

1 BEFORE THE LAND USE BOARD OF APPEALS
2 OF THE STATE OF OREGON

3
4 PINNACLE ALLIANCE GROUP, LLC,
5 *Petitioner,*

6
7 vs.

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9 CITY OF SISTERS,
10 *Respondent,*

11 and

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14 McKENZIE MEADOWS VILLAGE, LLC,
15 Intervenor-Respondent.

16
17 LUBA No. 2016-021

18
19 FINAL OPINION
20 AND ORDER

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22 Appeal from City of Sisters.

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24 Seth J. King, Portland, filed the petition for review on behalf of
25 petitioner. With him on the brief were Michael C. Robinson and Perkins Coie
26 LLP.

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28 No appearance by City of Sisters.

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30 Laura Craska Cooper and Laurie E. Craghead, Bend, filed a joint
31 response brief on behalf of intervenor-respondent. With them on the brief was
32 Brix Law LLP.

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

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37 REVERSED 09/01/2016

1 You are entitled to judicial review of this Order. Judicial review is
2 governed by the provisions of ORS 197.850.

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NATURE OF THE DECISION

Petitioner appeals a city council decision that grants a one-year extension for a tentative subdivision plan approval for a multi-phase subdivision proposal.

FACTS

A. Initial Tentative Subdivision Approval in 2010

On September 16, 2010, the city granted tentative subdivision plan and master plan approval for a multi-phase development known as McKenzie Meadows Village. The master plan and tentative subdivision plan approvals have been extended over the years. This appeal concerns a city council decision that denied petitioner’s appeal of a planning commission decision that granted a third extension of the 2010 tentative subdivision plan approval.

B. First Tentative Subdivision Approval Extension in 2012

Following initial tentative subdivision approval in 2010, the city granted the first extension of that subdivision approval on November 3, 2012. Under that first extension, tentative subdivision approval was extended to 2014.

C. Second Tentative Subdivision Approval Extension in 2014

In a December 10, 2014 decision, the city granted a second extension of tentative subdivision plan approval, until December 31, 2015.

1 **D. Third Tentative Subdivision Approval Extension in 2016**

2 Finally, on November 19, 2015, the city planning commission granted a
3 third tentative subdivision approval extension. On appeal, the city council on
4 February 11, 2016 affirmed that decision and extended the tentative
5 subdivision approval decision to December 31, 2016. Petitioner appeals that
6 February 11, 2016 city council decision and seeks reversal of the decision.

7 **FIRST ASSIGNMENT OF ERROR**

8 Petitioner contends that Sisters Development Code (SDC) 4.3.400.F only
9 allows two one-year extensions and that the city erred by granting the third
10 extension. The city has not filed a response brief, and intervenor-respondent
11 concedes the city council’s interpretation that a third extension is permissible is
12 not sustainable, even under the deferential standard of review required by ORS
13 197.829(1) and *Siporen v. City of Medford*, 349 Or 247, 262, 243 P3d 776
14 (2010).

15 The first assignment of error is sustained.

16 **SECOND ASSIGNMENT OF ERROR**

17 SDC 4.3.400.F.2 provides that “[i]n no case shall extensions combined
18 with original approval durations exceed four years for single phased
19 development from the original approval date, and six years for subsequent
20 phases within a multiple-phased development from the original approval date.”

21 Petitioner contends the third extension to December 31, 2016 extends
22 beyond six years after the original September 16, 2010 approval and therefore

1 violates SDC 4.3.400.F.2. The city has not filed a response brief and
2 intervenor-respondent concedes the city council’s interpretation that a third
3 extension is permissible under SDC 4.3.400.F.2 is not sustainable under ORS
4 197.829(1) and *Siporen v. City of Medford*, 349 Or 247, 262, 243 P3d 776
5 (2010).

6 The second assignment of error is sustained.

7 **THIRD ASSIGNMENT OF ERROR**

8 The third assignment of error is styled as an alternative, “[i]f LUBA
9 denies one or both of” the first two assignments of error. Petition for Review
10 12. We have sustained both of the first two assignments of error. We therefore
11 do not consider the third assignment of error.

12 In accordance with our disposition of the first two assignments of error,
13 the city’s decision is reversed.