to that effect with City staff.

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.

STAFF COMMENT: Staff can confirm that a phone conversation was held with the appellant and their engineer on August 6, 2024, to discuss the appealed decision. During that call, staff reaffirmed that the decision (07PA-24) was properly based upon applicable criteria and pointed out appellant's opportunity to appeal the decision in accordance with Type II procedures.

Appellant Item #2 ROW Improvements 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.

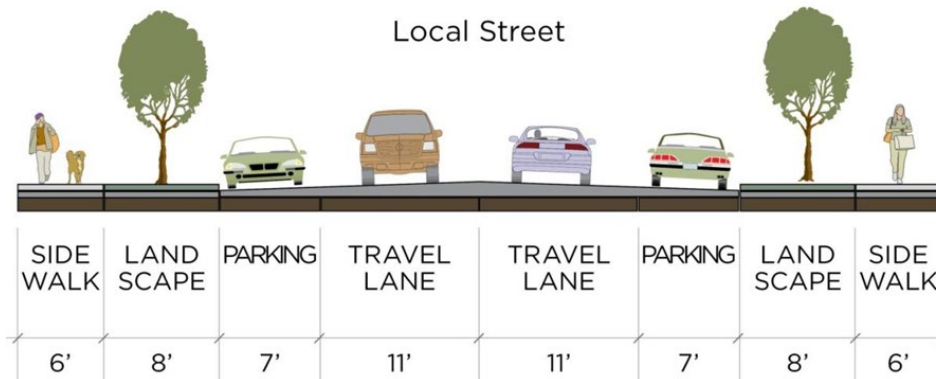
The City's decision does not even clearly identify what the standards are that City of LaPine Engineering is relying on to impose these cost-prohibitive conditions. It just cites the engineer's comments. However, City ordinance 15.90.020's "inadequate existing streets" standard is not clear and objective,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

STAFF COMMENT: Appellant fails to identify all applicable criteria on which the appealed condition is based upon, in addition to LPDC 15.90.020(C). As outlined below, the TSP defines what is "inadequate" under City land use regulations. For that reason, staff disagrees with the appellant's comments that the proposed right of way conditions are not based upon clear and objective standards. The La Pine Development Code specifies that, where development is proposed on inadequate streets, additional right of way improvements may be required (LPDC Section 15.90.020(C)). The adopted La Pine Transportation System Plan (TSP) defines numerically and by image (see below) what the development standards are for each type of road classification within La Pine. Roads that do not meet the TSP's adopted, clear and objective standards, are "inadequate". The applicant proposed development along Pine Drive, which is approximately 50 feet wide. Pine Drive is classified as a local access road within the TSP, which sets the following local street standards:



Based upon the TSP local street standards set out in the image above, staff found that the existing gravel 50 feet right of way fronting the subject property does not meet the above TSP standards. It, therefore, is inadequate. The right-of-way improvements required in 07PA-24 directly apply the numeric standards of the TSP. Staff finds that the development standards upon which the imposed condition is based are clear and objective.

Appellant Item #3, 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 Cities 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.

STAFF COMMENT: Appellant correctly references McClure v. City of Springfield, which was appealed to the Oregon Court of Appeals (175 Or. App. 425 (2001)) as holding that the City must support conditions of approval that effect exactions with individualized findings showing that the requested improvements (or associated fee in lieu) are roughly proportional to the burden imposed on the impacted system by the proposed development.

Appellant requested a waiver of the required street improvements. The requested waiver is not appropriate given the lack of a transportation impact study on record and the extent of street improvements required by the City's adopted TSP, as outlined above. However, deferral is also an option under LPDC Section 15.90.080. Subsection(D) states:

- D. Waiver or deferral. The city may waive or allow deferral of standard street improvements, including sidewalk, roadway, bicycle lane, undergrounding of utilities, and landscaping, as applicable, where one or more of the following conditions in [subsections] 1 through 4 is met. Where the city agrees to defer a street improvement, it shall do so only where the property owner agrees not to remonstrate against the formation of a local improvement district in the future:***
- 1. The standard improvement conflicts with an adopted capital improvement plan.***
 - 2. The standard improvement would create a safety hazard.***
 - 3. It is unlikely due to the developed condition of adjacent property that the subject improvement would be extended in the foreseeable future, and the improvement under consideration does not by itself significantly improve transportation operations or safety.***
 - 4. The improvement under consideration is part of an approved partition in the [RL or RM] and the proposed partition does not create any new street.***

Upon further review of the appellant's issues raised on appeal, staff finds that a deferral of the required improvements could be appropriate, as conditions of LPDC Section 15.90.080(D)(3) are met. Staff never intended Appellant to construct only the required portion of Pine Drive adjacent to the subject property prior to final plat. Staff agrees that partial construction would not be efficient, and piecemeal construction potentially could undermine compliance with all applicable City public works and street design standards. The City's original decision allowed for payment of a fee in lieu of the required improvements, which allows for future, uniform construction of all required improvements along the length of Pine Drive.

Granting a deferral pursuant to LPDC Section 15.90.080.D would warrant an amendment to staff's issued decision. Specifically, as to Conditions of Approval R and T from File 07PA-24, staff finds that the TSP still requires the following improvements to be made to Pine Drive:

- 29 feet of asphalt pavement (two 11-foot travel lanes and one 7-foot parallel parking lane)
- 6-foot-wide concrete sidewalks on the Pine Drive project frontage
- Drainage swales on the Pine Drive project frontage
- Street trees at an average of 35 foot spacing

Staff takes notice of recently submitted evidence showing that sidewalks cost \$3.4939 per square foot. Therefore, with this cost information imported into the record, the City is able to calculate that a fee in lieu which is detailed in the table below

Description	Unit	Unit Price 2022	Unit Price 2024 (5.9% Inflation)
Mobilization	LS	\$1,150.00	\$1,217.85
Temporary Traffic Control	LS	\$480.00	\$508.32
Clearing and Grubbing	SF	\$0.20	\$0.2118
6' Wide Sidewalk Subgrade Prep	SF	\$1.10	\$1.1649
6' Wide Sidewalk: 2' HMAC	SF	\$2.00	\$2.118

For required improvements for which the City lacks recent, reliable evidence of cost, including street paving, drainage swales, and street trees, staff also finds that deferral could be appropriate upon Appellant's submittal of a signed waiver of non-remonstrance in a form acceptable to City to be recorded against the subject property. Such a submittal would satisfy the requirement for construction of those remaining improvements.

Considering these findings, staff recommends substituting the following conditions of approval for conditions of approval R and T from File 07PA-24:

Sidewalk Fee in Lieu: **Prior to final plat approval** the applicant shall be required to pay \$3.4939 per square foot of required sidewalk along the entire property frontage on Pine Drive, along with \$1,726.17 in fees associated with sidewalk construction.

Waiver of Non-Remonstrance: **Prior to final plat approval**, the applicant and all property owners shall sign and record a Waiver of Non-Remonstrance in a form acceptable to City agreeing to not remonstrate against the formation of a future local improvement district.

Appellant Item #4, 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.

STAFF COMMENT: As noted above, the appealed decision allows for payment of a fee in lieu of appellant's portion of the required improvements. Particularly with the amendment of Conditions R and T, the City is not requiring Appellant to construct portions of Pine Drive prior to final plat approval. As a result, the street will not be constructed in the piecemeal fashion assumed by Appellant.

In addition, staff incorporates by reference the comments and cites to Okeson v. Union County, 10 Or LUBA 1, 5 (1983) and LPDC Section 15.202.070, above under Appellant Item #1. Based on these findings, staff finds that the applicant's fairness argument has no merit, as prior decisions are not binding on City.

Appellant Item #5, Conflict of Interest

In reviewing the approved application I realized that in the O1PA-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?

STAFF COMMENT: Staff clarifies that Erik Huffman is the City's Contract Engineer and is not a staff member employed by the City of La Pine. The City is bound to apply its applicable criteria, so cannot disregard engineering guidance in the record, simply because the City's contracted expert also has represented private applicants before the City in the past. The City has no jurisdiction within or outside the context of this land use arena over its engineer's licensing or ethics. This issue can, therefore, not be considered in deciding this appeal.

Appellant Item #5, 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 nonpartitioned 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.

STAFF COMMENT: The City can only consider partition criteria and other applicable TSP and land use criteria in deciding this appeal. The City may not consider the tax implications of any proposed development and lacks the ability to ignore right of way improvements required by LPDC. This issue can, therefore, not be considered in deciding this appeal.

As an informational item, staff encourages the applicant to get involved in the City's current comprehensive plan update and specifically provide input for Chapter 9, which relates to economic development. Staff notes that any such involvement would have no effect on the current appeal or underlying application.

Appellant Item #6, 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.

STAFF COMMENT: Staff notes that applicable partition and other criteria within LPDC provides no method to ignore right of way improvements in order to approve proposed affordable housing. However, as discussed above, deferral may be appropriate, as recommended by the amendment of Conditions R and T, herein.

As an informational item, staff encourages the applicant to get involved in the City's current comprehensive plan update and specifically provide input for Chapter 10, which relates to housing. Staff notes that any such involvement would have no effect on the current appeal or underlying application.

Appellant Item #7, Other 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.

STAFF COMMENT: Pursuant to Chapter 15.212, this appeal is processed as a Type III decision. Those procedures provide the opportunity for public comments submitted both in writing, between the time of application and close of the public hearing, and orally at the public hearing. Pursuant to LPDC Section 15.204.030(B), notice of this appeal and associated hearing was mailed, published, and posted notice. At the time of this staff report, no public comments were received.

Land use file 04PA-24 became final on May 20, 2024, and file 01PA-24 became final on April 30, 2024. Staff notes that, while the applicants for those files will have the opportunity to comment either in writing or orally during the public hearing for this appeal, those two decisions have become final and were decided on their own discreet set of facts and supporting record. Therefore, the result of this appeal will not effect on those final decisions.

Appellant Item #8, 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.

STAFF COMMENT: Based on all of staff's findings above, staff recommends that the planning commission amend staff decision of 07PA-24 to substitute the following two conditions for Staff's original Conditions of Approval R and T:

Sidewalk Fee in Lieu: ***Prior to final plat approval*** the applicant shall be required to pay \$3.4939 per square foot of required sidewalk along the entire property frontage on Pine Drive, along with \$1,726.17 in fees associated with sidewalk construction.

Wavier of Non-Remonstrance: ***Prior to final plat approval***, the applicant and all property owners shall sign and record a Waiver of Non-Remonstrance in a form acceptable to City agreeing to not remonstrate against the formation of a future local improvement district

IV. FINDINGS OF FACT

PART III, CITY OF LA PINE DEVELOPMENT CODE

Article 7, Procedures

Chapter 15.204 – Application Procedures

Section 15.204.020, Type II Procedure (Administrative Review With Notice)

The planning official performs administrative staff reviews through the Type II procedure. Type II decisions are made by the planning official with public notice and an opportunity for appeal to the planning commission. Alternatively, the planning official may refer a Type II application to the planning commission for its review and decision in a public meeting.

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F. Appeal of Type II (Administrative) Decision

1. **Who may appeal. The following people have legal standing to appeal a Type II administrative decision:**
 - a. **The applicant or owner of the subject property;**
 - b. **Any person who was entitled to written notice of the Type II decision; and**
 - c. **Any other person who participated in the proceeding by submitting written comments on the application to the city by the specified deadline.**

FINDING: The application 07PA-24 was appealed by First Cabin Investments LLC, who was listed as the applicant of the proposal, as well as the property owner. This criterion is met.

2. Appeal filing procedure. Appeals shall be filed in accordance with chapter 15.212.

FINDING: As discussed herein, compliance with the appeal procedure outlined in LPDC Chapter 15.212 has been met, therefore this criterion is met.

Section 15.204.030, Type III Procedure (Quasi-Judicial Review – Public Hearing)

Type III decisions are made by the planning commission after a public hearing, with an opportunity for appeal to the city council. Except that prior to becoming effective, all quasi-judicial comprehensive plan amendments and zone changes shall be adopted by the city council. In considering all quasi-judicial comprehensive plan amendments and zone changes on which the planning commission has authority to make a decision, the city council shall, in the absence of an appeal or review initiated by the council, adopt the planning commission decision. No argument or further testimony will be taken by the council.

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FINDING: As discussed herein, the current application is an appeal of a Type II application that was approved administratively by staff and appealed by the applicant. In accordance with LPDC 15.212.060(B), this appeal shall be heard by the Planning Commission, in accordance with required Type III procedures. As evidenced discussed herein, staff has complied with the requirements of the Type III procedures relating to notice of public hearing (LPDC Section 15.204.030(B)). Other relevant procedural criteria (LPDC Section 15.204.030 (C)-(K)) will be met at during hearing.

Chapter 15.212 – Appeals

Section 15.212.010, Who May Appeal

The following may file an appeal:

- A. **Appeals of Type I decisions shall be in accordance with 15.204.010.G. [15.204.010.F]**
- B. **Appeals of Type II decisions shall be in accordance with 15.204.020.F.**
- C. **Appeals of Type III decisions shall be in accordance with 15.204.030.K.**
- D. **There is no local appeal for city council decisions. City council decisions appealed to the land use board of appeals must follow applicable state laws.**

FINDING: As discussed previously the property owner/applicant of 07PA-24 appealed the administrative decision in accordance with 15.204.020(F). This criterion is met.

Section 15.212.020, Filing Appeals

- A. To file an appeal, an appellant must file a completed notice of appeal on a form prescribed by the city planning official and an appeal fee.**

FINDING: The appellant filed the correct appeal form prescribed the by city planning official, as well as the required \$250 fee. This criterion is met.

- B. Unless a request for reconsideration has been filed, the notice of appeal and appeal fee must be received at the offices of the city planning official no later than 5:00 p.m. on the 12th day following mailing of the decision. If a decision has been modified on reconsideration, an appeal must be filed no later than 5:00 p.m. on the 12th day following mailing of the decision as modified. Notices of appeals may not be received by facsimile machine.**

FINDING: The administrative decision (07PA-24) was approved by staff on August 1, 2024, and the appeal was submitted on August 12, 2024. This criterion is met.

- C. If the city council is the hearings body and the city declines review of the appeal, a portion of the appeal fee may be refunded. The amount of any refund will depend upon the actual costs incurred by the city in reviewing the appeal.**

FINDING: The City of La Pine Planning Commission is the hearings body and, therefore, this criterion is not applicable.

- D. The appeal fee shall be paid by cash or check or money order, except that local, state or federal governmental agencies may supply a purchase order at the time of filing.**

FINDING: The appellant paid the appeal fee by check. This criterion is met.

Section 15.212.030, Notice of Appeal

- A. A statement raising any issue relied upon for appeal with sufficient specificity to afford the hearings body an adequate opportunity to respond to and resolve each issue in dispute.**

FINDING: The notice of appeal included the above reference information. This criterion is met.

- B. If the city council is the hearings body, a request for review by the council stating the reasons why the council should review the lower hearings body's decision.**
- C. If the city council is the hearings body and de novo review is desired, a request for de novo review by the council stating the reasons why the council should provide de novo review as provided in section 15.212.050.**

FINDING: The La Pine Planning Commission is the hearing body for this appeal; therefore, these criteria are not applicable.

Section 15.212.040, Consolidation of Multiple Appeals

If more than one party files a notice of appeal, the appeals shall be consolidated and noticed and heard as one proceeding.

FINDING: Only one party, First Cabin Investments LLC, filed a notice of appeal, therefore this criterion is not applicable.

Section 15.212.050, Scope of Review

A. *Before planning commission. The review on appeal before the planning commission shall be de novo.*

FINDING: The review on appeal will be held in front of the planning commission and shall be de novo. This criterion is met.

B. *Before the council.*

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FINDING: The review on appeal will not be held in front of the city council. Therefore, this criteria is not applicable.

Section 15.212.060, Hearing on Appeal

A. *The appellant and all other parties to the decision below shall be mailed notice of the hearing on appeal at least ten days prior to any de novo hearing or deadline for submission of written arguments.*

FINDING: The appellant and all other parties as required under LPDC Section 15.204.030 were mailed notice of the hearing on August 14, 2024. This criterion is met.

B. *Except as otherwise provided in this chapter, the appeal shall be heard in accordance with the Type III procedures. The applicant shall proceed first in all de novo appeals.*

FINDING: As discussed herein this appeal will be heard in accordance with the Type III procedures and will be heard de novo. This criterion is met.

C. *The order of hearings body shall be as follows: 1. planning commission. 2. city council, except that the council may call up an administrative decision for review without the necessity of an application going before the planning commission.*

FINDING: The planning commission shall be the hearings body for this first appeal. This criterion is met.

D. *The record of the proceeding from which appeal is taken shall be a part of the record on appeal.*

FINDING: All materials for this appeal file as well as 07PA-24 are included in the record. This criterion is met.

E. *The record for a review on the record shall consist of the following:*
1. *A written transcript of any prior hearing;*

FINDING: This is the first hearing on appeal; therefore, this criterion is not applicable.

2. *All written and graphic materials that were part of the record below;*

FINDING: As discussed previously, there is the first hearing on appeal and all materials from the record of 07PA-24 are included. This criterion is met.

3. *The hearings body decision appealed from;*

FINDING: The notice of appeal form is included in the record. This criterion is met.

4. *Written arguments, based upon the record developed below, submitted by any party to the decision;*

FINDING: All written arguments are included in the record. This criterion is met.

5. *Written comments submitted by the planning commission or individual planning commissioners, based upon the record developed below; and*

FINDING: Written comments, if any, provided by the planning commission will be included in the record. This criterion is met.

6. *A staff report and staff comment based on the record. No oral evidence, argument or comment other than staff comment based on the record shall be taken. The hearings body shall not consider any new factual information.*

FINDING: Staff reports and staff comments are included in the record. This criterion is met.

V. CONCLUSION

Based on the foregoing findings, City staff concludes that the land use file 07PA-24 should be amended to remove Condition of Approval R and T and add the following conditions of approval:

Sidewalk Fee in Lieu: ***Prior to final plat approval*** the applicant shall be required to pay \$3.4939 per square foot of required sidewalk along the entire property frontage on Pine Drive, along with \$1,726.17 in fees associated with sidewalk construction.

Waiver of Non-Remonstrance: ***Prior to final plat approval***, the applicant and all property owners shall sign and record a Waiver of Non-Remonstrance in a form acceptable to City agreeing to not remonstrate against the formation of a future local improvement district

VI. RECOMMENDED DECISION

AMEND staff's decision, as outlined above.

VII. CONDITIONS OF APPROVAL:

AT ALL TIMES

A. 07PA-24: All conditions of approval from 07PA-24 remain in effect with the exception of removing condition of approval R and T and adding the following conditions of approval

Sidewalk Fee in Lieu: ***Prior to final plat approval*** the applicant shall be required to pay \$3.4939 per square foot of required sidewalk along the entire property frontage on Pine Drive, along with \$1,726.17 in fees associated with sidewalk construction.

Wavier of Non-Remonstrance: ***Prior to final plat approval***, the applicant and all property owners shall sign and record a Waiver of Non-Remonstrance in a form acceptable to City agreeing to not remonstrate against the formation of a future local improvement district

VIII. DURATION OF APPROVAL, NOTICE, AND APPEALS

THIS DECISION BECOMES FINAL ON THE DATE OF MAILING, UNLESS APPEALED BY THE APPLICANT IN ACCORDANCE WITH ARTICLE 7, CHAPTER 15.212 OF THE CITY OF LA PINE LAND DEVELOPMENT CODE. PURSUANT TO ARTICLE 7, CHAPTER 15.212 OF THE CITY OF LA PINE LAND DEVELOPMENT CODE, APPEALS MUST BE RECEIVED BY 5:00 PM ON THE 12TH DAY FOLLOWING MAILING OF THIS DECISION.

CITY OF LA PINE COMMUNITY DEVELOPMENT DEPARTMENT

Written By: Rachel Vickers, Associate Planner