



In March 2022, after a public hearing, the City Council voted to deny an application for a conditional use permit for a multi-family residential apartment complex containing twenty-six buildings and a total of 291 dwelling units (Attachment 2).

The applicant appealed City Council's decision to the Land Use Board of Appeals (LUBA). LUBA issued a final order reversing the decision of the City Council and ordering the City to approve the application.

**ISSUE:**

Shall the City Council APPROVE Case No. CU-SPR-ADJ-DAP-DR21-05 for development of a new twenty-six building apartment complex with 291 dwelling units?

**RECOMMENDATION:**

APPROVE Case No. CU-SPR-ADJ-DAP-DR21-05 for development of a new twenty-six building apartment complex with 291 dwelling units.

**FACTS AND FINDINGS:**

Procedural Findings

1. On September 22, 2021, a Conditional Use Permit, Class 3 Site Plan Review, Class 2 Adjustment, Class 2 Driveway Approach Permit, and Class 1 Design Review consolidated application was submitted for property located at the 4900 Block of State Street. After receiving additional information, the collective application was deemed complete for processing on December 1, 2021.
2. A public hearing was conducted on December 22, 2021. The Hearings Officer continued the public hearing to January 26, 2022, to allow for additional findings and testimony to be submitted.
3. Prior to the continued hearing, the applicant submitted an updated site plan and updated written response which were included in the supplemental staff report dated January 26, 2022. On January 26, 2022, the Hearings Officer conducted the continued hearing, closed the public hearing, and left the record open for additional written comments and final argument by the applicant.
4. On February 9, 2022, an open record memo, including staff rebuttal testimony in response to the updated plans and findings provided by the applicant was provided to the Hearings Officer. The applicant provided final argument on February 16, 2022.
5. On March 9, 2022, the Hearings Officer issued a decision denying the collective application.

6. On March 15, 2022, a timely Notice of Appeal was filed by the applicant. At the March 28, 2022, regularly scheduled meeting, the City Council voted to initiate review of the appeal filed by the applicant.
7. The 120-day State mandated deadline for final decision has been extended by the applicant to May 26, 2022.
8. On April 25, 2022, the City Council held a public hearing, received public testimony, and then closed the hearing. The City Council conducted deliberations and voted to affirm the Hearings Officer's decision denying CU-SPR-ADJ-DAP-DR21-05.
9. The applicant appealed the City's final decision denying the development application to the Land Use Board of Appeals (LUBA).
10. On August 30, 2022, LUBA issued a final order, LUBA No. 2022-050, reversing the decision, and requiring the City to approve the development application. LUBA found that the City misconstrued applicable state law by determining that state law did not require only clear and objective criteria to apply to the application, as required by ORS 197.307(4), and erred in applying discretionary criteria to the application. Because the City Council found that the application met all clear and objective criteria, LUBA determined that the City's denial was outside the range of discretion afforded the City under state law, and that the City is obligated to now approve the application. (Attachment 3)

### Substantive Findings

The applicable criteria and considerations that must be satisfied for the approval of the collective application are as follows:

- Conditional Use Permit: SRC 240.005(d)
- Class 3 Site Plan Review: SRC 220.005(f)(3)
- Class 2 Adjustment: SRC 250.005(d)(2)
- Class 2 Driveway Approach Permit: SRC 804.025(d)
- Class 1 Design Review: SRC 225.005(e)(1)

The Facts and Findings for this application have been updated following the decision from LUBA (Attachment 4).

Pursuant to LUBA's final order the City is obligated to approve the application for Conditional Use Permit, Class 3 Site Plan Review, Class 2 Adjustment, Class 2 Driveway Approach Permit, and Class 1 Design Review Case No. CU-SPR-ADJ-DAP-DR21-05.

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Planner III

**Attachments:**

1. Vicinity Map
2. Proposed Development Plans
3. LUBA Final Order and Opinion No. 2022-050
4. Final Order CU-SPR-ADJ-DAP-DR21-05
5. Facts and Findings for CU-SPR-ADJ-DAP-DR21-05