



Memorandum

TO: Chris Jordan, City Manager

FROM: Peter Spir, Associate Planner

DATE: December 21, 2009

SUBJECT: Work session to refine language amending the Community Development Code (CDC) to provide the opportunity for two-year extension for approved land use applications (CDC-09-04).

Purpose

At the December 12, 2009 public hearing, City Council took public testimony and continued the hearing to January 11, 2010. The public hearing was not closed and the record was left open. City Council members decided to hold a work session on December 21, 2009 to discuss the extensions. City Councilors Kovash and Burgess have both submitted proposed changes for consideration and discussion as has Attorney Michael Robinson.

Background

The purpose of the proposed code amendments is to provide people who have approved land use applications the opportunity to apply for a two-year extension (or a one year plus one year extension process) in light of the current economic recession. An extension would allow extra time for people to secure funding and proceed with the approved project in an improved financial environment.

West Linn imposes time limits on land use applications like most other jurisdictions. But unlike many other jurisdictions, West Linn currently offers no opportunities for extensions. There are approximately 20 land use approvals that have recently been voided or will be voided in 2010.

The Planning Commission voted to recommend adoption of a two year extension.

Discussion

To assist in the work session, staff offers the following basic questions for consideration:

- Is it appropriate to allow extensions? If no, then let's table these amendments.
- If yes, then how long should the extension be for? One year + One year? Two years?
- Do we want "de novo" hearings which re-examine all aspects of the original decision? Essentially, a new hearing.
- Do we want "limited de novo" hearings which just focus on compliance with code changes adopted since the original approval date plus obvious errors and omissions?
- Do we want simple approval criteria? Or do we want more comprehensive/complex approval criteria?
- If it turns out that an application does not fully comply with new CDC language do we want to allow the applicant to make very minor modifications if that is all that is needed to be in compliance? (see footnote below)
- If the extension language is adopted and the opportunity to deny extensions, if necessary, are in place, is a sunset provision really needed? (e.g. December 31, 2012)

Footnote represents possible text amendments. The text in black would be the simple approach whereas the red highlighted text provides the means for applicant to modify his application to meet revisions to CDC etc.:

C. Approval Criteria:

- (1) *Compliance with all applicable regulations, including regulations adopted since the project initially vested. Compliance will be verified by planning staff and the applicable decision-making body (e.g. Planning Commission).*
- (2) *Demonstrate that regulations which were approved since the date that the original application was vested can be met with changes which would not significantly impact or modify the approved application. Significant modification is defined as:
(a) the increase or decrease of more than three or 10% of the lots (whichever is less);
(b) increased traffic volumes, street alignments or new points of ingress/egress which require major on or off site improvements; or,
(c) a modified site plan that includes different alignment of streets, driveways, building pads or utilities to the extent that it bears little relationship to the originally approved plan.*
- (3) *The applicant has the burden of proof to demonstrate compliance with CDC approval criteria.*

Options

- Councilor Kovash submitted a proposal to revise the attached “de novo” version.
- Councilor Burgess submitted a proposal to revise the attached “limited de novo” version.
- Attorney Michael Robinson submitted the attached proposed language on December 17, 2009. This language’s simplicity has merit but the Historic Review Board must be added as a decision making body.
- Other version, such as the Planning Commission’s recommendation.
- Table or reject extension amendment proposal.

Memo2009-2year extension memo to City Manager for CC-12-20-09

ORDINANCE NO. _____
WEST LINN, OREGON

AN ORDINANCE CREATING A PROCEDURE TO ALLOW TWO-YEAR EXTENSIONS TO APPROVED LAND USE DECISIONS

WHEREAS, applicants must complete the improvements required by the original land use approval within three years of the approval date or the approval is voided; and

WHEREAS, the past 18 months have seen the collapse of the housing market, the unwillingness of lending institutions to provide loans to construct improvements such as roads and utilities necessary for final platting land divisions; and

WHEREAS, many cities in the Metro area allow extensions for land use approvals under specific circumstances; and

WHEREAS, in November, 2008 the City Council directed that staff process a review of the Community Development Code to determine if allowing for extension for local land use approvals was of value to the City, and

WHEREAS, by allowing extensions for land use approvals the City can maintain an inventory of approvals that can be activated early during the upturn of the economy rather than require staff and the local approval authorities to duplicate effort by performing a repeat review of applications; and

WHEREAS, the City can require that those approvals that obtain an extension be reviewed if there are errors, omissions or facts which were misinterpreted during the initial review of the application or where regulations have been adopted by the City since the initial approval vested, and

WHEREAS, the City of West Linn provided legislative notice pursuant to Community Development Code Chapter 98; and

WHEREAS, the West Linn Planning Commission held a public hearing on May 20, 2009 and a meeting on October 7, 2009 and recommended approval of the amendments to allow a two-year extension subject to specific criterion; and

WHEREAS, the City Council held public hearings on December 14, 2009 and January 11, 2010, and determined that allowing for extension for local land use approvals retroactive to August 1, 2009 is of value to the City, and subsequently adopted findings of fact and conclusions justifying its decision.

NOW, THEREFORE, THE CITY OF WEST LINN ORDAINS AS FOLLOWS:

Section 1: The West Linn Community Development Code is hereby amended to read as identified in Exhibit __ (attached hereto).

Section 2: Any prior land use approval that would have expired between August 1, 2009 and the effective date of this ordinance shall be eligible for extension(s) if a complete one-year extension application is submitted within ninety (90) of the effective date of this ordinance.

Section 3: Due to the severity of local and national economic conditions that prevent the implementation of approved land use projects and the potential that projects will soon lapse causing unnecessary expense to applicants and the duplication of staff effort to repeat the review of prior approvals, an emergency is declared and this ordinance will become effective upon passage.

Section 4: With the expectation that this economic recession will eventually end, the provisions of this ordinance will not be required indefinitely. Many economists believe that the recession will have abated or at least weakened within three years. Therefore this ordinance shall sunset or be voided on December 31, 2012.

PASSED AND APPROVED THIS 11th DAY OF JANUARY 2010.

PATTY GALLE, MAYOR

ATTEST:

TINA LYNCH, CITY RECORDER

APPROVED AS TO FORM:

City Attorney

Ordinance-JAN 11 2yr ext-cdc-09-04-monahan-emerg/sunset

EXHIBIT D: PROPOSED CODE AMENDMENTS
PROPOSED CHANGES FOR CITY COUNCIL HEARING
INCLUDING MORE RECENT CHANGES HIGHLIGHTED IN YELLOW

“DE NOVO” OPTION

Amendments proposed by Councilor Kovash highlighted in blue

SUBDIVISIONS

85.090 EXPIRATION OF APPROVAL - CONTINUATION

~~If the~~ The final plat ~~has not been~~ map shall be submitted to the Planning Director and recorded with the County within three years from the date of approval of the tentative plan, unless an extension is granted per CDC 85.095, which would then require the final plat to be recorded with the County within one year from the date that the original three-year approval lapses or two years from the date that the original three-year approval lapses if a second extension has been approved.

If not, the approval expires.

85.095 EXTENSIONS OF APPROVAL

A. (1) Approvals may be extended by one year with the opportunity to re-apply for an additional one year. The initial decision making body, as designated by CDC Chapter 99, shall approve, approve with conditions, or deny the initial one-year extension application. For the second one-year extension, the Planning Director shall be the decision making body and shall approve, approve with conditions or deny the application. The applicant shall submit a completed application form accompanied by payment of fees and where findings are made by the decision making body that the approval criteria in subsection C below is met. In the case of subdivisions, planned unit developments and minor partitions the extension requires that the final plat be recorded with

the County within **one year** of the date of the approval of the extension or two years if a second extension has been approved.

(2) The extension periods shall be measured from the date that the original three-year approval lapses.

(3) **The initial one-year extension** hearing or review by the decision making body shall be de novo. **The second year extension review by the Planning Director shall require the applicant to address regulations that have been adopted since the project initially vested.**

B. Submittal Requirements:

(1) A Pre-application Conference is required and shall include discussion of any new engineering, environmental and other changes to regulations in the CDC that, if applicable to the applicant's site, could have a significant impact upon the applicant's proposal.

(2) The applicant's submittal shall include:

(a) Completed application form and payment of fees.

(b) Written request for the extension to include:

i) identification and discussion all new engineering, environmental and other changes to regulations in the CDC that may be applicable to the proposal. If there are CDC changes to regulations that are deemed applicable, the applicant shall discuss their impact on the proposal and any modifications to the proposal or plan needed to meet the CDC changes or new regulations. Drawings, to scale, shall communicate any changes to the design or layout required by the new regulations; and

ii) summarize how the application ~~still~~ meets the approval criteria of the specific application(s). Submittal of a copy of

initial application and accompanying studies and maps etc. is required.

(c) Electronic or digital copy of the submittal in an acceptable format.

(d) Three hard copies of initial application and plans (full blueprint size and 11 X 17 inches) as well as three hard copies of narrative and plans addressing 2(b)(i) and (ii) above.

C. Approval Criteria:

(1) Compliance with all applicable regulations, including regulations adopted since the project initially vested; or, Compliance will be verified by planning staff and the applicable decision-making body (e.g. Planning Commission).

(2) Demonstrate that engineering, environmental or other regulations which were approved since the date that the original application was vested would not significantly impact or modify the approved application. Significant modification is defined as:

(a) the increase or decrease of more than three or 10% of the lots (whichever is greater);

(b) increased traffic volumes, street alignments or new points of ingress/egress which require major on or off site improvements; or,

(c) a modified site plan that includes different alignment of streets, driveways, building pads or utilities to the extent that it bears little relationship to the originally approved plan.

(3) (2) The applicant has the burden of proof to demonstrate continued compliance with the original CDC approval criteria.

85.110 STAGED DEVELOPMENT

The applicant may elect to develop the site in stages. Staged development shall be subject to the provisions of Section 99.125. However, notwithstanding the provisions of Section 99.125, in no case shall the time period for **final** platting **and recording** all stages **with the County** be greater than five years without re-filing the application.

SUBDIVISION AND PARTITION PLATS

89.010 SUBMISSION OF SUBDIVISION OR PARTITION PLAT

A. Within ~~one year~~ **three years** after approval of the tentative plan **or after the completion of all granted extensions (whichever is greater)**, the developer shall cause the final plat, or any part thereof, to be surveyed and a final plat prepared by a licensed land surveyor and submitted to the Planning Director in conformance with:

DESIGN REVIEW

55.040 EXPIRATION OF APPROVAL - CONTINUATION

If substantial construction has not occurred within three years from the date of approval of the development plan, the approved proposal will be void **unless an extension is granted per CDC 55.045. If an extension is granted, substantial construction must have occurred within one year from the date that the original three-year approval lapses or two years from the date that the original three-year approval lapses if a second extension has been approved.**

55.045

- A. (1) Approvals may be extended by one year with the opportunity to re-apply for an additional one year. The initial decision making body, as designated by CDC Chapter 99, shall approve, approve with conditions, or deny the initial one-year extension application. For the second one-year extension, the Planning Director shall be the decision making body and shall approve, approve with conditions or deny the application. The applicant shall submit a completed application form accompanied by payment of fees and where findings are made by the decision making body that the approval criteria in subsection C below is met.
- (2) The extension periods shall be measured from the date that the original three-year approval lapses.
- (3) The initial one-year extension hearing or review by the decision making body shall be de novo. The second year extension review by the Planning Director shall only require the applicant to address regulations that have been adopted since the project initially vested.

B. Submittal Requirements:

- (1) Pre-application Conference is required and shall include discussion of any new engineering, environmental and other changes to regulations in the CDC that, if applicable to the applicant's site, could have a significant impact upon the applicant's proposal.
- (2) The applicant's submittal shall include:
- (a) Completed application form and payment of fees.
 - (b) Written request for the extension to include discussion of whether or not new engineering, environmental and other changes to regulations in the CDC are applicable to the proposal. If there are changes that are deemed applicable, the applicant shall discuss their impact on the proposal. Drawings, to scale,

shall communicate any changes to the design or layout required by the new regulations.

(c) Electronic or digital copy of the submittal in an acceptable format.

C. Approval Criteria:

(1) Compliance with all applicable regulations, including regulations adopted since the project initially vested; ~~or~~. Compliance will be verified by planning staff and the applicable decision-making body (e.g. Planning Commission).

~~(2) Demonstrate that engineering, environmental or other regulations which were approved since the date that the original application was vested would not significantly impact or modify the approved application. Significant modification is defined as:~~

~~(a) the increase or decrease of more than three or 10% of the lots (whichever is greater);~~

~~(b) increased traffic volumes, street alignments or new points of ingress/egress which require major on or off site improvements; or,~~

~~(c) a modified site plan that includes different alignment of streets, driveways, building pads or utilities to the extent that it bears little relationship to the originally approved plan.~~

~~(3) (2) The applicant has the burden of proof to demonstrate ~~continued~~ compliance with ~~the original~~ CDC approval criteria.~~

PARK DESIGN REVIEW

56.040 EXPIRATION OF APPROVAL - CONTINUATION

If substantial construction, as defined in CDC chapter 2, has not occurred within three years from the date of approval of the development plan, the approved proposal will be void unless an extension is granted per CDC 56.045. If an extension is granted, substantial construction must have occurred within one year from the date that the original three-year approval lapses or two years from the date that the original three-year approval lapses if a second extension has been approved.

Phased improvements to a park or natural area, with clearly stated timeline, are permitted under the provisions of CDC 56.060. However, substantial construction of the final phased improvement must be begun within five years of the original approval date.

56.045

- A. (1) Approvals may be extended by one year with the opportunity to re-apply for an additional one year. The initial decision making body, as designated by CDC Chapter 99, shall approve, approve with conditions, or deny the initial one-year extension application. For the second one-year extension, the Planning Director shall be the decision making body and shall approve, approve with conditions or deny the application. The applicant shall submit a completed application form accompanied by payment of fees and where findings are made by the decision making body that the approval criteria in subsection C below is met.**
- (2) The extension periods shall be measured from the date that the original three-year approval lapses.**
- (3) The initial one-year extension hearing or review by the decision making body shall be de novo. The second year extension review by the**

Planning Director shall only require the applicant to address regulations that have been adopted since the project initially vested.

B. Submittal Requirements:

(1) A Pre-application Conference is required and shall include discussion of any new engineering, environmental and other changes to regulations in the CDC that, if applicable to the applicant's site, could have a significant impact upon the applicant's proposal.

(2) The applicant's submittal shall include:

(a) Completed application form and payment of fees.

(b) Written request for the extension to include discussion of whether or not new engineering, environmental and other changes to regulations in the CDC are applicable to the proposal. If there are changes that are deemed applicable, the applicant shall discuss their impact on the proposal. Drawings, to scale, shall communicate any changes to the design or layout required by the new regulations.

(c) Electronic or digital copy of the submittal in an acceptable format.

C. Approval Criteria:

(1) Compliance with all applicable regulations, including regulations adopted since the project initially vested; ~~or~~. Compliance will be verified by planning staff and the applicable decision-making body (e.g. Planning Commission).

(2) ~~Demonstrate that engineering, environmental or other regulations which were approved since the date that the original application was vested would not significantly impact or modify the approved application. Significant modification is defined as:~~

~~(a) the increase or decrease of more than three or 10% of the lots
(whichever is greater);~~

~~(b) increased traffic volumes, street alignments or new points of
ingress/egress which require major on or off site
improvements; or,~~

~~(c) a modified site plan that includes different alignment of
streets, driveways, building pads or utilities to the extent
that it bears little relationship to the originally approved
plan.~~

**(3) (2) The applicant has the burden of proof to demonstrate continued
compliance with ~~the original~~ CDC approval criteria.**

WILLAMETTE FALLS DRIVE COMMERCIAL DISTRICT DESIGN STANDARDS

58.110 EXPIRATION OF APPROVAL - CONTINUATION

**If substantial construction has not occurred within three years from the
date of approval of the development plan, the approved proposal will
be void unless an extension is granted per CDC 58.115. unless an
extension is granted per CDC 55.045. ~~If an extension is granted,
substantial construction must have occurred within one year from the
date that the original three-year approval lapses or two years from the
date that the original three-year approval lapses if a second extension
has been approved.~~**

58.115

- A.**
- (1) Approvals may be extended by one year with the opportunity to re-apply for an additional one year. The initial decision making body, as designated by CDC Chapter 99, shall approve, approve with conditions, or deny the initial one-year extension application. For the second one-year extension, the Planning Director shall be the decision making body and shall approve, approve with conditions or deny the application. The applicant shall submit a completed application form accompanied by payment of fees and where findings are made by the decision making body that the approval criteria in subsection C below is met.**
 - (2) The extension periods shall be measured from the date that the original three-year approval lapses.**
 - (3) The initial one-year extension hearing or review by the decision making body shall be de novo. The second year extension review by the Planning Director shall only require the applicant to address regulations that have been adopted since the project initially vested.**

B. Submittal Requirements:

- (1) A Pre-application Conference is required and shall include discussion of any new engineering, environmental and other changes to regulations in the CDC that, if applicable to the applicant's site, could have a significant impact upon the applicant's proposal.**
- (2) The applicant's submittal shall include:**
 - (a) Completed application form and payment of fees.**
 - (b) Written request for the extension to include discussion of whether or not new engineering, environmental and other changes to regulations in the CDC are applicable to the proposal. If there are changes to regulations that are deemed applicable, the applicant shall discuss their impact on the proposal.**

Drawings, to scale, shall communicate any changes to the design or layout required by the new regulations

(c) Electronic or digital copy of the submittal in an acceptable format.

C. Approval Criteria:

(1) Compliance with all applicable regulations, including regulations adopted since the project initially vested; ~~or, Compliance will be verified by planning staff and the applicable decision-making body (e.g. Planning Commission).~~

~~(2) Demonstrate that engineering, environmental or other regulations which were approved since the date that the original application was vested would not significantly impact or modify the approved application. Significant modification is defined as:~~

~~(a) the increase or decrease of more than three or 10% of the lots (whichever is greater);~~

~~(b) increased traffic volumes, street alignments or new points of ingress/egress which require major on or off site improvements; or,~~

~~(c) a modified site plan that includes different alignment of streets, driveways, building pads or utilities to the extent that it bears little relationship to the originally approved plan.~~

~~(3)~~ (2) The applicant has the burden of proof to demonstrate continued compliance with the original CDC approval criteria.

CONDITIONAL USE PERMIT

60.010 PURPOSE

The purpose of this chapter is to provide standards and procedures under which conditional uses may be permitted, enlarged, or altered if the site is appropriate and if other conditions can be met.

~~A. The Planning Commission may approve an application subject to a specific time period, at the termination of which there will be a renewal hearing. The decision at the renewal hearing shall be based on the factors in B1 and B2 below.~~

~~B. Approval of a conditional use shall be void after one year or such lesser time as the approval may specify, unless substantial construction pursuant thereto has taken place. The Planning Commission after a public hearing as provided by Section 99.060(B) may extend authorization for an additional period not to exceed one year, on request and a finding that:~~

- ~~1. There have been no changes in the facts on which the approval was based; and,~~
- ~~2. There have been no changes in the policy or applicable standards on which the approval was based.~~

60.040 TIME LIMIT ON A CONDITIONAL USE APPROVAL

Approval of a conditional use by the Commission shall be void after three years, unless an extension is granted per CDC 60.045, if:

1. Substantial construction of the approval plan has not begun within that three-year period.

2. Construction on the site is a departure from the approved plan.

60.045

- A.** (1) Approvals may be extended by one year with the opportunity to re-apply for an additional one year. The initial decision making body, as designated by CDC Chapter 99, shall approve, approve with conditions, or deny the initial one-year extension application. For the second one-year extension, the Planning Director shall be the decision making body and shall approve, approve with conditions or deny the application. The applicant shall submit a completed application form accompanied by payment of fees and where findings are made by the decision making body that the approval criteria in subsection C below is met.
- (2) The extension periods shall be measured from the date that the original three-year approval lapses.
- (3) The initial one-year extension hearing or review by the decision making body shall be de novo. The second year extension review by the Planning Director shall only require the applicant to address regulations that have been adopted since the project initially vested.

B. Submittal Requirements:

- (1) A Pre-application Conference is required and shall include discussion of any new engineering, environmental and other changes to regulations in the CDC that, if applicable to the applicant's site, could have a significant impact upon the applicant's proposal.
- (2) The applicant's submittal shall include:
- (a) Completed application form and payment of fees.
 - (b) Written request for the extension to include discussion of whether or not new engineering, environmental and other

changes to regulations in the CDC are applicable to the proposal.

If there are changes to regulations that are deemed applicable, the applicant shall discuss their impact on the proposal.

Drawings, to scale, shall communicate any changes to the design or layout required by the new regulations.

(c) Electronic or digital copy of the submittal in an acceptable format.

C. Approval Criteria:

(1) Compliance with all applicable regulations, including regulations adopted since the project initially vested; or, Compliance will be verified by planning staff and the applicable decision-making body (e.g. Planning Commission).

(2) Demonstrate that engineering, environmental or other regulations which were approved since the date that the original application was vested would not significantly impact or modify the approved application. Significant modification is defined as:

(a) the increase or decrease of more than three or 10% of the lots (whichever is greater);

(b) increased traffic volumes, street alignments or new points of ingress/egress which require major on or off site improvements; or,

(c) a modified site plan that includes different alignment of streets, driveways, building pads or utilities to the extent that it bears little relationship to the originally approved plan.

(3) (2) The applicant has the burden of proof to demonstrate continued compliance with the original CDC approval criteria.

VARIANCE

75.040 TIME LIMIT ON A VARIANCE

Approval of a variance shall be void after three years unless substantial construction pursuant thereto has taken place unless an extension is granted per CDC 75.045. (ORD. 1408)

75.045

- A.** (1) Approvals may be extended by one year with the opportunity to re-apply for an additional one year. The initial decision making body, as designated by CDC Chapter 99, shall approve, approve with conditions, or deny the initial one-year extension application. For the second one-year extension, the Planning Director shall be the decision making body and shall approve, approve with conditions or deny the application. The applicant shall submit a completed application form accompanied by payment of fees and where findings are made by the decision making body that the approval criteria in subsection C below is met.
- (2) The extension periods shall be measured from the date that the original three-year approval lapses.
- (3) The initial one-year extension hearing or review by the decision making body shall be de novo. The second year extension review by the Planning Director shall only require the applicant to address regulations that have been adopted since the project initially vested.
- B. Submittal Requirements:**
- (1) A Pre-application Conference is required and shall include discussion of any new engineering, environmental and other changes to

regulations in the CDC that, if applicable to the applicant's site, could have a significant impact upon the applicant's proposal.

(2) The applicant's submittal shall include:

(a) Completed application form and payment of fees.

(b) Written request for two-year extension to include discussion of whether or not new engineering, environmental and other changes to regulations in the CDC are applicable to the proposal. If there are changes to regulations that are deemed applicable, the applicant shall discuss their impact on the proposal. Drawings, to scale, shall communicate any changes to the design or layout required by the new regulations.

(c) Electronic or digital copy of the submittal in an acceptable format.

C. Approval Criteria:

(1) Compliance with all applicable regulations, including regulations adopted since the project initially vested; ~~or~~. Compliance will be verified by planning staff and the applicable decision-making body (e.g. Planning Commission).

~~(2) Demonstrate that engineering, environmental or other regulations which were approved since the date that the original application was vested would not significantly impact or modify the approved application. Significant modification is defined as:~~

~~(a) the increase or decrease of more than three or 10% of the lots (whichever is greater);~~

~~(b) increased traffic volumes, street alignments or new points of ingress/egress which require major on or off site improvements; or,~~

~~(c) a modified site plan that includes different alignment of streets, driveways, building pads or utilities to the extent that it bears little relationship to the originally approved plan.~~

(3) (2) The applicant has the burden of proof to demonstrate continued compliance with the original CDC approval criteria.

PLANNED UNIT DEVELOPMENT

24.030 EXPIRATION OF APPROVAL ~~-CONTINUATION~~

~~If no substantial construction~~ **the final plat has not been recorded with the County** ~~has occurred~~ within three years from the date of approval of the final plat or development plan, the application shall be null and void **unless an extension is granted per CDC 24.035.**

If an extension is granted, the final plat must be recorded with the County within one year from the date that the original three-year approval lapses or two years from the date that the original three-year approval lapses if a second extension has been approved.

The extension period shall be measured from the date that the original three-year approval lapses.

24.035

A. (1) Approvals may be extended by one year with the opportunity to re-apply for an additional one year. The initial decision making body, as designated by CDC Chapter 99, shall approve, approve with conditions, or deny the initial one-year extension application. For the second one-year extension, the Planning Director shall be the decision making body

and shall approve, approve with conditions or deny the extension application. The applicant shall submit a completed application form accompanied by payment of fees and where findings are made by the decision making body that the approval criteria in subsection C below is met. In the case of subdivisions, planned unit developments and minor partitions the extension requires that the final plat be recorded with the County within one year of the date of the approval of the extension or two years if a second extension has been approved.

- (2) The extension periods shall be measured from the date that the original three-year approval lapses.
- (3) The initial one-year extension hearing or review by the decision making body shall be de novo. The second year extension review by the Planning Director shall only require the applicant to address regulations that have been adopted since the project initially vested.

B. Submittal Requirements:

- (1) A Pre-application Conference is required and shall include discussion of any new engineering, environmental and other changes to regulations in the CDC that, if applicable to the applicant's site, could have a significant impact upon the applicant's proposal.
- (2) The applicant's submittal shall include:
- (a) Completed application form and payment of fees.
- (b) Written request for the extension to include discussion of whether or not new engineering, environmental and other changes to regulations in the CDC are applicable to the proposal. If there are changes to regulations that are deemed applicable, the applicant shall discuss their impact on the proposal. Drawings, to scale, shall communicate any changes to the design or layout required by the new regulations.

(c) Electronic or digital copy of the submittal in an acceptable format.

C. Approval Criteria:

(1) Compliance with all applicable regulations, including regulations adopted since the project initially vested; or, Compliance will be verified by planning staff and the applicable decision-making body (e.g. Planning Commission).

(2) Demonstrate that engineering, environmental or other regulations which were approved since the date that the original application was vested would not significantly impact or modify the approved application. Significant modification is defined as:

(a) the increase or decrease of more than three or 10% of the lots (whichever is greater);

(b) increased traffic volumes, street alignments or new points of ingress/egress which require major on or off site improvements; or,

(c) a modified site plan that includes different alignment of streets, driveways, building pads or utilities to the extent that it bears little relationship to the originally approved plan.

(3) (2) The applicant has the burden of proof to demonstrate continued compliance with the original CDC approval criteria.

WILLAMETTE AND TUALATIN RIVER PROTECTION

28.080 TIME LIMIT ON APPROVAL

A. Approval of a protection area permit shall be void if

1. Substantial work (e.g. piling installation etc) is not completed within three years of the approval date **unless an extension is granted per CDC 28.035.**

28.085

- A. **(1) Approvals may be extended by one year with the opportunity to re-apply for an additional one year. The initial decision making body, as designated by CDC Chapter 99, shall approve, approve with conditions, or deny the initial one-year extension application. For the second one-year extension, the Planning Director shall be the decision making body and shall approve, approve with conditions or deny the application. The applicant shall submit a completed application form accompanied by payment of fees and where findings are made by the decision making body that the approval criteria in subsection C below is met. In the case of a Willamette and Tualatin River protection permit, the applicant must begin substantial work per 28.080 within the extension period.**
- (2) The extension periods shall be measured from the date that the original three-year approval lapses.**
- (3) The initial one-year extension hearing or review by the decision making body shall be de novo. The second year extension review by the Planning Director shall only require the applicant to address regulations that have been adopted since the project initially vested.**

B. Submittal Requirements:

- (1) A Pre-application Conference is required and shall include discussion of any new engineering, environmental and other changes to regulations in the CDC that, if applicable to the applicant's site, could have a significant impact upon the applicant's proposal.
- (2) The applicant's submittal shall include:
- (a) Completed application form and payment of fees.
- (b) Written request for the extension to include discussion of whether or not new engineering, environmental and other changes to regulations in the CDC are applicable to the proposal. If there are changes to regulations that are deemed applicable, the applicant shall discuss their impact on the proposal. Drawings, to scale, shall communicate any changes to the design or layout required by the new regulations.
- (c) Electronic or digital copy of the submittal in an acceptable format.

C. Approval Criteria:

- (1) Compliance with all applicable regulations, including regulations adopted since the project initially vested; or, Compliance will be verified by planning staff and the applicable decision-making body (e.g. Planning Commission).
- (2) Demonstrate that engineering, environmental or other regulations which were approved since the date that the original application was vested would not significantly impact or modify the approved application. Significant modification is defined as:
- (a) the increase or decrease of more than three or 10% of the lots (whichever is greater);

~~(b) increased traffic volumes, street alignments or new points of ingress/egress which require major on or off site improvements; or,~~

~~(c) a modified site plan that includes different alignment of streets, driveways, building pads or utilities to the extent that it bears little relationship to the originally approved plan.~~

(3) (2) The applicant has the burden of proof to demonstrate continued compliance with the original CDC approval criteria.

PROCEDURES FOR DECISION MAKING: QUASI-JUDICIAL

99.330 REVOCATION OF APPROVALS - FAILURE TO FULFILL CONDITIONS

A.

- 1.** Conditions of approval shall be fulfilled within the time limit set forth in the decision; or, by specific provisions in this code; or, if no time limit is set forth, within three years **unless an extension is granted per the provisions of the specific chapters.**
- 2.** **Applications for extensions must be submitted along with the appropriate deposit to the Planning Director prior to the three-year time limit lapsing. Applications for extensions will be processed and decisions rendered by the decision making body(s) even if the three-year time limit lapses during the review and decision making period.**
- 3.** **Any application that would expire within six months of the adoption of the ordinance that allows one-year extensions shall be exempt from expiration so long as the person or entity responsible for the land use approval submitted an application and deposit fee to the**

Planning Director during that six-month period and so long as the extension application is ultimately approved.

4. In all cases, (2) and (3) above, the one-year extension shall go from the date that the application's initial three-year approval lapsed. The second one-year extension shall go from the date that the first extension lapsed.

5. Failure to fulfill any condition of approval within the time limitations provided will be grounds for revocation of approval after notice and an opportunity to be heard as an administrative action as provided in Section 99.330. Alternately, the Planning Director shall pursue compliance through Section 106.000. (ORD. 1474, 1568)

99.060 APPROVAL AUTHORITY

This section explains the authority of Planning Director, Planning Commission, City Council, and Historic Review Board as it relates to quasi-judicial and legislative action.

PLANNING DIRECTOR AUTHORITY

A. The Planning Director shall have the authority to:

1. Approve, deny, or approve with conditions, applications for the following development applications.

u. Extensions of Approval when the Planning Director acted as the initial decision making authority or in the case of applications for a second one-year extension.

PLANNING COMMISSION AUTHORITY

B. The Planning Commission shall have the authority to:

1. Make a recommendation to approve, deny, or approve with conditions to the Council:
 - a. A quasi-judicial Comprehensive Plan Map amendment. (ch. 105). (ORD 1568)
 - b. A quasi-judicial zone change involving a concurrent application for a quasi-judicial Plan Map amendment as provided by Section 99.030(A) (ch. 35). (ORD 1568)
2. Approve, deny, or approve with conditions:
 - l. Extensions of Approval when the Planning Commission acted as the initial decision making authority.**

HISTORIC REVIEW BOARD AUTHORITY

- D. The Historic Review Board shall have the authority to approve, deny, or approve with conditions, applications for the following development applications. (ORD. 1474)

8. Extensions of Approval when the Historic Review Board acted as the initial decision making authority.

99.080 NOTICE

Land Use Action	Type of Notice
Amendment or Modification of Application or Permit	Same as original application
Appeal or Review of Decision	A
Boundary Change:	Special
Code Interpretation	Notice to parties requesting the interpretation
Comprehensive Plan:	
Map Amendment	A
Plan/Code Text Amendment (Legislative Action)	A***
Conditional Use	A
Design Review:	
Class I	B
Class II	A

Determination of Unlisted Use	No Notice
Enlarge or Alter Non-Conforming Use/Structure: Commercial or Industrial Single-Family Residential	A B
Erosion and Sediment Control Permit	No Notice
Expedited Land Division	per state statute requirements
Flood Management Area	B**
Final Plat and Partition Plat	No Notice
Historic District: Amendments Demolition New Home Construction Major Renovations or Additions Minor Renovations or Additions Construction of non-exempt accessory structures/ garages	A A B B B B
Home Occupation:	No Notice
Lot Line Adjustment	No Notice
Minor Partition	A
Planned Unit Development	A
Revocation of Approval	A
Sidewalk Use Permit	No Notice
Sign Permit	No Notice
Subdivision	A
Temporary Use Permit: 60 days or less; 60-day extension Over 60 days, up to 1 year	No Notice A
Tualatin River Setback: Uses permitted outright & not subject to design review Uses permitted outright & subject to design review Uses requiring conditional use permit & design review	No Notice B A
Street Vacations	(per state statute requirements)
Variations: Class I (involves a small change with minor or no effect) Class II (involves a significant change from code requirements)	B A
Water Resource Area Permit (NDW)	A**
Willamette River Greenway: Development Permit Uses requiring conditional use permit & design review	A** A**
Zone Change	A

Extensions of Approval same notice as original application

**Plus COE/DSL is notified

***Plus DLCD notice (ORD. 1474, ORD.1545,ORD.1547,ORD.1565, ORD 1568)

Staffreports2009-CDC-09-04-DE NOVO-Jan 11 redo-KOVASH

EXHIBIT C: PROPOSED CODE AMENDMENTS

PROPOSED CHANGES SINCE CITY COUNCIL WORKSESSION (11-16-09)

"DE NOVO FOR ERRORS AND OMISSIONS" OPTION

Amendments proposed by Councilor Burgess shown in blue

SUBDIVISIONS

85.090 EXPIRATION OF APPROVAL - CONTINUATION

If the ~~The~~ final plat has not been map shall be submitted to the Planning Director and recorded with the County within three years from the date of approval of the tentative plan, unless an extension is granted per CDC 85.095, which would then require the final plat to be recorded with the County within ~~one two~~ years from the date that the original three-year approval lapses or two years from the date that the original three-year approval lapses if a second extension has been approved.

If not, the approval expires.

85.095 EXTENSIONS OF APPROVAL

- A. (1) Approvals may be extended by one two years with the opportunity to re-apply for an additional one year. The initial decision making body, as designated by CDC Chapter 99, shall approve, approve with conditions, or deny the initial one two-year extension application. For the second one year extension, the Planning Director shall be the decision making body and shall approve, approve with conditions or deny the application. The applicant shall submit a completed application form accompanied by payment of fees and where findings are made by the decision making body that the approval criteria in subsection C below is met. In the case of subdivisions, planned unit developments and minor partitions the extension requires that the final plat be recorded with the County within one two years of the date of the approval of the extension or two years if a second extension has been approved.

(2) The extension periods shall be measured from the date that the original three-year approval lapses.

(3) ~~The initial one two-year extension~~ hearing or review by the decision making body shall be de novo ~~but only~~ for errors, omissions or where facts were misinterpreted by the initial decision making body and where regulations have been adopted since the project initially vested. The intent of the extension review is not to re-hear every aspect of the application.

B. Submittal Requirements:

(1) A Pre-application Conference is required and shall include discussion of any new ~~engineering, environmental and other changes to regulations in the CDC~~ that, if applicable to the applicant's site, could have a significant impact upon the applicant's proposal.

(2) The applicant's submittal shall include:

(a) Completed application form and payment of fees.

(b) Written request for the extension to include:

i) identification and discussion all new ~~engineering, environmental and other changes to~~ regulations ~~in the CDC~~ that may be applicable to the proposal. If there are ~~CDC~~ changes to regulations that are deemed applicable, the applicant shall discuss their impact on the proposal and any modifications to the proposal or plan needed to meet the ~~CDC~~ changes or new regulations. Drawings, to scale, shall communicate any changes to the design or layout required by the new regulations; and

ii) summarize how the application still meets the approval criteria of the specific application(s). Submittal of a copy of

initial application and accompanying studies and maps etc. is required.

(c) Electronic or digital copy of the submittal in an acceptable format.

(d) Three hard copies of initial application and plans (full blueprint size and 11 X 17 inches) as well as three hard copies of narrative and plans addressing 2(b)(i) and (ii) above.

C. Approval Criteria:

(1) Compliance with all applicable regulations, including regulations adopted since the project initially vested; or,

(2) Demonstrate that ~~engineering, environmental or other~~ regulations which were approved since the date that the original application was vested would not significantly impact or modify the approved application. Significant modification is defined as:

(a) the increase or decrease of more than three or 10% of the lots (whichever is ~~greater~~ less);

(b) increased traffic volumes, ~~street alignments or new points of ingress/egress~~ which require major on or off site improvements; or,

(c) a modified site plan ~~that includes different alignment of streets, driveways, building pads or utilities to the extent that it bears little relationship to the originally approved plan.~~

(3) The applicant has the burden of proof to demonstrate continued compliance with the original CDC approval criteria.

85.110 STAGED DEVELOPMENT

The applicant may elect to develop the site in stages. Staged development shall be subject to the provisions of Section 99.125. However, notwithstanding the provisions of Section 99.125, in no case shall the time period for **final** platting **and recording** all stages **with the County** be greater than five years without re-filing the application.

SUBDIVISION AND PARTITION PLATS

89.010 SUBMISSION OF SUBDIVISION OR PARTITION PLAT

A. Within ~~one year~~ **three years** after approval of the tentative plan **and after the completion of all granted extensions**, the developer shall cause the final plat, or any part thereof, to be surveyed and a final plat prepared by a licensed land surveyor and submitted to the Planning Director in conformance with:

DESIGN REVIEW

55.040 EXPIRATION OF APPROVAL - CONTINUATION

If substantial construction has not occurred within three years from the date of approval of the development plan, the approved proposal will be void **unless an extension is granted per CDC 55.045. If an extension is granted, substantial construction must have occurred within ~~one two~~ years from the date that the original three-year approval lapses ~~or two~~ years from the date that the original three-year approval lapses if a second extension has been approved.**

55.045

A. (1) Approvals may be extended by ~~one two years with the opportunity to re-apply for an additional one-year.~~ The initial decision making body, as designated by CDC Chapter 99, ~~shall approve, approve with conditions, or deny the initial one-two year extension application.~~ ~~For the second one-year extension, the Planning Director shall be the decision making body and shall approve, approve with conditions or deny the application.~~ The applicant shall submit a completed application form accompanied by payment of fees and where findings are made by the decision making body that the approval criteria in subsection C below is met.

(2) The extension periods shall be measured from the date that the original three-year approval lapses.

(3) ~~The initial one-two -year extension~~ hearing or review by the decision making body shall be de novo ~~but only for errors, omissions or where facts were misinterpreted by the initial decision making body and where regulations have been adopted since the project initially vested.~~ The intent of the extension review is not to re-hear every aspect of the application.

B. Submittal Requirements:

(1) Pre-application Conference is required and shall include discussion of any new ~~engineering, environmental and other changes to regulations in the CDC~~ that, if applicable to the applicant's site, could have a significant impact upon the applicant's proposal.

(2) The applicant's submittal shall include:

(a) Completed application form and payment of fees.

(b) Written request for the extension to include discussion of whether or not new ~~engineering, environmental and other changes to regulations in the CDC~~ are applicable to the proposal.

If there are changes that are deemed applicable, the applicant shall discuss their impact on the proposal. Drawings, to scale, shall communicate any changes to the design or layout required by the new regulations.

(c) Electronic or digital copy of the submittal in an acceptable format.

C. Approval Criteria:

(1) Compliance with all applicable regulations, including regulations adopted since the project initially vested; or,

(2) Demonstrate that ~~engineering, environmental or other~~ regulations which were approved since the date that the original application was vested would not significantly impact or modify the approved application. Significant modification is defined as:

(a) the increase or decrease of more than three or 10% of the lots (whichever is ~~greater-less~~);

(b) increased traffic volumes, ~~street alignments or new points of ingress/egress~~ which require major on or off site improvements;

(c) re-design of the proposed structure resulting in an increase or reduction in square footage of over 30% or 1,000 square feet, whichever is greater; or

(d) a modified site plan ~~that includes different alignment of streets, driveways, building pads or utilities to the extent that it bears little relationship to the originally approved plan.~~

(3) The applicant has the burden of proof to demonstrate continued compliance with the original CDC approval criteria.

PARK DESIGN REVIEW

56.040 EXPIRATION OF APPROVAL - CONTINUATION

If substantial construction, as defined in CDC chapter 2, has not occurred within three years from the date of approval of the development plan, the approved proposal will be void unless an extension is granted per CDC 56.045. If an extension is granted, substantial construction must have occurred within ~~one~~ two years from the date that the original three-year approval lapses or two years from the date that the original three-year approval lapses if a second extension has been approved.

Phased improvements to a park or natural area, with clearly stated timeline, are permitted under the provisions of CDC 56.060. However, substantial construction of the final phased improvement must be begun within five years of the original approval date.

56.045

- A. (1) Approvals may be extended by ~~one two years with the opportunity to re-apply for an additional one year.~~ The initial decision making body, as designated by CDC Chapter 99, shall approve, approve with conditions, or deny the initial one-two year extension application. For the second one-year extension, the Planning Director shall be the decision making body and shall approve, approve with conditions or deny the application. The applicant shall submit a completed application form accompanied by payment of fees and where findings are made by the decision making body that the approval criteria in subsection C below is met.**
- (2) The extension periods shall be measured from the date that the original three-year approval lapses.**

(3) The ~~initial one-two~~ -year extension hearing or review by the decision making body shall be de novo but only for errors, omissions or where facts were misinterpreted by the initial decision making body and where regulations have been adopted since the project initially vested. The intent of the extension review is not to re-hear every aspect of the application.

B. Submittal Requirements:

(1) A Pre-application Conference is required and shall include discussion of any new ~~engineering, environmental and other changes to~~ regulations ~~in the CDC~~ that, if applicable to the applicant's site, could have a significant impact upon the applicant's proposal.

(2) The applicant's submittal shall include:

(a) Completed application form and payment of fees.

(b) Written request for the extension to include discussion of whether or not new ~~engineering, environmental and other changes to~~ regulations ~~in the CDC~~ are applicable to the proposal. If there are changes that are deemed applicable, the applicant shall discuss their impact on the proposal. Drawings, to scale, shall communicate any changes to the design or layout required by the new regulations.

(c) Electronic or digital copy of the submittal in an acceptable format.

C. Approval Criteria:

(1) Compliance with all applicable regulations, including regulations adopted since the project initially vested; or,

(2) Demonstrate that ~~engineering, environmental or other~~ regulations which were approved since the date that the original application

was vested would not significantly impact or modify the approved application. Significant modification is defined as:

(a) increased traffic volumes, ~~street alignments or new points of ingress/egress~~ which require major on or off site improvements;

(b) re-design of the proposed structure resulting in an increase or reduction in square footage of over 30% or 1,000 square feet, whichever is ~~greater-less~~; or

(c) a modified site plan ~~that includes different alignment of streets, driveways, building pads or utilities to the extent that it bears little relationship to the originally approved plan.~~

(3) The applicant has the burden of proof to demonstrate continued compliance with the original CDC approval criteria.

WILLAMETTE FALLS DRIVE COMMERCIAL DISTRICT DESIGN STANDARDS

58.110 EXPIRATION OF APPROVAL - CONTINUATION

If substantial construction has not occurred within three years from the date of approval of the development plan, the approved proposal will be void unless an extension is granted per CDC 58.115. unless an extension is granted per CDC 55.045. ~~If an extension is granted, substantial construction must have occurred within ~~one~~ two years from the date that the original three-year approval lapses or two years from the date that the original three-year approval lapses if a second extension has been approved.~~

58.115

A. (1) Approvals may be extended by ~~one two~~ years ~~with the opportunity to re-apply for an additional one year~~. The initial decision making body, as designated by CDC Chapter 99, ~~shall approve, approve with conditions, or deny the initial one-two year extension application. For the second one-year extension, the Planning Director shall be the decision making body and shall approve, approve with conditions or deny the application.~~ The applicant shall submit a completed application form accompanied by payment of fees and where findings are made by the decision making body that the approval criteria in subsection C below is met.

(2) The extension periods shall be measured from the date that the original three-year approval lapses.

(3) ~~The initial one-two -year extension~~ hearing or review by the decision making body shall be de novo ~~but only for errors, omissions or where facts were misinterpreted by the initial decision making body and where regulations have been adopted since the project initially vested. The intent of the extension review is not to re-hear every aspect of the application.~~

B. Submittal Requirements:

(1) A Pre-application Conference is required and shall include discussion of any new ~~engineering, environmental and other changes to regulations in the CDC~~ that, if applicable to the applicant's site, could have a significant impact upon the applicant's proposal.

(2) The applicant's submittal shall include:

(a) Completed application form and payment of fees.

(b) Written request for the extension to include discussion of whether or not new ~~engineering, environmental and other~~

~~changes to~~ regulations ~~in the CDC~~ are applicable to the proposal.

If there are changes that are deemed applicable, the applicant shall discuss their impact on the proposal. Drawings, to scale, shall communicate any changes to the design or layout required by the new regulations.

(c) Electronic or digital copy of the submittal in an acceptable format.

C. Approval Criteria:

(1) Compliance with all applicable regulations, including regulations adopted since the project initially vested; or,

(2) Demonstrate that ~~engineering, environmental or other~~ regulations which were approved since the date that the original application was vested would not significantly impact or modify the approved application. Significant modification is defined as:

(a) re-design of the proposed structure resulting in an increase or reduction in square footage of over 30% or 1,000 square feet, whichever is ~~greater-less~~; or

(b) a modified site plan ~~that includes different alignment of streets, driveways, building pads or utilities to the extent that it bears little relationship to the originally approved plan.~~

(3) The applicant has the burden of proof to demonstrate continued compliance with the original CDC approval criteria.

CONDITIONAL USE PERMIT

60.010 PURPOSE

The purpose of this chapter is to provide standards and procedures under which conditional uses may be permitted, enlarged, or altered if the site is appropriate and if other conditions can be met.

~~A. The Planning Commission may approve an application subject to a specific time period, at the termination of which there will be a renewal hearing. The decision at the renewal hearing shall be based on the factors in B1 and B2 below.~~

~~B. Approval of a conditional use shall be void after one year or such lesser time as the approval may specify, unless substantial construction pursuant thereto has taken place. The Planning Commission after a public hearing as provided by Section 99.060(B) may extend authorization for an additional period not to exceed one year, on request and a finding that:~~

~~1. There have been no changes in the facts on which the approval was based; and,~~

~~2. There have been no changes in the policy or applicable standards on which the approval was based.~~

60.040 TIME LIMIT ON A CONDITIONAL USE APPROVAL

Approval of a conditional use by the Commission shall be void after three years, unless an extension is granted per CDC 60.045,

if:

1. Substantial construction of the approval plan has not begun within that three-year period.

2. Construction on the site is a departure from the approved plan.

60.045

A. (1) Approvals may be extended by ~~one two years with the opportunity to re-apply for an additional one year.~~ The initial decision making body, as designated by CDC Chapter 99, ~~shall approve, approve with conditions, or deny the initial one-two year extension application. For the second one-year extension, the Planning Director shall be the decision making body and shall approve, approve with conditions or deny the application.~~ The applicant shall submit a completed application form accompanied by payment of fees and where findings are made by the decision making body that the approval criteria in subsection C below is met.

(2) The extension periods shall be measured from the date that the original three-year approval lapses.

(3) ~~The initial one two -year extension~~ hearing or review by the decision making body shall be de novo ~~but only for errors, omissions or where facts were misinterpreted by the initial decision making body and where regulations have been adopted since the project initially vested. The intent of the extension review is not to re-hear every aspect of the application.~~

B. Submittal Requirements:

(1) A Pre-application Conference is required and shall include discussion of any new ~~engineering, environmental and other changes to regulations in the CDC~~ that, if applicable to the applicant's site, could have a significant impact upon the applicant's proposal.

(2) The applicant's submittal shall include:

- (a) Completed application form and payment of fees.
- (b) Written request for the extension to include discussion of whether or not new ~~engineering, environmental and other changes to~~ regulations ~~in the CDC~~ are applicable to the proposal. If there are changes that are deemed applicable, the applicant shall discuss their impact on the proposal. Drawings, to scale, shall communicate any changes to the design or layout required by the new regulations.
- (c) Electronic or digital copy of the submittal in an acceptable format.

C. Approval Criteria:

- (1) Compliance with all applicable regulations, including regulations adopted since the project initially vested; or,
- (2) Demonstrate that ~~engineering, environmental or other~~ regulations which were approved since the date that the original application was vested would not significantly impact or modify the approved application. Significant modification is defined as:
 - (a) increased traffic volumes, ~~street alignments or new points of ingress/egress~~ which require major on or off site improvements; or,
 - (b) a modified site plan ~~that includes different alignment of streets, driveways, building pads or utilities to the extent that it bears little relationship to the originally approved plan.~~
- (3) The applicant has the burden of proof to demonstrate continued compliance with the original CDC approval criteria.

VARIANCE

75.040 TIME LIMIT ON A VARIANCE

Approval of a variance shall be void after three years unless substantial construction pursuant thereto has taken place unless an extension is granted per CDC 75.045. (ORD. 1408)

75.045

- A. (1) Approvals may be extended by one two years with the opportunity to re-apply for an additional one year. The initial decision making body, as designated by CDC Chapter 99, shall approve, approve with conditions, or deny the initial one-two year extension application. For the second one year extension, the Planning Director shall be the decision making body and shall approve, approve with conditions or deny the application. The applicant shall submit a completed application form accompanied by payment of fees and where findings are made by the decision making body that the approval criteria in subsection C below is met.
- (2) The extension periods shall be measured from the date that the original three-year approval lapses.
- (3) The initial one-two -year extension hearing or review by the decision making body shall be de novo but only for errors, omissions or where facts were misinterpreted by the initial decision making body and where regulations have been adopted since the project initially vested. The intent of the extension review is not to re-hear every aspect of the application.

B. Submittal Requirements:

(1) A Pre-application Conference is required and shall include discussion of any new ~~engineering, environmental and other changes to regulations in the CDC~~ that, if applicable to the applicant's site, could have a significant impact upon the applicant's proposal.

(2) The applicant's submittal shall include:

(a) Completed application form and payment of fees.

(b) Written request for the extension to include discussion of whether or not new ~~engineering, environmental and other changes to regulations in the CDC~~ are applicable to the proposal. If there are changes that are deemed applicable, the applicant shall discuss their impact on the proposal. Drawings, to scale, shall communicate any changes to the design or layout required by the new regulations.

(c) Electronic or digital copy of the submittal in an acceptable format.

C. Approval Criteria:

(1) Compliance with all applicable regulations, including regulations adopted since the project initially vested; or,

(2) Demonstrate that ~~engineering, environmental or other~~ regulations which were approved since the date that the original application was vested would not significantly impact or modify the approved application. Significant modification is defined as:

(a) the increase or decrease of more than three or 10% of the lots (whichever is ~~greater-less~~); or,

(b) increased traffic volumes, ~~street alignments or new points of ingress/egress~~ which require major on or off site improvements; or,

(c) a modified site plan that includes different alignment of streets, driveways, building pads or utilities to the extent that it bears little relationship to the originally approved plan; or,

(d) re-design of the proposed structure resulting in an increase or reduction in square footage of over 30% or 1,000 square feet, whichever is greater-less .

(3) The applicant has the burden of proof to demonstrate continued compliance with the original CDC approval criteria.

PLANNED UNIT DEVELOPMENT

24.030 EXPIRATION OF APPROVAL -CONTINUATION

If ~~no substantial construction~~ the final plat has not been recorded with the County ~~has occurred~~ within three years from the date of approval of the final plat or development plan, the application shall be null and void unless an extension is granted per CDC 24.035.

If an extension is granted, the final plat must be recorded with the County within ~~one~~ two years from the date that the original three-year approval lapses or two years from the date that the original three-year approval lapses if a second extension has been approved.

The extension period shall be measured from the date that the original three-year approval lapses.

24.035

- A. (1) Approvals may be extended by ~~one two years with the opportunity to re-apply for an additional one year.~~ The initial decision making body, as designated by CDC Chapter 99, ~~shall approve, approve with conditions, or deny the initial one-two year extension application. For the second one-year extension, the Planning Director shall be the decision making body and shall approve, approve with conditions or deny the application.~~ The applicant shall submit a completed application form accompanied by payment of fees and where findings are made by the decision making body that the approval criteria in subsection C below is met. In the case of subdivisions, planned unit developments and minor partitions the extension requires that the final plat be recorded with the County within ~~one two years~~ of the date of the approval of the extension ~~or two years if a second extension has been approved.~~
- (2) The extension periods shall be measured from the date that the original three-year approval lapses.
- (3) ~~The initial one-two-year extension~~ hearing or review by the decision making body shall be de novo ~~but only for errors, omissions or where facts were misinterpreted by the initial decision making body and where regulations have been adopted since the project initially vested.~~ The intent of the extension review is not to re-hear every aspect of the application.

B. Submittal Requirements:

- (1) A Pre-application Conference is required and shall include discussion of any new ~~engineering, environmental and other changes to regulations in the CDC~~ that, if applicable to the applicant's site, could have a significant impact upon the applicant's proposal.
- (2) The applicant's submittal shall include:

- (a) Completed application form and payment of fees.
- (b) Written request for the extension to include discussion of whether or not new ~~engineering, environmental and other changes to~~ regulations ~~in the CDC~~ are applicable to the proposal. If there are changes that are deemed applicable, the applicant shall discuss their impact on the proposal. Drawings, to scale, shall communicate any changes to the design or layout required by the new regulations.
- (c) Electronic or digital copy of the submittal in an acceptable format.

C. Approval Criteria:

- (1) Compliance with all applicable regulations, including regulations adopted since the project initially vested; or,
- (2) Demonstrate that ~~engineering, environmental or other~~ regulations which were approved since the date that the original application was vested would not significantly impact or modify the approved application. Significant modification is defined as:
 - (a) the increase or decrease of more than three or 10% of the lots (whichever is ~~greater-less~~);
 - (b) increased traffic volumes, ~~street alignments or new points of ingress/egress~~ which require major on or off site improvements; or,
 - (c) a modified site plan ~~that includes different alignment of streets, driveways, building pads or utilities to the extent that it bears little relationship to the originally approved plan.~~

(d) re-design of the proposed structure resulting in an increase or reduction in square footage of over 30% or 1,000 square feet, whichever is ~~greater~~-less.

(3) The applicant has the burden of proof to demonstrate continued compliance with the original CDC approval criteria.

WILLAMETTE AND TUALATIN RIVER PROTECTION

28.080 TIME LIMIT ON APPROVAL

- A. Approval of a protection area permit shall be void if
1. Substantial work (e.g. piling installation etc) is not completed within three years of the approval date unless an extension is granted per CDC 28.035.

28.085

- A. (1) Approvals may be extended by ~~one two~~ years with the opportunity to re-apply for an additional one year. The initial decision making body, as designated by CDC Chapter 99, shall approve, approve with conditions, or deny the ~~initial one-two year extension application.~~ For the second one-year extension, the Planning Director shall be the decision making body and shall approve, approve with conditions or deny the application. The applicant shall submit a completed application form accompanied by payment of fees and where findings are made by the decision making body that the approval criteria in subsection C below is met. In the case of a Willamette and Tualatin River protection permit, the applicant must begin substantial work per 28.080 within the extension period.

(2) The extension periods shall be measured from the date that the original three-year approval lapses.

(3) The ~~initial one two~~-year extension hearing or review by the decision making body shall be de novo but only for errors, omissions or where facts were misinterpreted by the initial decision making body and where regulations have been adopted since the project initially vested. The intent of the extension review is not to re-hear every aspect of the application.

B. Submittal Requirements:

(1) A Pre-application Conference is required and shall include discussion of any new ~~engineering, environmental and other changes to~~ regulations ~~in the CDC~~ that, if applicable to the applicant's site, could have a significant impact upon the applicant's proposal.

(2) The applicant's submittal shall include:

(a) Completed application form and payment of fees.

(b) Written request for the extension to include discussion of whether or not new ~~engineering, environmental and other changes to~~ regulations ~~in the CDC~~ are applicable to the proposal. If there are changes that are deemed applicable, the applicant shall discuss their impact on the proposal. Drawings, to scale, shall communicate any changes to the design or layout required by the new regulations.

(c) Electronic or digital copy of the submittal in an acceptable format.

C. Approval Criteria:

- 1) Compliance with all applicable regulations, including regulations adopted since the project initially vested; or,**
- (2) Demonstrate that ~~engineering, environmental or other~~ regulations which were approved since the date that the original application was vested would not significantly impact or modify the approved application. Significant modification is defined as:**
 - (a) the increase or decrease of more than three or 10% of the lots (whichever is ~~greater less~~);**
 - (b) a significant re-design of the proposed structure resulting in an increase or reduction in square footage of over 30% or 1,000 square feet, whichever is ~~greater-less~~;**
 - (c) a significantly modified site plan (including significant ramp and dock re-alignment or design); or,**
 - (d) an increase in ramp length by 50% or 50 feet whichever is ~~greater-less~~.**
 - (e) a modified site plan that includes different alignment of streets, driveways, building pads or utilities to the extent that it bears little relationship to the originally approved plan.**
- (3) The applicant has the burden of proof to demonstrate continued compliance with the original CDC approval criteria.**

PROCEDURES FOR DECISION MAKING: QUASI-JUDICIAL

99.330 REVOCATION OF APPROVALS - FAILURE TO FULFILL CONDITIONS

A.

- 1.** Conditions of approval shall be fulfilled within the time limit set forth in the decision; or, by specific provisions in this code; or, if no time

limit is set forth, within three years unless an extension is granted per the provisions of the specific chapters.

2. Applications for extensions must be submitted along with the appropriate deposit to the Planning Director prior to the three-year time limit lapsing. Applications for extensions will be processed and decisions rendered by the decision making body(s) even if the three-year time limit lapses during the review and decision making period.
3. Any application that would expire within six months of the adoption of the ordinance that allows one-year extensions shall be exempt from expiration so long as the person or entity responsible for the land use approval submitted an application and deposit fee to the Planning Director during that six-month period and so long as the extension application is ultimately approved.
4. In all cases, (2) and (3) above, the ~~one-two-year extension shall go from the date that the application's initial three-year approval lapsed. The second one-year extension shall go from the date that the first extension lapsed.~~
5. Failure to fulfill any condition of approval within the time limitations provided will be grounds for revocation of approval after notice and an opportunity to be heard as an administrative action as provided in Section 99.330. Alternately, the Planning Director shall pursue compliance through Section 106.000. (ORD. 1474, 1568)

99.060

APPROVAL AUTHORITY

This section explains the authority of Planning Director, Planning Commission, City Council, and Historic Review Board as it relates to quasi-judicial and legislative action.

PLANNING DIRECTOR AUTHORITY

A. The Planning Director shall have the authority to:

1. Approve, deny, or approve with conditions, applications for the following development applications.

u. Extensions of Approval when the Planning Director acted as the initial decision making authority ~~or in the case of applications for a second one-year extension.~~

PLANNING COMMISSION AUTHORITY

B. The Planning Commission shall have the authority to:

1. Make a recommendation to approve, deny, or approve with conditions to the Council:

a. A quasi-judicial Comprehensive Plan Map amendment. (ch. 105). (ORD 1568)

b. A quasi-judicial zone change involving a concurrent application for a quasi-judicial Plan Map amendment as provided by Section 99.030(A) (ch. 35). (ORD 1568)

2. Approve, deny, or approve with conditions:

l. Extensions of Approval when the Planning Commission acted as the initial decision making authority.

HISTORIC REVIEW BOARD AUTHORITY

D. The Historic Review Board shall have the authority to approve, deny, or approve with conditions, applications for the following development applications. (ORD. 1474)

8. Extensions of Approval when the Historic Review Board acted as the initial decision making authority.

99.080 NOTICE

Land Use Action	Type of Notice
Amendment or Modification of Application or Permit	Same as original application
Appeal or Review of Decision	A
Boundary Change:	Special
Code Interpretation	Notice to parties requesting the interpretation
Comprehensive Plan: Map Amendment	A
Plan/Code Text Amendment (Legislative Action)	A***
Conditional Use	A
Design Review: Class I	B
Class II	A
Determination of Unlisted Use	No Notice
Enlarge or Alter Non-Conforming Use/Structure: Commercial or Industrial	A
Single-Family Residential	B
Erosion and Sediment Control Permit	No Notice
Expedited Land Division	per state statute requirements
Flood Management Area	B**
Final Plat and Partition Plat	No Notice
Historic District: Amendments	A
Demolition	A
New Home Construction	B
Major Renovations or Additions	B
Minor Renovations or Additions	B
Construction of non-exempt accessory structures/ garages	B
Home Occupation:	No Notice
Lot Line Adjustment	No Notice
Minor Partition	A
Planned Unit Development	A
Revocation of Approval	A
Sidewalk Use Permit	No Notice
Sign Permit	No Notice
Subdivision	A
Temporary Use Permit: 60 days or less; 60-day extension	No Notice
Over 60 days, up to 1 year	A
Tualatin River Setback: Uses permitted outright & not subject to design review	No Notice
Uses permitted outright & subject to design review	B
Uses requiring conditional use permit & design review	A
Street Vacations	(per state statute requirements)
Variances: Class I (involves a small change with minor or no effect)	B
Class II (involves a significant change from code requirements)	A
Water Resource Area Permit (NDW)	A**
Willamette River Greenway:	

Development Permit Uses requiring conditional use permit & design review	A** A**
Zone Change	A

Extensions of Approval same notice as original application

**Plus COE/DSL is notified

***Plus DLCD notice (ORD. 1474, ORD.1545,ORD.1547,ORD.1565, ORD 1568)

Staffreports2009-CDC-09-04-de novo in errors only –BURGESS-JAN 2010

Proposed code language from
Attorney Michael Robinson

DRAFT EXTENSION ORDINANCE
AMENDMENT TO WEST LINN
COMMUNITY DEVELOPMENT CODE CHAPTER 99

99.XXX, Extension Requests.

A. Extension Requests for Applications listed in 99.060.A.

For those applications listed in 99.060.A, the Planning Director may grant an extension from the effective date of approval of up to two (2) years if the Planning Director finds good cause for the extension. The Planning Director shall provide notice of the request for extension pursuant to 99.080.B. The extension application may be submitted only after neighborhood contact under 99.038 and a pre-application meeting under 99.030.B. Notice of the decision shall be issued pursuant to 99.160.C and the decision shall not become effective until resolution of all appeal periods, including an opportunity for City Council call-up pursuant to 99.160.C.2.

B. Extension Requests for Applications listed in 99.060.B.

For those applications listed in 99.060.B, the Planning Commission may grant an extension from the effective date of approval of up to two (2) years. The extension application may be submitted only after neighborhood contact under 99.038 and a pre-application meeting under 99.030.B. The Planning Commission may grant the extension if it finds good cause for the extension and that the circumstances in CDC 99.330.E.1 and E.4 are not found to be present in the original approval. Notice of the decision shall be issued pursuant to 99.130.B and the decision shall not become effective until resolution of all appeal periods, including an opportunity for City Council call-up pursuant to 99.170.G.

C. Extension Applications limited to those approvals issued prior to the effective date of this section.

Only those applications with an approval date prior to the effective date of this section shall be eligible to submit an extension application under this section.



Michael C. Robinson
PHONE: (503) 727-2264
FAX: (503) 346-2264
EMAIL: MRobinson@perkinscoie.com

1120 N.W. Couch Street, Tenth Floor
Portland, OR 97209-4128
PHONE: 503.727.2000
FAX: 503.727.2222
www.perkinscoie.com

December 17, 2009

VIA E-MAIL

Mr. John Sonnen
Planning Director
City of West Linn
22500 Salamo Road, #100
West Linn, OR 97068

Re: My Client, Jeff Smith; Proposed Extension Ordinance

Dear Mr. Sonnen:

I am writing to confirm the action that the City Council took on Monday, December 14, 2009 regarding the proposed extension ordinance (File No. CDC-09-04). On a motion by City Councilor Jody Carson, and seconded by City Councilor John Kovash, the City Council directed that the proposed ordinance be brought back to a City Council work session scheduled on December 21, 2009 and to a public hearing on January 11, 2010 with the record remaining open during the interim. The City Council further requested that City Councilor comments on the proposed ordinance be provided to staff no later than Wednesday, December 16, 2009 in order to be considered at the work session.

37891-0014/LEGAL17445248.1

ANCHORAGE · BEIJING · BELLEVUE · BOISE · CHICAGO · DENVER · LOS ANGELES · MENLO PARK
OLYMPIA · PHOENIX · PORTLAND · SAN FRANCISCO · SEATTLE · SHANGHAI · WASHINGTON, D.C.

Perkins Coie LLP and Affiliates

Printed on recycled paper

(59)

Mr. John Sonnen
December 17, 2009
Page 2

Please place this letter in the official Planning Department file for this matter and before the City Council at the continued public hearing on January 11, 2010.

Very truly yours,



Michael C. Robinson

MCR:cfr

cc: Mr. Chris Jordan (via email)
Mr. Peter Spir (via email)
Mr. Tim Ramis (via email)
Mr. Jeff Smith (via email)
Mr. Ernie Platt (via email)
Mr. Tony Marnella (via email)
Mr. Jeff Parker (via email)
Mr. Rhys Konrad (via email)

Spir, Peter

From: Vogel, Stephanie (Perkins Coie) [SVogel@perkinscoie.com] on behalf of Robinson, Michael C. (Perkins Coie) [MRobinson@perkinscoie.com]
Sent: Thursday, December 17, 2009 9:32 AM
To: Sonnen, John
Cc: Spir, Peter; Jordan, Chris; tim.ramis@jordanschrader.com; Robinson, Michael C. (Perkins Coie)
Subject: Extension Ordinance Proposal

Dear Mr. Sonnen,

Pursuant to the City Council's discussion on Monday night, I submit for your review a draft extension ordinance. Please provide this e-mail and the attached ordinance to the City Council prior to the December 21 work session. The attached ordinance has the following virtues:

1. It is simple and the language is easy to apply by staff and the public.
2. It divides extension applications between those applications decided by the Planning Director (applications considered to be less significant) and those applications decided by the Planning Commission (applications considered to be more significant).
3. Each extension application is required to have a neighborhood contact meeting pursuant to CDC 99.038 and a pre-application meeting pursuant to CDC 99.030 prior to submittal. The purpose of these requirements is to ensure that the public is aware of an extension application.
4. The approval criteria are also simple. "Good cause" is sufficient enough to grant broad discretion to the decision maker; in the case of those applications described in CDC 99.060.A, the Planning Director, and in the case of those applications described in CDC 99.060.B, the Planning Commission, makes the decision. Each decision may be appealed or called up by the City Council as currently provided in CDC Chapter 99. Additionally, those applications described in CDC 99.060.B must meet a second criterion, which is that none of the circumstances in CDC 99.330.E.1 and E.4 must be found to be present in the original application.

The virtue of using this language is that it is already found in the CDC and allows the hearings authority to modify or revoke any approval criterion granted pursuant to this chapter for a material misrepresentation or mistake of fact made by the applicant in the application or in testimony and evidence submitted, whether such misrepresentation be intention or unintentional, or a material misrepresentation of a mistake of fact or policy by the City in the written or oral report regarding the matter whether such misrepresentation be intentional or unintentional. This language gives ample authority to the hearing authority (ultimately, the

City Council) to "re-review" the original approval. While I completely disagree with those who allege that numerous applications were granted improperly (if that were the case, the decisions should have been successfully appealed), this criteria nevertheless provides an opportunity to re-evaluate the original decision.

5. The universe of applications that may take advantage of an extension application is limited. The proposed ordinance limits extension applications to those applications with an approval date prior to the effective date of the ordinance enacting the extension provision. The rationale is that for those applications made some time ago, the applicants proceeded in good faith and without foresight that the current economic crisis would occur. For those applications receiving approval after the effective date of this ordinance, the applicants have proceeded in the face of knowledge of the current economic environment.

6. The City Council should consider putting the extension ordinance in one location in Chapter 99. That section contains all of the quasi-judicial provisions and it is efficient to amend the code in this way. The current draft simply adds pages to the code without any increase in efficiency, or ease of use.

I hope this simplified ordinance is helpful. An ordinance cannot satisfy every person but if the City Council's goal is to consider a simplified ordinance providing a distinction between less significant and more significant applications and one that allows a review of potential mistakes for more significant applications, this proposal achieves that purpose.

Mike

<<Draft Extension Ordinance.pdf>>

Michael C. Robinson | Perkins Coie LLP
1120 N.W. Couch Street
Tenth Floor
Portland, OR 97209-4128
PHONE: 503.727.2264
MOBILE: 503.407.2578
FAX: 503.346.2264
E-MAIL: mrobinson@perkinscoie.com

* * * * *

IRS CIRCULAR 230 DISCLOSURE: To ensure compliance with Treasury Department and IRS regulations, we inform you that, unless expressly indicated otherwise, any federal tax advice contained in this communication (including any attachments) is not intended or written by Perkins Coie LLP to be used, and cannot be used by the taxpayer, for the purpose of (i) avoiding penalties that may be imposed

on the taxpayer under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein (or any attachments).

* * * * *

NOTICE: This communication may contain privileged or other confidential information. If you have received it in error, please advise the sender by reply email and immediately delete the message and any attachments without copying or disclosing the contents. Thank you.

Spir, Peter

From: Sonnen, John
Sent: Friday, December 18, 2009 8:57 AM
To: Spir, Peter
Subject: FW: Extension Ordinance Proposal

John Sonnen, Planning Director
Planning and Building, #1524

West Linn Sustainability Please consider the impact on the environment before printing a paper copy of this email.

Public Records Law Disclosure This e-mail is subject to the State Retention Schedule and may be made available to the public.

From: Robinson, Michael C. (Perkins Coie) [mailto:MRobinson@perkinscoie.com]
Sent: Thursday, December 17, 2009 1:05 PM
To: bill.monahan@jordanschrader.com; Sonnen, John
Cc: tim.ramis@jordanschrader.com; Jenny.DeGregorio@jordanschrader.com
Subject: Re: Extension Ordinance Proposal

Thanks, Bill. John, I would be happy to answer any questions that you and Peter might have. Mike

-----Original Message-----

From: Bill Monahan <Bill.Monahan@jordanschrader.com>
To: Sonnen, John <jsonnen@westlinnoregon.gov>
CC: Tim Ramis <Tim.Ramis@jordanschrader.com>; Jenny De Gregorio <Jenny.DeGregorio@jordanschrader.com>
Sent: Thu Dec 17 11:55:25 2009
Subject: FW: Extension Ordinance Proposal

John,

Tim is out of town until Monday. He will be at the Council meeting Monday night as well as the meeting when the Council acts on the extension request.

Tim asked me to look at the proposal by Mike Robinson to determine if it has merit. I reviewed Mike's simplified approach and believe that it would work, if the Council wants to consider an alternative to the staff and planning commission approach.

I assume that you will ask Peter Spir to compare the language to the code to make sure that it covers all approvals that would be governed by the extension request process.

The draft ordinance should have an emergency clause and retroactive provision added. These can be taken from the staff prepared approach.

I think you can send Mike's option on to the Council with a note that it is the opinion of our office that this alternative change would accomplish the same purpose as the staff alternative that would make revisions throughout the code.

Bill

CONFIDENTIALITY NOTICE: Please do not read, copy, or disseminate this communication unless you are the intended

addressee. This e-mail may contain confidential and/or privileged information intended only for the addressee. If you have received this in error, please notify me via return e-mail.

TAX ADVICE NOTICE: IRS Circular 230 requires us to advise you that if this communication or any attachment contains any tax advice, the advice is not intended to be used, and cannot be used, for the purpose of (i) avoiding tax-related penalties or (ii) promoting, marketing, or recommending any transaction, plan, or arrangement. A taxpayer may rely on professional advice to avoid tax-related penalties only if the advice is reflected in a comprehensive tax opinion that conforms to stringent requirements. Please contact us if you have any questions about this requirement, or would like to discuss preparation of an opinion that conforms to these IRS rules.

-----Original Message-----

From: Robinson, Michael C. (Perkins Coie) [mailto:MRobinson@perkinscoie.com]
Sent: Thursday, December 17, 2009 9:48 AM
To: Bill Monahan
Subject: FW: Extension Ordinance Proposal

Bill, Tim asked me to forward this extension ordinance to you. Mike

Michael C. Robinson | Perkins Coie LLP
PHONE: 503.727.2264

From: Vogel, Stephanie (Perkins Coie) On Behalf Of Robinson, Michael C. (Perkins Coie)
Sent: Thursday, December 17, 2009 9:32 AM
To: 'jsonnen@westlinnoregon.gov'
Cc: 'pspir@westlinnoregon.gov'; 'cjordan@westlinnoregon.gov'; 'tim.ramis@jordanschrader.com'; Robinson, Michael C. (Perkins Coie)

Subject: Extension Ordinance Proposal

Dear Mr. Sonnen,

Pursuant to the City Council's discussion on Monday night, I submit for your review a draft extension ordinance. Please provide this e-mail and the attached ordinance to the City Council prior to the December 21 work session. The attached ordinance has the following virtues:

1. It is simple and the language is easy to apply by staff and the public.
2. It divides extension applications between those applications decided by the Planning Director (applications considered to be less significant) and those applications decided by the Planning Commission (applications considered to be more significant).
3. Each extension application is required to have a neighborhood contact meeting pursuant to CDC 99.038 and a pre-application meeting pursuant to CDC 99.030 prior to submittal. The purpose of these requirements is to ensure that the public is aware of an extension application.
4. The approval criteria are also simple. "Good cause" is sufficient enough to grant broad discretion to the decision maker; in the case of those applications described in CDC 99.060.A, the Planning Director, and in the case of those applications described in CDC 99.060.B, the Planning Commission, makes the decision. Each decision may be appealed or called up by the City Council as currently provided in CDC Chapter 99. Additionally, those applications described in CDC 99.060.B must meet a second criterion, which is that none of the circumstances in CDC 99.330.E.1 and E.4 must be found to be present in the original application.

The virtue of using this language is that it is already found in the CDC and allows the hearings authority to modify or revoke any approval criterion granted pursuant to this chapter for a material misrepresentation or mistake of fact made by the applicant in the application or in testimony and evidence submitted, whether such misrepresentation be intention or unintentional, or a material misrepresentation of a mistake of fact or policy by the City in the written or oral report regarding the matter whether such misrepresentation be intentional or unintentional. This language gives ample authority to the hearing authority (ultimately, the City Council) to "re-review" the original approval. While I completely disagree with those who allege that numerous applications were granted improperly (if that were the case, the decisions should have been successfully appealed), this criteria nevertheless provides an opportunity to re-evaluate the original decision.

5. The universe of applications that may take advantage of an extension application is limited. The proposed ordinance limits extension applications to those applications with an approval date prior to the effective date of the ordinance enacting the extension provision. The rationale is that for those applications made some time ago, the applicants proceeded in good faith and without foresight that the current economic crisis would occur. For those applications receiving approval after the effective date of this ordinance, the applicants have proceeded in the face of knowledge of the current economic environment.

6. The City Council should consider putting the extension ordinance in one location in Chapter 99. That section contains all of the quasi-judicial provisions and it is efficient to amend the code in this way. The current draft simply adds pages to the code without any increase in efficiency, or ease of use.

I hope this simplified ordinance is helpful. An ordinance cannot satisfy every person but if the City Council's goal is to consider a simplified ordinance providing a distinction between less significant and more significant applications and one that allows a review of potential mistakes for more significant applications, this proposal achieves that purpose.

Mike

<<Draft Extension Ordinance.pdf>>

Michael C. Robinson | Perkins Coie LLP
1120 N.W. Couch Street
Tenth Floor
Portland, OR 97209-4128
PHONE: 503.727.2264
MOBILE: 503.407.2578
FAX: 503.346.2264
E-MAIL: mrobinson@perkinscoie.com

IRS CIRCULAR 230 DISCLOSURE: To ensure compliance with Treasury Department and IRS regulations, we inform you that, unless expressly indicated otherwise, any federal tax advice contained in this communication (including any attachments) is not intended or written by Perkins Coie LLP to be used, and cannot be used by the taxpayer, for the purpose of (i) avoiding penalties that may be imposed on the taxpayer under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein (or any attachments).

NOTICE: This communication may contain privileged or other confidential information. If you have received it in error, please advise the sender by reply email and immediately delete the message and any attachments without copying or disclosing the contents. Thank you.

IRS CIRCULAR 230 DISCLOSURE: To ensure compliance with Treasury Department and IRS regulations, we inform you that, unless expressly indicated otherwise, any federal tax advice contained

in this communication (including any attachments) is not intended or written by Perkins Coie LLP to be used, and cannot be used by the taxpayer, for the purpose of (i) avoiding penalties that may be imposed on the taxpayer under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein (or any attachments).

* * * * *

NOTICE: This communication may contain privileged or other confidential information. If you have received it in error, please advise the sender by reply email and immediately delete the message and any attachments without copying or disclosing the contents. Thank you.

Spir, Peter

From: Burgess, Scott
Sent: Thursday, December 17, 2009 8:44 PM
To: Spir, Peter
Subject: RE: extensions

1) I heard Mike Robinson say, "the hearing body can decide whether to grant one or two years." I understand your issue, how does one decide? I guess I am okay with two years. Can you think of criteria to apply to a choice?

2) We can try 12/31/2012. Is 12/31/2011 too short? We can always elect to extend it.

Thanks,

Scott

Councilor Scott Burgess
mailto:sburgess@westlinnoregon.gov
West Linn City Councilor
22500 Salamo Road
West Linn, Oregon, 97068
P: (503) 657-0331
F: (503) 650-9041
Web: <http://westlinnoregon.gov>

West Linn Sustainability Please consider the impact on the environment before printing a paper copy of this email.

Public Records Law Disclosure This e-mail is subject to the State Retention Schedule and may be made available to the public. -----Original Message-----

From: Spir, Peter
Sent: Thu 12/17/2009 8:24 AM
To: Burgess, Scott
Subject: extensions

Scott

(1) Yes I can put in "up to two years" or "one or two years".

But if the decision making authority is to exercise discretion in deciding how long the extension should be for: one year or two years or some other amount of time-then we need some guidelines or criterion to serve as the basis for those decisions. With "up to two years" language, an applicant may be left wondering: "Will the Planning Commission just grant me six months?" Allowing a fixed "two year extension" would simplify the code and would remove uncertainties.

(2) There is retroactive language in the ordinance. The City Attorney added an emergency clause but that can be removed. I can add sunset language. Did you have a date in mind? December 31, 2012?

Peter

Peter Spir, Associate Planner
Planning and Building, #1539

West Linn Sustainability Please consider the impact on the environment before printing a paper copy of this email.

Public Records Law Disclosure This e-mail is subject to the State Retention Schedule and may be made available to the public.

Peter Spir, Associate Planner
Planning and Building, #1539

West Linn Sustainability Please consider the impact on the environment before printing a paper copy of this email.

Public Records Law Disclosure This e-mail is subject to the State Retention Schedule and may be made available to the public.

-----Original Message-----

From: Burgess, Scott

Sent: Wednesday, December 16, 2009 8:20 PM

To: Spir, Peter

Subject: RE: amendments per your e-mail regarding extensions (CDC-09-04)

I think you captured it except:

1) I think it should say "up to two years" or "one or two years" beyond three year approval

2) I assume the sunset language would be in the ordinance along with the retroactivity language...

I can't remember what I finally wrote but in thinking about it I guess an emergency clause is not necessary if we do the retroactivity - it may give the applicant 30 more days to apply or before they have to complete substantial completion.

Thanks,

Scott

Spir, Peter

From: Spir, Peter
Sent: Friday, December 18, 2009 7:04 AM
To: Burgess, Scott
Subject: RE: extensions

Scott

In an email I got from Mike Robinson, he proposed language of his own and emphasized the advantage of simplicity: reduced confusion. How indeed do you decide if one or two years is fair? I do not know. It seems rather arbitrary to me. I think offering a flat two years simplifies things and relieves everyone from having to go through the process for a second extension hearing (year 2).

Just when a flurry of economists say things are getting better, another group say that while we may have bottomed out, getting out of this mess by encouraging more indebtedness and spending could mean a long recovery or even a relapse so the 2012 date seems logical to me.

Peter

-----Original Message-----

From: Burgess, Scott
Sent: Thursday, December 17, 2009 8:44 PM
To: Spir, Peter
Subject: RE: extensions

1) I heard Mike Robinson say, "the hearing body can decide whether to grant one or two years." I understand your issue, how does one decide? I guess I am okay with two years. Can you think of criteria to apply to a choice?

2) We can try 12/31/2012. Is 12/31/2011 too short? We can always elect to extend it.

Thanks,

Scott

Councilor Scott Burgess
mailto:sburgess@westlinnoregon.gov
West Linn City Councilor
22500 Salamo Road
West Linn, Oregon, 97068
P: (503) 657-0331
F: (503) 650-9041
Web: <http://westlinnoregon.gov>

West Linn Sustainability Please consider the impact on the environment before printing a paper copy of this email.

Public Records Law Disclosure This e-mail is subject to the State Retention Schedule and may be made available to the public. -----Original Message-----

From: Spir, Peter
Sent: Thu 12/17/2009 8:24 AM
To: Burgess, Scott
Subject: extensions

Scott

(1) Yes I can put in "up to two years" or "one or two years".

But if the decision making authority is to exercise discretion in deciding how long the extension should be for: one year or two years or some other amount of time-then we need some guidelines or criterion to serve as the basis for those decisions. With "up to two years" language, an applicant may be left wondering: "Will the Planning Commission just grant me six months?" Allowing a fixed "two year extension" would simplify the code and would remove uncertainties.

(2) There is retroactive language in the ordinance. The City Attorney added an emergency clause but that can be removed. I can add sunset language. Did you have a date in mind? December 31, 2012?

Peter

Peter Spir, Associate Planner
Planning and Building, #1539

West Linn Sustainability Please consider the impact on the environment before printing a paper copy of this email.

Public Records Law Disclosure This e-mail is subject to the State Retention Schedule and may be made available to the public.

Peter Spir, Associate Planner
Planning and Building, #1539

West Linn Sustainability Please consider the impact on the environment before printing a paper copy of this email.

Public Records Law Disclosure This e-mail is subject to the State Retention Schedule and may be made available to the public.

-----Original Message-----

From: Burgess, Scott

Printed on recycled paper

Sent: Wednesday, December 16, 2009 8:20 PM

To: Spir, Peter

Subject: RE: amendments per your e-mail regarding extensions (CDC-09-04)

I think you captured it except:

1) I think it should say "up to two years" or "one or two years" beyond three year approval

2) I assume the sunset language would be in the ordinance along with the retroactivity language...

I can't remember what I finally wrote but in thinking about it I guess an emergency clause is not necessary if we do the retroactivity - it may give the applicant 30 more days to apply or before they have to complete substantial completion.

Thanks,

Scott

Spir, Peter

From: Sonnen, John
Sent: Wednesday, December 16, 2009 8:26 AM
To: Spir, Peter
Cc: Jordan, Chris
Subject: FW: Extension Ordinance

John Sonnen, Planning Director
Planning and Building, #1524

West Linn Sustainability Please consider the impact on the environment before printing a paper copy of this email.
Public Records Law Disclosure This e-mail is subject to the State Retention Schedule and may be made available to the public.

-----Original Message-----

From: Burgess, Scott
Sent: Tuesday, December 15, 2009 9:12 PM
To: Sonnen, John
Subject: Extension Ordinance

John:

First, please use my city email for city business (not work). Thanks.

Here are my comments/concerns RE extension ordinance.

I will focus on Version "C" - De Novo for Errors and Omissions.

- ✓ 1. I think extensions of up to an additional 2 years should be allowed.
- ✓ 2. I don't think an extension request, assuming no code changes or mistakes in the original should have to go through the whole review process. Citizens or the applicant may have disagreed with the hearing bodies original approval but again unless a law was broken or a mistake made I don't want to hear the same issues over again.
- ✓ 3. I can support a sunset given this is due to unusual and short term situation (hopefully).
- ✓ 4. On page (24), 85.095 A. (3) I would delete "but only in the following: "...shall be de novo but only for errors, omissions or where facts..." I think we can get caught up in that "but only" language; the rest of the sentence speaks for itself. This is true for where ever this wording occurs in other parts of the ordinance.
- ✓ 5. I think we might consider that the original hearing body hearing the extension can grant up to a two year extension. This would allow for another one year extension if the hearing body only grants a one year extension. For example, I don't know why we would want to re-hear or not give the City's park plan approval a two year extension; we can always decide to change it and re-apply. Also, a minor partition on a single-family lot - this can be only a personal finance issue and not a big impact (beyond the possible objection of the neighbor originally).
- ✓ 6. I DO NOT agree with the idea of having a (expanded) pre-application conference with citizens. A the pre-ap, paid for by the applicant, the applicant deserves an objective professional review by staff based on the code not subjective citizen viewpoints. The applicant already went through the meeting with the neighborhood association and public hearing at original approval and will have to go through a public hearing again. Again, we are not re-hearing the project all over - only what has changed or was missed.
- ✓ 7. I don't know why we have to have two types of reviews - big projects and small projects. The size and complexity will take care of itself in the application, staff review, deposit and hearing.
8. Page (24) 85.095 B. (1), I don't like the long complicated language, e.g. new engineering, environmental and other regulations in the CDC" Why not just say "must

address code changes".

9. I don't really like words like "significantly" but at least they are defined but then I don't like some of the definitions, e.g. Page (28) 55.045C.(2)(c) "30% or 1,000 square feet, whichever is greater". I would say "whichever is less". A 1,000 square feet can be a significant change (on a 10,000 square foot building (if I understand the math)).

10. Do we have a definition of "substantial construction" in 56.040 on Page (29)?

11. We need a retroactive and emergency clause to address the approvals caught by the Council's inactivity.

12. I do not support Tony Viella's of Tamarisk request - if the codes have changed and the project cannot meet them, he has to re-apply.

13. I still believe The Vineyard should have had to provide a pathway along its western boundary (except for Jeff Smith's house). This was dropped by the Parks and Planning Department, obviously the applicant and the Planning Commission. I don't know if it can be rectified but I think it would qualify for as an "error, omission or where facts were misrepresented".

That's all for now. Hope this helps.

Thanks,

Scott

Councilor Scott Burgess
mailto:sburgess@westlinnoregon.gov
West Linn City Councilor
22500 Salamo Road
West Linn, Oregon, 97068
P: (503) 657-0331
F: (503) 650-9041
Web: <http://westlinnoregon.gov>

West Linn Sustainability Please consider the impact on the environment before printing a paper copy of this email.

Public Records Law Disclosure This e-mail is subject to the State Retention Schedule and may be made available to the public.