

# Legal tussle delays senior-living project

By Sue Stafford  
Correspondent

A legal tussle involving two potential senior-living projects in Sisters has gone through a land-use appeal.

The State Land Use Board of Appeals (LUBA) has issued its final opinions and orders regarding two appeals filed with them by Pinnacle Alliance Group, LLC, whose president is Mark Adolf, developer of a proposed assisted-living facility in Sisters.

The appeals are regarding decisions made by the City of Sisters, the Sisters Planning Commission, and the City Council regarding McKenzie Meadow Village (MMV), a multi-phase mixed-used development, including an assisted-living facility.

The grounds for the appeals have mainly to do with procedural errors and omissions, differences of opinion or interpretation, and missing documentation. The two appeals involved five attorneys in three law firms, three LUBA board members, untold hours of City staff time, and continued delays in the start of construction at McKenzie Meadow Village.

The accompanying record of all relevant materials is 1,666 pages long.

One petition — which was dismissed by LUBA — asserted that Pinnacle was adversely affected by the City's community development director administratively extending the MMV Master Plan approval without a hearing.

The City contended, and LUBA agreed, that the extension was simply a reauthorization of the original master plan uses approved in 2010 and 2012. Oregon statute requires that Pinnacle show how the uses authorized by the extended master plan adversely affected its interests.

LUBA concluded that Pinnacle's brief only asserts that its interests will be impacted, with no explanation as to how or why. The brief contends that MMV will generate traffic impacts that will affect the petitioner's nearby property, which in fact is over a mile away from the McKinney Butte Drive location of MMV, next to the post office.

LUBA rejected Pinnacle's undeveloped claim that MMV may use the same

city road and water system as Pinnacle, as insufficient to demonstrate that MMV's extended master plan will adversely affect Pinnacle.

Finally, Pinnacle's undeveloped assertions that the decision will have "economic impacts" and "violates petitioner's due process and equal-protection rights" also lack sufficient detail to demonstrate an adverse effect for purposes of establishing standing under Oregon law.

The conclusion reached by LUBA is that Pinnacle didn't establish it had standing to bring the appeal; therefore, it was dismissed. Pinnacle is entitled to judicial review of the order and could take it to the Court of Appeals.

The second appeal is much more complex, consisting of four assignments of error, one of which has three sub-assignments. The appeal concerns approval of a new site plan and modification of the original master plan for the MMV senior-living facility.

On June 18, 2015, the Planning Commission approved the new site plan and modification of the original master plan for the MMV senior-living facility.

During that public hearing, Pinnacle's attorney requested that the hearing remain open to allow time for submission of more materials for the Planning Commission's consideration.

Planning Commission

prejudiced. Council upheld the Planning Commission's decision. LUBA concluded that the Planning Commission's procedural error outlined in the first assignment of error provides no basis for reversal of

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Chairman David Gentry closed the hearing. That was an error.

City Attorney Steve Bryant had not been asked to attend that evening's meeting, so was not there to avoid that error being made, which provided grounds for Pinnacle to appeal the decision to the Sisters City Council.

In August 2015, City Council held a de novo (new) public hearing at which Pinnacle was permitted to submit additional evidence, which adequately ensured that their rights to a full and fair hearing were not

remand under Oregon statute, since Pinnacle was able to receive a fair hearing in front of City Council. That assignment was dismissed.

In a second assignment of error — which was sustained by LUBA — Pinnacle contends that the two-page City Council decision from August 2015 is not supported by adequate findings. LUBA's rules require that the record include "the final decision including any findings of fact and conclusion of law."

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