

1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

3  
4 RICHARD DIDZUN, BETTE SINCLAIR,  
5 MARGARET LARSON and JAY LARSON,  
6 *Petitioners,*

7  
8 vs.

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10 LINCOLN COUNTY,  
11 *Respondent,*

12  
13 and

14  
15 JOOK DEVELOPMENT, LLC,  
16 *Intervenor-Respondent.*

17  
18 LUBA No. 2005-147

19  
20 FINAL OPINION  
21 AND ORDER

22  
23 Appeal from Lincoln County.

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25 Richard Didzun and Bette Sinclair, Portland, and Margaret Larson and Jay Larson, Tigard,  
26 filed the petition for review and argued on their own behalf.

27  
28 Wayne Belmont, County Counsel, Newport, filed a joint response brief on behalf of  
29 respondent.

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31 Joan M. Chambers, Lincoln City, filed a joint response brief and argued on behalf of  
32 intervenor-respondent. With her on the brief were Kulla, Ronnau, Schaub and Chambers, PC.

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34 BASSHAM, Board Member; DAVIES, Board Chair; HOLSTUN, Board Member,  
35 participated in the decision.

36  
37 AFFIRMED

01/06/2006

38  
39 You are entitled to judicial review of this Order. Judicial review is governed by the  
40 provisions of ORS 197.850.

**NATURE OF THE DECISION**

Petitioners appeal a county decision approving a 35-lot planned unit development (PUD) on a 7.2-acre parcel within the City of Lincoln City urban growth boundary.

**MOTION TO INTERVENE**

Jook Development, LLC (intervenor), the applicant below, moves to intervene on the side respondent. There is no opposition to the motion, and it is allowed.

**FACTS**

In 2003, intervenor applied to the county for approval of a 43-unit PUD on the subject property, known eventually as Belhaven. The application was significantly revised and, as finally proposed, included 35 residential lots, preservation of 25 percent of the property in open space areas protecting three wetlands, and a significantly amended street plan from that initially proposed, among other changes.

The subject property is a rectangular tract accessed by NE 56<sup>th</sup> Drive, a publicly dedicated local street that is stubbed to the property's northwestern border. The proposed PUD continues NE 56<sup>th</sup> Drive eastward across the property, providing future access to a vacant parcel to the east. The revised application proposes a 41-foot right of way for NE 56<sup>th</sup> Drive, with a 25-foot paved roadway. An internal network of private streets loops south around a central green and returns to NE 56<sup>th</sup> Drive. As proposed, two private streets will consist of a 24-foot right of way with 20 feet paved surface and a two-foot gravel shoulder on each side. A short one-way private street adjacent to the central green consists of a right of way that varies in width but has at least 20 feet of paved surface width. The PUD proposes a block of four lots that front on two private streets.

The county planning commission approved the PUD on May 23, 2005. Petitioners and the Roads End Improvement Association separately appealed the planning commission decision to the county board of commissioners. The commissioners held a public hearing July 26, 2005, and voted to deny both appeals. This appeal followed.

1 **FIRST ASSIGNMENT OF ERROR**

2 Petitioners challenge the county’s approval of streets with rights of way and improved road  
3 width narrower than required under county and city codes.<sup>1</sup>

4 Lincoln County Code (LCC) 1.3230(5)(a) requires local streets to have a right of way  
5 width of 50 feet. The county’s code does not specify the width of the improved surface, but instead  
6 requires that “street improvements” shall meet standards set forth in the American Association of  
7 State Highway and Transportation Officials (AASHTO) or other acceptable design principles  
8 consistent with generally accepted engineering practices. LCC 1.3220(6)(c).

9 Because the subject property is within the City of Lincoln City urban growth boundary, the  
10 county considered city street standards pursuant to LCC 1.3220(6)(e), which requires that

11 “All roads proposed to be developed within a city’s urban growth boundary shall  
12 be developed to the standards of the city where such standards require greater  
13 levels of improvements than the standards contained herein.”

14 Specifically, the county considered Lincoln City Municipal Code (LCMC) 16.12.030, which  
15 provides that

16 “Unless otherwise approved by the planning commission or indicated on a  
17 development plan, the width of streets and roadways in feet shall not be less than  
18 the minimum shown in the following table.”

19 The table indicates that “other lesser streets” must have a minimum right of way of 50 feet and a  
20 “minimum roadway” of 36 feet. The city code requires sidewalks on both sides of all streets within  
21 a subdivision or partition. LCMC 16.16.060.

22 As noted, intervenor proposed public and private streets with narrower rights of way and  
23 improved widths than required under either the city or county code. The county approved a

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<sup>1</sup> Petitioners also point out under this assignment of error that the county code does not require sidewalks, but that the city code does. Petition for Review 5, 6. However, petitioners do not argue that the county erred in failing to require sidewalks or in failing to modify the city sidewalk standard. Petitioners’ arguments exclusively focus on road standards, specifically the improved road width. Absent a more developed argument with respect to sidewalks, we decline to consider on our own whether the county erred in failing to require sidewalks or to modify the city sidewalk standard.

1 “modification” of the applicable standards pursuant to LCC 1.3230(18), which allows modifications  
2 “to the standards contained in LCC 1.3230” based on “practical difficulties” in meeting the required  
3 standard or “demonstrable aesthetic advantages in modifying the required standard,” along with  
4 other criteria.<sup>2</sup> In justifying that modification of the city standards, the county first noted that  
5 LCMC 16.12.030 provides that the city planning commission can approve street widths less than  
6 those specified in the table. The county reasoned that the county planning commission stands in the  
7 shoes of the city planning commission, for purposes of applying city standards pursuant to  
8 LCC 1.3230(6)(e). The county further noted that (1) the city has in fact approved other  
9 development proposals with narrower widths than required under LCMC 16.12.030 and (2) the  
10 city did not object to the proposed street widths in this case.<sup>3</sup>

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<sup>2</sup> LCC 1.3230(18) provides:

“The Director or Commission may grant modifications to the standards contained in LCC 1.3230. Modifications shall be requested by the applicant as part of the tentative plan application. A modification may be granted provided that:

- “(a) There are practical difficulties in meeting the required standard or demonstrable aesthetic advantages in modifying the required standard;
- “(b) The basic intent and purpose of the requirement to be modified would still be served; and
- “(c) The granting of the modification would not be contrary to or conflict with any other provision of the Lincoln County Code.”

<sup>3</sup> The pertinent county findings state:

“The City of Lincoln City’s design standards for roads in subdivisions are set forth in Chapter 16.12 of the [LCMC]. Section 16.12.030 sets the minimum right of way and roadway width standards for streets. The preface to the table setting forth street widths for various types of streets reads as follows:

‘Unless otherwise approved by the Planning Commission or indicated on a development plan, the width of streets and roadways in feet shall not be less than the minimum shown in the following table.’

“The significance of that section is evident. The [city] Planning Commission or City Council, or in this instance, the Lincoln County Planning Commission or the Board of Commissioners for Lincoln County, has the authority to approve street widths and designs that differ from the minimum right of way. It is our interpretation that [LCC] 1.3230(6) does not transfer authority

1           The county then approved the narrow streets under the modification criteria at  
2 LCC 1.3230(18), based in part on testimony from the applicant that many jurisdictions in Oregon  
3 have adopted narrow or “skinny” street standards, under the belief that such streets increase traffic  
4 safety and improve neighborhood character. The county also relied on evidence that the paved  
5 width of most of the streets in the surrounding neighborhood are actually narrower than those  
6 proposed.<sup>4</sup>

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for design approval from the Lincoln County Planning Commission and/or the Lincoln County Board of Commissioners, to the City of Lincoln City. The Lincoln City subdivision provisions do not require specific findings or determinations regarding alternate design, when the aspects of the design are shown on the proposed subdivision plan or planned development submission, and that development plan is approved, as was the plan for this planned development.

“There was substantial evidence in the record that the City of Lincoln City has in fact approved similar developments within the City of Lincoln City. Two such examples were The Villages at Cascade Head, with narrower streets, and Olivia Beach, which also proposed narrower streets.

“The County Planning Department solicited comments from City staff regarding the proposed roads. Neither the City of Lincoln City Public Works Department or the Lincoln County Road Department raised any objections to the proposed internal street system for Belhaven. \* \* \*.”  
Record 23.

<sup>4</sup> The county’s findings quote sections of the City of Eugene’s local street plan, among other jurisdictions, indicating that narrow streets (1) increase traffic safety by discouraging through traffic and reducing traffic volumes and speed and (2) improve neighborhood character. The findings go on to state, in relevant part:

“The record also contains substantial evidence indicating that the paved streets throughout the Roads End area, with the possible exception of Logan Road, are narrow, some are unimproved, and there are no sidewalks in the Roads End area. The proposed pavement width for this planned development exceeds what can be found in most of the Roads End area. In reviewing the proposed street design for Belhaven Planned Development, the evidence in the record shows that there are demonstrable aesthetic advantages in modifying the 50 [foot] street standard set forth in the [LCC], to allow the narrower streets proposed within Belhaven. The narrower streets increase traffic safety and have the effect of slowing the cars. The narrow streets improve neighborhood character. The narrow streets increase the amount of open space available at the site, resulting in 25 percent open space which will greatly enhance the aesthetic qualities of the site. The narrower roadways result in less impervious surface and significantly less ground disturbance activity, again enhancing the aesthetic qualities of the site.

“We also find that the basic intent and purpose of the road standards, *i.e.*, to provide adequate road width and safe travel conditions, are met by the overall design proposed for the Belhaven street system. The narrower streets have a calming and slowing effect on traffic, which increases safety. The road width of the proposed streets is adequate to allow safe travel conditions and adequate lane width.

1           Petitioners first argue that the county misinterpreted LCMC 16.12.030 to allow  
2 modification of city street standards based on the “development plan” submitted by intervenor.  
3 According to petitioners, the “development plan” referenced in LCMC 16.12.030 is a city-  
4 approved comprehensive development plan of some kind, not a PUD plat submitted by an  
5 applicant. While we tend to agree with petitioners on that point, it is not clear to us that the county  
6 relied on the reference to “development plan” as its authority to modify the street standards. As we  
7 understand the findings quoted at n 3, the county instead relied on the “[u]nless otherwise approved  
8 by the Planning Commission” language to support its conclusion that LCMC 16.12.030 authorizes  
9 the city, and hence the county, to modify city street standards.

10           Petitioners next argue that under LCMC 16.12.030 only the city planning commission or  
11 city council can modify city street standards, and the city has not delegated that task to the county.  
12 Because the city itself has no jurisdiction to approve streets outside its boundaries, petitioners argue,  
13 the result is that no modifications of city street standards are possible with respect to intervenor’s  
14 PUD.

15           The county and intervenor (together, respondents) argue that the county correctly  
16 concluded that the county planning commission and board of commissioners have the same authority  
17 to review and modify city street standards applied pursuant to LCC 1.3230(6)(e) as would the city  
18 planning commission and city council.<sup>5</sup> Respondents argue that that authority is consistent with the  
19 purpose of planned unit developments under the county’s code, stated at LCC 1.1380, to promote

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“In addition, we find that granting the modification would not be contrary to or conflict with any other provision of the [LCC]. The requested modification of the LCC road width standards set forth in [LCC] 1.3230(5) is hereby approved pursuant to LCC 1.3230(18), based on the findings set forth above.” Record 25-26.

<sup>5</sup> Respondents also argue that in fact city street standards do not require more stringent right of way and improved surface widths than the county. Both jurisdictions require a 50-foot right of way, but the county requires an indeterminate improved roadway width based, we understand, on AASHTO standards. Respondents cite to testimony below submitted by petitioners that both the city and the county require a 36-foot improved roadway surface. Record 243. If city and county street standards are the same, respondents argue, then city street standards do not apply under LCC 1.3230(6)(e). Respondents may be correct on this point, but we decline to address that argument, because the challenged decision appears to proceed on the assumption that city street standards apply pursuant to LCC 1.3230(6)(e).

1 creativity and innovation in design and development through the application of flexible land  
2 development standards. That purpose is thwarted, we understand respondents to argue, if unlike all  
3 other PUD standards in LCC 1.3230 the county cannot modify the city street standards that apply  
4 pursuant to LCC 1.3230(6)(e). In any case, respondents argue, LCC 1.3230(18) allows the  
5 county to modify any of the standards at LCC 1.3280, including the county right of way standards  
6 at LCC 1.3230(5) and any city standards applied pursuant to LCC 1.3230(6)(e). *See* n 2.

7 We agree with the respondents that LCC 1.3230(18) authorizes the county to modify any  
8 of the standards in LCC 1.3230, including any city street standards that may apply pursuant to  
9 LCC 1.3230(6)(e). Any such city standards are “standards” that may be modified under  
10 LCC 1.3230(18). The county did not err in interpreting its code to that effect. We also tend to  
11 agree with respondents that even if LCC 1.3230(18) did not directly allow modification of  
12 standards applied under LCC 1.3230(6)(e), the county would have the same authority to modify  
13 city street standards as the city planning commission and city council could exercise under  
14 LCMC 16.12.030. Nothing cited to us in either the city or county code requires that city street  
15 standards applied pursuant to LCC 1.3230(6)(e) must, unlike all other standards, be applied in an  
16 inflexible manner, without the possibility of modification.

17 Finally, we understand petitioners to argue that the county modified only the county 50-foot  
18 right of way width standard at LCC 1.3230(5), and did not actually modify the city 36-foot  
19 improved roadway width in LCMC 16.12.030. Because modification of the county right of way  
20 width conflicts with the roadway width required under LCMC 16.12.030 pursuant to  
21 LCC 1.3230(6)(e), we understand petitioners to contend, the county cannot find that granting the  
22 modification “would not be contrary to or conflict with any other provision of the Lincoln County  
23 Code,” a finding required by LCC 1.3230(18)(c).

24 The findings quoted at n 4 that address LCC 1.3230(18)(c) explicitly address only the 50-  
25 foot right of way at LCC 1.3230(5). However, read in context with the findings quoted at n 3 it  
26 seems clear that the county believed that it was modifying both the 50-foot right of way standard at

1 LCC 1.3230(5) as well as city street standards to allow the proposed 20 to 25-foot wide improved  
2 streets.

3 The first assignment of error is denied.

4 **SECOND ASSIGNMENT OF ERROR**

5 Petitioners challenge the county’s approval of four lots with frontages on two of the internal  
6 streets.

7 LCC 1.3230(11)(c) provides that “[l]ots or parcels with double frontage shall not be  
8 permitted unless in the opinion of the Director or the Commission, an odd-shaped tract or existing  
9 topography makes such lots unavoidable.” The county did not find that double frontages are  
10 “unavoidable.” Instead, the county modified LCC 1.3230(11)(c) pursuant to LCC 1.3230(18).

11 Petitioners contend that the county did not *modify* the prohibition on double frontages at  
12 LCC 1.3230(11)(c) so much as ignore it. According to petitioners, while the modification  
13 provisions in LCC 1.3230(18) may allow the county to vary a numerical standard such as road  
14 width, those provisions do not allow the county to permit what is prohibited. Petitioners note that  
15 LCC 1.3230(18)(b) requires a finding that “[t]he basic intent and purpose of the requirement to be  
16 modified would still be served \* \* \*.” Petitioners contend that the basic intent and purpose of  
17 prohibiting double frontages is not served by allowing them.

18 The county adopted findings addressing modification of LCC 1.3230(11)(c), which  
19 describe the intent and purpose of the prohibition on double frontage lots, and explains why the  
20 county believes the modification is consistent with the intent and purpose of LCC 1.3230(11)(c).<sup>6</sup>

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<sup>6</sup> The county’s findings state, in relevant part:

“\* \* \* The applicant asked the Planning Commission to modify the double frontage criteria pursuant to the provisions of LCC 1.3230(18) in order that the aesthetic advantages of the overall plan can be achieved through such design. By approving this street layout, the basic intent and purpose of the standard to be modified will still be served. Even though this design may create double frontage lots, as viewed under the County Code, the design will insure that the homes are appropriately oriented to the street that has been architecturally designated as the front street.

1 Petitioners do not challenge those findings, other than to argue that no modification of  
2 LCC 1.3230(11)(c) is permissible. We disagree. LCC 1.3230(18) allows the county to “grant  
3 modifications to the standards contained in LCC 1.3230.” LCC 1.3230(11)(c) is one such  
4 “standard.” Nothing in the code cited to us qualifies LCC 1.3230(18) or distinguishes between  
5 ‘standards’ and ‘prohibitions.’ Petitioners have not demonstrated that the county erred in  
6 modifying LCC 1.3230(11)(c).

7 The second assignment of error is denied.

8 The county’s decision is affirmed.

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“Underlying the design of the proposed plan are fundamental planning and design principles that reflect time-tested historical patterns of successful neighborhoods. These attributes include presenting a dignified ‘public face’ on all residences, in the form of functional porches on well-proportioned facades, rather than garage doors. The garage and car are relegated to the back of most houses. The combination of human scale architecture, landscaping and building placement along streets and greens composes a series of ‘outdoor rooms,’ each defined spatially by built and planted structures. The windows and porches along each outdoor room function as ‘eyes on the street’ that helps make the neighborhood more safe, secure and inviting.

“Neither the Lincoln County Public Works Department [nor] the Lincoln City Public Works Department had any adverse comments about the proposed double frontages. The Lincoln County Planning Commission has approved similar designs in other planned developments.

“The proposed road design, including the use of double frontage lots, makes it possible to achieve a high quality built environment. Some of the problems that come from the use of double frontage lots are problems with addressing, and which street frontage is used as the address. The use of double frontage lots can also create problems with orientation (which street should the house front on). The prohibition of double frontage lots in the County Code is intended to avoid those sorts of problems. The careful design of this planned development provides assurance that the ‘problems’ associated with typical double frontage lots will not be present in this planned development. Thus, the basic intent and purpose of the standard to be modified is still served and the granting of the modification would not be contrary to or conflict with any other provision of the Code.” Record 27.