



CITY OF  
**West Linn**  
 PLANNING AND DEVELOPMENT

**ADDENDUM TO STAFF REPORT  
 REVISED LANGUAGE FOR 5-6-09 WORK SESSION**

**CITY OF WEST LINN  
 PLANNING COMMISSION PUBLIC HEARING  
 SCHEDULED HEARING DATE: MAY 20, 2009**

**FILE NO: CDC-09-04**

**PROJECT NAME: PROPOSAL FOR EXTENSIONS OF ORIGINAL LAND USE APPROVALS**

	<u>Page</u>
<b><u>STAFF REPORT:</u></b>	
EXECUTIVE SUMMARY & STAFF RECOMMENDATION.....	2
SPECIFIC DATA .....	6
PUBLIC INVOLVEMENT.....	6
DISCUSSION.....	7
APPROVAL CRITERIA.....	9

<b><u>EXHIBITS:</u></b>	
EXHIBIT A: PROPOSED CODE AMENDMENTS.....	15
EXHIBIT B: SURVEY OF OTHER CITIES.....	25
EXHIBIT C: CORRESPONDENCE.....	27-35

**City of West Linn  
PLANNING & BUILDING DEPT.  
STAFF REPORT**

TO: West Linn Planning Commission

FROM: Planning Department (Peter Spir, Associate Planner)

DATE: April 27, 2009  
(for May 20, 2009 Planning Commission hearing)

FILE NO.: CDC-09-04

SUBJECT: Proposal to create a review process that could allow extensions to approved land use applications which typically expire after three years and to restore bonding options.

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Planning Director's Initials



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**EXECUTIVE SUMMARY**

From the date of approval, most land use decisions expire after three years. Consequently, approved subdivisions, partitions, conditional use permits, design reviews and variances must be constructed or be final platted within three years or the application is void and the applicant must start all over again and re-apply. Historically, the three year time limit has given applicants sufficient time to complete their work.

Then things changed as the current economic crisis brought home remodel projects plus small and large scale land use development including subdivisions to a virtual halt. More and more approved projects will expire before the economy recovers. Developer Jeff Smith, through his attorney Michael Robinson, introduced the proposal to allow additional time for land use approvals. A two year extension for example would allow extra time for homeowners and developers to secure funding and loans and proceed with the approved project in an improved and a more secure market. Financial institutions have made construction loans for subdivisions almost impossible to get.

At their meeting of April 15, 2009, the Planning Commission discussed the proposal at length but numerous unresolved issues resulted in the hearing being continued to May 20, 2009. To work through these issues, the Planning Commission will hold a work session on May 6, 2009. The Planning Commission provided staff with a number of questions:

### **Why was bonding eliminated?**

From the early 1980's to 2004, bonding was regularly used as a means to guarantee that required improvements associated with subdivisions or other development would be completed. A developer could bond the improvements then get the final plat recorded. The bond would guarantee that the improvements would be done. For the most part, it worked well. But in rare cases when the developer did not make the improvements, it would fall to the City's Engineering Department to go after the bond.

In 2003-2004, City Council oversaw a change to Community Development Code (CDC) Chapter 91 which had allowed developers to final plat their subdivisions while securing required improvements through bonds. The code change still allowed bonding but required that all improvements be completed and approved prior to final platting. Thus, bonding was made redundant since there was no advantage to developers to bond a project if they still had to pay for and install all the physical improvements before final platting.

As to why these changes were made, the staff report (MIS-03-26) stated that it relieves the City of the task of monitoring the bond process and eliminates the chance that a developer or the bond would not adequately complete the required improvements. The downside is that it eliminated one very useful means of guaranteeing the improvements and eliminated an option offered by virtually every other city.

### **Is bonding a reasonable alternative to allowing a two year extension?**

Yes. City Staff including the Engineering Department, who must monitor and approve subdivision improvements, believe that the use of bonds is a very effective and time proven alternative.

Other forms of guarantees include letters of credit or cash deposits for (e.g.) 125% of the estimated cost of the improvement. All have been used in West Linn with good results.

Most cities in the Portland Metro region allow bonding or similar guarantees. So long as a bond has been posted, most cities and counties allow subdivisions to be final platted and recorded. The bonds ensure that the improvements will be completed.

Although the earlier staff report and survey showed that most cities and counties allow only one or two years to final plat a subdivision show this is somewhat misleading since the fact that they allow bonding means that so long as the city or county is holding onto that bond or guarantee the developer can record the plat with improvements guaranteed by the bond at no detriment to the city or county.

CDC Chapter 91 could be easily amended to allow recording the final plat with the improvements guaranteed by bond or other financial instruments.

**What engineering standards should or should not impact the project and trigger an amendment?**

Staff proposed at the last hearing that objective criteria be used as the basis for any decision to grant an extension. Based on discussion at the previous Planning Commission hearing, staff has come to the conclusion that trying to define what constitutes a substantive change for above ground utilities or other similar modifications would be problematic.

Staff proposes modifying the amendment with simplified criteria. The applicant would have to demonstrate "*just cause*" that the Planning Commission should approve the extension. This language gives the Planning Commission considerable latitude to determine whether the extension is appropriate particularly in the case of new environmental regulations which would otherwise apply to the application.

The amendment would give subdivision and minor partition applicants three years from date of preliminary plat approval to submit the final plat to the Planning Director. Applicants would then, if the extension is approved, have an additional two years for the plat to be recorded with Clackamas County. Improvements necessary for final platting may be guaranteed by bond, letter of credit or by cash deposit.

**How will West Linn's extension compare with other cities/counties?**

Although the earlier staff report and survey showed that most cities and counties allow only one or two years to final plat a subdivision, the fact is that most cities and counties allow extensions and, most importantly, virtually all allow bonding. That means that West Linn's current three year period is one of the most restrictive in the region.

Although to some, three years may sound like a long time, please consider the fact that street improvements (e.g. paving) can only occur during dry warm months. If the applicant is nearing the end of their three year period, weather can keep them from meeting the deadline. With no option to bond the street work, preliminary approval could be voided. Then there is the final plat recording process. The Clackamas County Surveyor can sometimes have a six month backlog of plats. The developer and the city have no control over the County Surveyor and such delays could take the plat past the three year period and thus void it.

**Should the Planning Commission be the decision maker?**

Yes.

**Why don't we eliminate all reference in CDC Chapters to three year approval and put the only reference in CDC Chapter 99?**

Staff left time limit references in each chapter out of deference to the fact that many people only read the chapter that they think applies to them. It is unlikely that people, especially, laypersons, would think, *"I am applying for a variance in Chapter 75 but I think I will look in Chapter 99 to see if there is a time limit."*

Staff recommends leaving the time limits in each chapter.

**What about variances, CUPs, design review etc.?**

For CUPs, design review, variances, expansion of a non conforming structure, etc. we can simply retain the three year approval and then offer the possibility of a two year extension. The criteria could read that the extension will be granted if the applicant has demonstrated *"just cause"* for the two year extension. The decision making body would be the Planning Commission.

(Similar *"just cause"* criteria used by other cities, though seemingly vague and arbitrary, has been upheld by Oregon Courts as adequate.)

**STAFF RECOMMENDATION**

Staff recommends approval of the modified amendments (Exhibit A) including amendments to CDC Chapter 91 relating to bonding.

**SPECIFIC DATA**

**APPLICANT:** City of West Linn

**APPROVAL**

**CRITERIA:**

Community Development Code (CDC) Chapter 98 provides administrative procedures for legislative amendments to the Comprehensive Plan. Section 98.100 of the CDC lists the factors upon which a decision shall be based. These are briefly described below and addressed in greater detail in a separate Section of this report:

1. The Statewide Planning Goals and rules adopted under ORS Chapter 197 and other applicable state statutes;
2. Any federal or state statutes or rules found applicable;
3. Applicable plans and rules adopted by the Metropolitan Service District (Metro);
4. The applicable Comprehensive Plan policies and map; and,
5. The applicable provisions of implementing ordinances.

**PUBLIC NOTICE:**

Staff has satisfied the legal notice requirements of CDC Chapter 99 including written notice in the West Linn Tidings and notice to the Oregon Department of Land Conservation, 45 days prior to the first evidentiary hearing.

**120-DAY RULE:**

Not applicable to this legislative action.

**PUBLIC COMMENTS AND INVOLVEMENT:**

Work on this subject was initiated after Jeff Smith, represented by attorney Michael Robinson, proposed a five year period between preliminary plat approval and final platting. Staff subsequently expanded the amendment to include other land use applications so that there would be some measure of consistency between the many different types of applications. Extensive correspondence from Mr. Robinson is attached as an exhibit. Additional public comment has been limited to an e-mail from Ed Schwarz dated February 17, 2009 which is also attached as an exhibit. A letter dated March 18, 2009 from John De Costa and Larry Vinton speaks in favor of the extension. Other letters in favor of the extension were received and entered into the record at the hearing and are attached as exhibits.

**DISCUSSION:**

West Linn imposes time limits on land use applications like most other jurisdictions. For example, CDC 85.090 offers standards that relate to subdivisions.

**85.090 EXPIRATION OF APPROVAL - CONTINUATION**

*If the final plat has not been submitted to the Planning Director within three years from the date of approval of the tentative plan, the approval expires.*

Historically, that time limit has been reasonable. West Linn's pattern of rapid growth from the 1970's onwards saw most partitions and subdivisions being final platted within one year of receiving preliminary plat approval from the Planning Commission or Planning Director. The dramatic collapse of the housing market in 2008 changed all that. Property owners and developers cannot get the construction loans for the infrastructure needed to develop the partitions and subdivisions.

And even if they could, there is no incentive given the glut of recently completed homes and empty platted lots. Many prospective buyers are no longer qualified to buy homes, while others fear further downturns and are reluctant to invest in new homes at this time. Faced with this perfect storm, many developers are now being squeezed by the City's three year final platting deadline. How many applications are affected? A rough count arrived at five minor partitions and two subdivisions that will lapse by the end of 2009 accounting for 54 lots. That figure is expected to increase in the next few years. And this hardship is not just impacting subdivisions.

Commercial projects as well as individual homeowners have been similarly affected. An individual homeowner who received a variance to build an addition to his house by variance is very likely to delay the

expensive addition out of deference to unemployment fears and other factors. These people deserve as much consideration as any subdivision developer. Staff proposes amending the Design Review, Planned Unit Development, Land Division, Variance, Conditional Use Permit Chapters as well as Chapter 99: Procedures.

Why not make these applicants re-apply? Staff does not support re-application just for its own sake: it would also constitute a waste of Planning Commission and city staff time since they would be reviewing and deciding upon the exact same application that they reviewed and approved three years earlier. For the decision making authority, time spent re-visiting old approvals means less time to spend on other cases.

There is also a significant cost factor. The average partition application costs a property owner between 25,000 and 35,000 dollars for consultants, lawyers and application fees. Subdivisions can cost in the 50,000 to 100,000 dollar range and that is just to get through the hearing and preliminary plat process. It also takes time: usually 12-18 months from original application date to approval date. Even variances by private home owners wanting to build an addition at the rear of their house take about four to six months to process at a cost of \$1,800 for the application alone. Why compel applicants to pay that money and spend months going through hearings to get approval all over again? It is redundant and no public interest is served.

Staff surveyed the development codes of Tigard, Salem, Oregon City, Lake Oswego, Milwaukie and Beaverton. (see Exhibit B for survey) All cities surveyed allow extensions. The City of Portland is also proceeding with an amendment that would extend approvals to five years.

Because ORS 92.285 prohibits retroactive ordinances we cannot simply increase the approved time to five years. Instead we must, offer an extension. Such extensions are themselves land use approvals and as such, approval criteria is required.

It was noted earlier that there was debate at the first hearing on the subject of approval criteria. What would be the basis for the extension and what would trigger a new application? Staff proposes replacing earlier criteria with the finding of “*just cause*” by the decision making authority: the Planning Commission, as the basis for extension approval or denial. This simple criterion has been upheld by Oregon courts as adequate.

## **APPROVAL CRITERIA**

This section of the report addresses the required contents pursuant to Section 98.100 of the Community Development Code. The required subheadings appear in enlarged bold type.

- 1. The Statewide Planning Goals adopted under ORS Chapter 197 found to be applicable and the reasons why any other goal and rule is not applicable to the proposal:**

### **GOAL 1: CITIZEN INVOLVEMENT**

#### **C. CITIZEN INFLUENCE**

**5. Evaluation** - *The general public, through the local citizen involvement programs, should have the opportunity to be involved in the evaluation of the comprehensive land use plans.*

**6. Revision** - *The general public, through the local citizen involvement*

*programs, should have the opportunity to review and make recommendations on proposed changes in comprehensive land-use plans prior to the public hearing process to formally consider the proposed changes.*

FINDING 1: Although this goal is focused upon citizen involvement programs such as the Citizen Involvement Advisory Committee, citizen involvement is integral to this proposed process. With every two year extension request comes public notice and the opportunity for the public to comment as well as appeal any such decision.

## **GOAL 9: ECONOMIC DEVELOPMENT**

### **B. IMPLEMENTATION**

**1. Plans should take into account methods and devices for overcoming certain regional conditions and deficiencies for implementing this goal, including but not limited to**

*(1) tax incentives and disincentives;*

**(2) land use controls and ordinances;**

*(3) preferential assessments;*

*(4) capital improvement programming; and*

*(5) fee and less-than-fee acquisition techniques.*

**2. Plans should provide for a detailed management program to assign respective implementation roles and responsibilities to those private and governmental bodies which operate in the planning area and have interests in carrying out this goal and in supporting and coordinating regional and local economic plans and programs.**

FINDING 2: One of the reasons cited to justify the two year extension was economic. Lines of credit and home equity loans are scarce so going ahead with approved projects has never been tougher. Factor in uncertainties of job losses,

interest rates and possible inflation translates into people putting projects on the backburner. By extending the qualified approvals, this land use ordinance will have the positive economic effect of allowing development to go ahead when economic conditions are hopefully better and to avoid the cost and redundancy of time wasting re-applications.

#### **GOAL 10: HOUSING**

***4. Plans providing for housing needs should consider as a major determinant the carrying capacity of the air, land and water resources of the planning area. The land conservation and development actions provided for by such plans should not exceed the carrying capacity of such resources.***

***3. Decisions on housing development proposals should be expedited when such proposals are in accordance with zoning ordinances and with provisions of comprehensive plans.***

FINDING 3: In this proposal, the criterion has been eliminated that states that if new environmental or other standards are adopted by the City that would require modifications or even denials of the subject application then the time extension would be denied and the applicant would have to re-apply all over again. It has been replaced by "just cause" language. It is entirely appropriate and reasonable for the Planning Commission to define "just cause" within the context of new environmental code changes and thus deny extension requests when new language would significantly modify the application or adversely affect environmental resources.

The other highlighted section is addressed by the fact that this process is being proposed so as to expedite already approved development. By reintroducing bonding as a guarantee for required improvements, we are also expediting reasonable development.

**2. Any federal or state statutes found applicable:**

FINDING 4: None other than statewide planning goals

**3. The Metropolitan Service District plans and rules found to be applicable:**

FINDING 5: None directly. Indirectly, the Urban Growth Management Functional Plan contains a number of references to environmental protection. Chief among them is Title 13, Nature in Neighborhoods. The purpose of this title is to conserve, protect and restore a continuous ecologically viable streamside corridor system that is integrated with upland wildlife habitat and the surrounding urban landscape. The City is expected to review and possibly amend its drainageway protection language in the CDC to comply with Title 13 and Goal 5 of the Statewide Planning Goals.

This work has the greatest likelihood of modifying the CDC and thus impacting two year extension requests. But at this point, any changes are speculative.

**4. The applicable (West Linn) Comprehensive Plan policies and map:**

FINDING 6: The following goal statements are applicable:

***Goal 2: Land Use Planning Recommended Action Measures***

6. *Review current development code standards for subdivisions and create regulations that preserve environmentally sensitive open space, require recreational amenities, and promote design excellence.*

***Goal 5: Open Spaces, Scenic and Historic Areas and Natural Resources***

2. *Protect sensitive environmental features such as steep slopes, wetlands, and riparian lands, including their contributory watersheds.*

***Recommended Action Measures***

9. *Complete a comprehensive review of the City's Development Codes and Policies to identify and amend any regulatory or procedural barriers that discourage the use of habitat friendly development practices (e.g. low impact development).*

FINDING 7: Staff finds that these goals and action measures emphasize the City's commitment to ongoing resource protection. The most applicable is the recommended action measure: "identify and amend any regulatory or procedural barriers that discourage the use of habitat friendly development practices". By interpreting the "just cause" approval criteria to include review of environmental regulatory changes in the intervening years then this language can be regarded as encouraging habitat friendly development practices.

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**5. The applicable provisions of the implementing ordinances**

FINDING 8: Staff finds that the proposed change will address the limited three year approval period for land division projects but will also standardize the approval period for other types of land use applications so that there is greater consistency in the CDC.

**B. Consideration may also be given to:**

- 1. A mistake or inconsistency in the Comprehensive Plan or implementing ordinance as it relates to the property which is the subject of the proposal; and, (ORD. 1474)**
- 2. Factual oral testimony or written statements from the parties, other persons and other governmental agencies relevant to the existing conditions or factors in sub-section (A) or sub-section (B) (1), above.**

FINDING 9: Staff finds that no mistake was made in the original code language. The three year period had worked well for many years. It was not possible to foresee the current economic crisis. The opportunity for applicants to get extensions for their approved land use applications gives them extra time to either wait until the economy improves or to get new sources of financing.

Staff also finds that the proposed extension is a reasonable response to current economic conditions and consistent with other jurisdictions including the proposal before the City of Portland.

Written statements from the public are attached as exhibits.

***ALTERNATIVES***

Alternatives to this proposal include:

- Leaving the CDC “as is”.

- Impose a sunset provision upon this amendment which would terminate the changes at a date such as January 1, 2012 when it is hoped that economic conditions will have improved. After that date, approvals would revert to their current approval period which is typically three years. It is noted that 2012 is somewhat arbitrary given the lack of a specific and definitive indicator(s) of economic recovery.
  - Amend the code with the language that City Council will revisit the amendment in January 2012 and may at that time choose to either keep the revised language “as is” or delete it depending on current conditions and/or the effectiveness of this change.
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## **EXHIBIT A: PROPOSED CODE AMENDMENTS**

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 99.335, which would then require the final plat to be recorded with the County within five years. If not, the approval expires.

**89.010 SUBMISSION OF SUBDIVISION OR PARTITION PLAT**

A. Within ~~one year~~ three years after approval of the tentative plan, 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:

**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.

**55.040 EXPIRATION OF APPROVAL**

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 99.335.

**56.040 EXPIRATION OF APPROVAL**

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 99.335. 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.

**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 99.335, 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.

**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 99.335. (ORD. 1408)

**24.030 EXPIRATION OF APPROVAL**  
If no substantial construction 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 99.335, which would then require the final plat to be recorded with the County within five years. (ORD. 1408)

**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 99.335.

**99.330 REVOCATION OF APPROVALS - FAILURE TO FULFILL CONDITIONS**  
A. 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 CDC 99.335.

**99.335 EXTENSIONS OF APPROVAL: APPROVAL CRITERIA**  
**A. Approvals shall be extended by two years by the Planning Commission after the applicant has submitted a completed application form**

accompanied by payment of fees and where findings are made by the decision making body that the approval criteria, below, is met. In the case of subdivisions, planned unit developments and minor partitions the extension requires that the final plat be recorded by the County within the two year period.

**B. Approval Criteria: The applicant shall demonstrate “just cause” that the two year extension should be allowed. The Planning Commission shall have reasonable and appropriate latitude to interpret “just cause” to include applicable new environmental regulations approved during the intervening years since the original approval date of the application.**

**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 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:
    - I. Extensions of Approval (CDC Ch. 99.335)**

**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 Plan/Code Text Amendment (Legislative Action)	A A***
Conditional Use	A
Design Review: Class I Class II	B 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)
Variances: 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

91.000 IMPROVEMENT GUARANTEE  
91.010 AGREEMENT FOR-IMPROVEMENTS

- A. Before approval by the Planning Director and the City Engineer of a final subdivision, partition plat, building permit, or construction plans ~~(other than plans for required improvements)~~, the developer shall:
1. ~~Either~~ install required improvements and repair existing streets and other public facilities damaged in the development of the property; ~~or,~~
  2. Execute and file with the City an agreement between the developer and the City specifying the period within which required improvements and repairs shall be completed and providing that, if the work is not completed within the period specified, the City may complete the work and recover the full costs and expenses, together with court costs and attorneys fees necessary to collect said amounts from the developer. To facilitate this, the provisions of Section 91.020 shall apply. The agreement must include security for performance in a form approved by the City. The agreement shall be submitted along with the performance bond required by Section 91.020 of the CDC.
  - 2.3 The developer shall also provide reimbursement to the City for costs of processing inspection, professional services, etc., of said required improvements by the City. Monthly costs of the City shall be billed against the six percent of construction cost deposit made by the developer to the City prior to construction of required improvements. The developer shall ensure that the deposit balance remains positive. If the developer is notified that the balance is negative, the developer has seven ~~calendar~~ business days to correct the overage and provide additional deposit as specified by the City Engineer. Failure of the developer to correct the situation by that date will result in the issuance of a stop-work order by the City which shall remain in force until said fees are paid in full and additional deposit provided.

- B. The City shall install all street name signs and traffic control devices for the initial signing of a new development, with said costs to be reimbursed by the developer.
- C. Upon written acceptance by the City of required improvements, the developer shall execute a maintenance bond with a surety company authorized to transact business in the state; such bond to be in a form approved by the City Attorney. The maintenance bond shall guarantee satisfactory performance of required and installed improvements included in the subdivision or partition for a maximum period of 18 months from the date of written approval/acceptance by the City of said improvements. The amount of said maintenance bond shall be in an amount equivalent to 20 percent of the total installation cost of required improvements. The maintenance bond shall also provide financial guarantee for any damage caused to said improvement during the period of the maintenance bond.
- D. Until such time as all required improvements within the subdivision or partition have been accepted by the City, the developer shall be solely responsible for the cleanup of debris, dirt, and foreign materials derived from this development or project, upon sidewalks and roadways. To guarantee performance of this responsibility, the developer shall provide a cash deposit in the amount of 5 percent of the total installation of the improvements. The developer shall be responsible for all safety and cleaning all debris, dirt, and foreign material derived from his development or project by five p.m. of each workday; except that if said debris, dirt, or foreign material is found by the City Engineer to constitute an immediate traffic or safety hazard, it shall be immediately removed by the developer. The developer shall furnish the City with information as to where the developer or a designated subordinate may be reached at all times by the City regarding the performance of such cleanup work. Failure of the developer to clean up debris, dirt, or foreign material as herein above stated, shall give the City the right to clean up said debris, dirt, or foreign material utilizing City crews, or to hire an independent contractor to do the same and deduct same costs from the 5 percent cash deposit. The City shall bill the developer for all such cleanup services at the rate of twice the actual City labor costs incurred plus 35 percent of such actual labor costs reflecting utilization of City equipment. In the event that the City

hires a private contractor to perform these services, the City shall bill the developer the actual cost incurred by the private contractor plus 50 percent of said actual costs reflecting the administrative costs incurred. The deposit shall be kept in a positive balance within the same criteria as the deposit noted in Section 91.020(A)(2) above with the same ramifications for failure to do so.

- E. Before the City accepts any required improvements within a subdivision or major partition and releases the performance bond, the developer shall furnish to the City certification of a registered civil engineer that said improvements have been installed and meet all applicable City, state, and federal requirements.

**91.020 PERFORMANCE BOND WITH IMPROVEMENTS REQUIRED**

- A. Prior to commencement of construction of said improvements and to assure full and faithful performance thereof, the developer shall file one of the following:
  - 1. A surety bond executed by a surety company authorized to transact business in the state, such bond to be in a form approved by the City Attorney;
  - 2. A personal bond cosigned by at least one additional person together with evidence of financial responsibility and resources of those signing the bond sufficient to provide reasonable assurance of ability to proceed in accordance with the agreement in a form approved by the City Attorney;
  - 3. Cash;
  - 4. Executed application for Bancroft bonding in approved improvement district; or,
  - 5. An irrevocable assignment agreement executed by a financial institution in a form approved by the City Attorney.
- B. Such assurance of full and faithful performance shall be for a sum approved by the City Engineer as sufficient to cover 120 percent

of the cost of the improvements and repairs, including related engineering and incidental expenses, and to cover the cost of City inspections.

- C. In the event the developer fails to execute the completion of the said improvements within the timeframe mutually agreed upon by the developer and City Engineer and the City has unreimbursed costs or expenses resulting from such failure, the City shall call upon the bond or cash deposit. If said bond or cash deposit exceeds costs and expenses incurred by the City, it shall release the remainder after acceptance by the City of said repaired improvements. If the amount of the bond or cash deposit is less than the cost and expense incurred by the City, the developer shall be liable to the City for the difference.

#### **91.030 OPEN SPACE CONVEYANCE**

When the tentative plan of a proposed subdivision or map of a partition includes open space, it shall be conveyed in accordance with one of the following methods:

- A. By dedication to the City as publicly owned and maintained as open space. Open space proposed for dedication to the City must be acceptable to the City with regard to the size, shape, location, improvement, and budgetary and maintenance limitations.
- B. By leasing or conveying title (including beneficial ownership) to a corporation, owners' association, or other legal entity, restrictions on development of the parcel shall be placed on the final plat or otherwise recorded. The specific language of the restrictions shall be approved by the City prior to recordation. The terms of such lease or other instrument of conveyance must include provisions suitable to the City Attorney for guaranteeing the following:
  - 1. The continued use of such land for the intended purposes.
  - 2. Continuity of property maintenance.
  - 3. When appropriate, the availability of funds required for such maintenance.
  - 4. Adequate insurance protection.
  - 5. Recovery of loss sustained by casualty and condemnation or otherwise.

- C. By any method which achieves the objectives set forth in (B) above.

**91.050      APPLICABILITY**

The ~~foregoing~~ previous requirements apply to:

1. Any construction of public improvements within an existing public right-of-way and/or easement; and,
2. Any construction of public improvements within a tract that does not require replatting prior to building permit issuance; and,
3. Any required improvements and conveyances necessary to satisfy conditions of approval and approved land use applications to the extent that final platting and recording of subdivisions, partitions with the County and occupancy of buildings may be allowed prior to completion of those improvements and conveyances so long as the provisions of this chapter are satisfied.

## **EXHIBIT B: SURVEY OF OTHER CITIES**

### TIGARD

Allows extensions where the applicant can demonstrate:

1. **No changes are made on the original preliminary plat plan as approved;**
2. **The applicant has expressed written intent of submitting a final plat within the one-year extension period;**
3. **There have been no changes to the applicable ordinance provisions on which the approval was based; and**
4. **An extension of time will not preclude the development of abutting properties.**

### SALEM

Where unforeseen circumstances beyond the control of the applicant intervene, the administrative body which granted the final decision on the subdivision or partition may extend the time for filing a final plat for a period not to exceed an additional two years, upon a written **finding that the facts upon which the approval was based have not changed to an extent sufficient to warrant refile of the tentative plan.** No more than two such extensions shall be granted for any one partition or subdivision, resulting in a maximum time extension of four years. (c) For subdivisions that were granted tentative plan approval to be constructed in phases, the final phase shall be recorded within ten (10) years of the tentative approval date. An application for an extension may be filed as allowed under subsection (b) of this section.

### OREGON CITY

Extensions. Any approval granted pursuant to this title may be extended beyond the twelve-month period provided in subsection A of this section. To extend an approval, the applicant must request an extension by applying to the planning manager prior to the expiration of the twelve-month period, as identified in Section 17.50.210. The planning manager may extend the expiration period for a maximum of two six-month periods, for an aggregate for up to one year, subject to the criteria set forth in Section 17.50.210. (Ord. 98-1007 §1

- A. The planning manager may extend, prior to its expiration, any approved permit for a period of six months up to an aggregate period of one year; provided, however, that there has been substantial implementation of the permit. Any request for an extension shall be reviewed and decided upon by the planning manager as a Type II decision.
- B. Substantial implementation of a permit shall require at a minimum, for each six-month extension, demonstrable evidence in a written application showing:
  1. **The permit holder has applied for all necessary additional approvals or permits required as a condition of the land use or limited land use permit;**
  2. **Further commencement of the development authorized by the permit could not practicably have occurred for reasons beyond the reasonable control of the permit holder;**
  3. **The request for an extension is not sought for purposes of avoiding any responsibility imposed by this code or the permit or any condition thereunder; and**
  4. **There have been no changes in circumstances or the law likely to necessitate significant modifications of the development approval or conditions of approval.** (Ord. 98-1008 §1 (part), 1998)

### LAKE OSWEGO

Section 50.87.010 Preparation and Submittal of Final Plan or Plat.

1. The final plan or plat shall be submitted within one year of the date of the order setting forth the final decision. Upon written application, prior to expiration of the one-year period, the City Manager shall, in writing, grant a one-year extension. Additional extensions may be requested in writing and will be submitted to the approving authority which approved the final decision for **review of the project for conformance with the current law, development standards and compatibility with development which may have occurred in the surrounding area. The extension may be granted or denied and if granted may be conditioned to require modifications to bring the project into compliance with then current law and compatibility with surrounding development.**

#### MILWAUKIE

17.04.050 Time limit on approval.

A. Expiration of Approval. All decisions on boundary changes and land divisions shall expire one year after the date of approval. Reactivation of expired decisions may only be made by submission of a new application and related fees.

B. Extensions. Approvals may be extended up to six (6) months upon submission of formal request to the original decision-making authority. One extension of the approval period not to exceed six (6) months will be granted provided that:

1. **No changes are made on the original plan as approved;**
2. **The applicant can show intent of recording the land division or boundary change within the six- (6)- month extension period; and**
3. **There have been no changes in the ordinance provisions on which the approval was based. (Ord. 1907 (Attach. 1), 2002)**

#### BEAVERTON

6. In order to approve an extension of time application, the decision making authority shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied: [ORD 4365; September 2005]

A. **It is not practicable to commence development within the time allowed for reasons beyond the reasonable control of the applicant.**

B. **There has been no change in circumstances or the applicable regulations or Statutes likely to necessitate modification of the decision or conditions of approval since the effective date of the decision for which the extension is sought.**

C. **The previously approved land use decision is not being modified in design, use, or conditions of approval.**

#### PORTLAND

Portland is currently considering amending its code to allow land use approvals to be good for five years.

Exhibits received in 10 days prior to  
April 15, 2009 Planning Commission hearing  
(CDC-09-04)

**Spir, Peter**

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**From:** Brad Kilby [brad.kilby@otak.com]  
**Sent:** Wednesday, April 15, 2009 3:35 PM  
**To:** Spir, Peter  
**Cc:** Mike Peebles; Don Hanson; Fares Kekhia; jwyland@jtsmithco.com  
**Subject:** Tonight's Planning Commission

Peter,

Good afternoon, as you already know, our firm has represented both property owners and developers in obtaining development entitlements and approvals for their property within the City of West Linn. I understand that the Planning Commission, under agenda item 4, is conducting a public hearing that would extend all current land use approvals by two years. I am writing on behalf of my firm and our clients in support of the proposed resolution. As everyone is aware, over the last year and a half, the building industry has seen a drastic slow down in the economy, and as a result many of the projects that were scheduled to begin construction have not been able to obtain the necessary financing to get off the ground. Many people do not realize the costs associated with obtaining land use approvals. These folks have spent thousands of dollars on studies, design, in meetings, and on professional assistance just to go through the preliminary approval process with the City. It would be a shame to have all of this money and effort to go to waste because of the current economic climate. The City does not stand to gain much by requiring these folks to go through the preliminary approval process again. For that reason we are requesting that the Planning Commission approve the proposed amendment, and would further propose that they make the exception retroactive to projects that may have expired in the last year. Please provide this correspondence to the Planning Commission on behalf of our clients that are not able to attend the hearing this evening. Thank you for your time.

Brad Kilby, AICP | Planner  
17355 SW Boones Ferry Rd. | Lake Oswego, OR 97035  
v: 503.699.2495 | f: 503.635.5395  
[www.otak.com](http://www.otak.com)

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**Van Loo<sup>2</sup> Associates, LLC**  
Urban Design Consultants  
Land Development Design & Planning  
Government Affairs

April 15, 2009

Peter Spir, Associate Planner  
City of West Linn  
22500 Salamo Road  
West Linn, Oregon 97068

RE: CDC 09-04  
Proposed Code Modification to Facilitate 2 Year Extensions of Original Land Use Approvals

Dear Mr. Spir:

Please enter this letter into the public record **in support** of the proposed Development Code Amendment. As a land use consultant with clients throughout the Metropolitan Portland region, I fully understand the current economic situation and its impact on land development. All of the investment made by land owners and developers will be lost if jurisdictions do not attempt to modernize their development codes to accommodate current financing constraints.

It is important protect all of the hard work accomplished by both the West Linn Planning/Engineering Department and the development community on projects in West Linn. The projects that have been designed and approved in the last several years need to be protected so that they can be carried forward into the development phase when the economic trend improves. By protecting those approved projects the City will be able to move forward with construction permits and positive permitting revenues without requiring re-submittal and re-review of work completed.

My clients will benefit from the approval of this amendment, and the City of West Linn will also benefit, because the opportunity for revenue from permit fees and SDC's will be facilitated when the economic tide turns and land development is once again supported by financial institutions.

Sincerely,

Kirsten Van Loo, Principal  
Van Loo 2 Associates, LLC

March 18, 2009

West Linn Planning Commission and City Council  
22500 Salamo Road  
West Linn, OR 97068

Dear Members of the Planning Commission and City Council,

This letter is in support of staff's recommendation of entering new language in the West Linn Development Code that allows a two year extension to the existing three year time limit to complete approved projects. We request this docket item be reviewed as an emergency in order to make the ruling effective on the date of the hearing rather than the standard 30 day after the hearing. This immediacy will ensure protection of those projects in jeopardy of expiration in the months of May and April and help protect those individuals vested in the development process.

Given the current uncertainty in today's economic environment, this code change will allow both citizens and the development community with existing approvals to move quickly when economic conditions begin to improve. This should also help generate funds for the building and engineering departments earlier than if the planning process had to start over. We appreciate your consideration and approval of the proposed code amendment.

Regards,

Company: Landfinding LLC

Signature: John DeCosta  
John DeCosta

Signature: Larry Vinton  
Larry Vinton

**Spir, Peter**

---

**From:** Tony Marnella [tony@marnellahomes.com]  
**Sent:** Wednesday, April 15, 2009 4:22 PM  
**To:** Spir, Peter  
**Subject:** CDC-09-04

Peter,

I wanted to write you in support of CDC-09-04. As a land owner and builder/developer in West Linn, I as many of my peers have been significantly impacted by the downturn in the economy. We have chosen to delay our projects that have approvals due to either the lack of available financing to move forward or prudent business decisions. Over the last 18 months it would have been a significant mistake to bring on more lot and home inventory to the city of West Linn. This would have hurt not only the city, but the developers and builders who brought this inventory to market.

Those of us that have spent the time and resources to get our projects approved have been burdened enough by this market and economy. To allow our project approvals to expire and then require us to reapply and go back through the approval process would not be the right thing to do. Our industry has supported the city for some time and all we are looking for is assistance from you to give us time to weather this market. This request requires nothing of the city other than an allowing us the ability to extend our approvals.

Due to the fact that there have been no significant changes to the development code since the projects in question, either expired or coming up on expiration, were approved I feel that allowing this extension would not impact any land use issues or concerns.

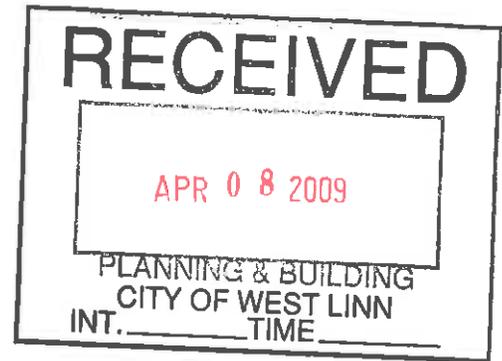
Therefore, I feel that a minimum of a two year extension is a reasonable and responsible request. I hope that you and the rest of Staff and the Planning Commission will agree and move this forward.

Thank you in advance of your time,  
Tony Marnella  
Marnella Homes

4/21/2009

April 4, 2009

City of West Linn  
City Planning Commissioners  
22500 Salamo Road  
West Linn, OR 97068



RE: File No. CDC-09-04 – Amendment to the CDC for a 2-year extension to previously approved land use approvals

Dear Commissioners:

I am writing today to express our support of the proposal by the City of West Linn to amend the Community Development Code (CDC) to allow for an extension process for previously approved land use actions. Due to the current economic hardship and global financial crisis, we believe this proposal to be a prudent and reasonable response by the City to provide a sense of stability for its citizens. I have been made aware of several other jurisdictions taking the same or similar action at both the State and City level.

As you may know, I have a previously approved subdivision within the City of West Linn. I have worked extremely hard to gain this approval and do not wish to lose our investment in time and money. Everyone has been affected by the global economic downturn. It is fair and practical for you to recommend approval to your City Council to allow applicants to apply for a 2-year extension to previous land use approvals.

JT Smith Companies has spent approximately \$142,000.00 to obtain subdivision approvals on my vineyard property. As it stands now, if I do not develop and record the first phase of the final plat by July, 2011 we will lose all of our effort and money spent to date. It will take approximately 4 months to gain design approvals and 5-6 months to construct with it currently estimated to cost \$2,100,000.00 to fully construct the planned improvements and record the plat as approved. Considering the current market conditions and the desire to continue living on the property, we do not wish to invest money on constructing the planned improvements. To invest this much money on the hopes of there being near term demand for developed lots would not be prudent. That is why we support the opportunity to submit for a 2-year extension to our current land use approvals.

I believe as I am sure you do, that at some point the economy will rebound. I believe this proposed amendment is a change necessary on a temporary basis to help your citizens to continue to hold onto their current investments. If not approved, several large investments will be lost. Please carefully consider the proposed amendments. I would also ask that you take into account that other jurisdictions, locally and around the nation are also considering or have already acted upon similar proposals.

Best Wishes

Jeff Smith

Dear Mr. Spir:

Please place this email and the attachment (a Yahoo news story entitled "US Home Price Drops Set Records in Jan." dated March 31, 2009) before the Planning Commission at the April 15, 2009 public hearing and in the official Planning Department file for this application.

Thanks very much.

Mike

<<yahoo article.PDF>>

**Michael C. Robinson | Perkins Coie LLP**  
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# US home price drops set records in **AP** Associated Press Jan.

By ALAN ZIBEL, AP Real Estate Writer 1 min ago

WASHINGTON – Home prices sank by the sharpest annual rate on record in January, and the pace continues to accelerate, but there were a handful battered metro areas where price declines slowed, according to data released Tuesday.

The Standard & Poor's/Case-Shiller index of home prices in 20 major cities tumbled by a record 19 percent from January 2008. It was the largest decline since the index started in 2000. The 10-city index dropped 19.4 percent, also a new record.

All 20 cities in the report showed monthly and annual price declines, with 13 posting new annual records. Prices dropped by more than 10 percent in 14 cities.

"There are very few bright spots that one can see in the data," David Blitzer, chairman of S&P's index committee, said in a prepared statement. "Most of the nation appears to remain on a downward path."

But in Cleveland, Los Angeles, Las Vegas and Washington D.C. — areas all ravaged by foreclosures — annual price declines eased.

Six cities, including Minneapolis, Charlotte, Seattle and New York, showed smaller price declines in January compared to December.

Faring the best were Dallas, Denver and Cleveland with annual price declines around 5 percent in January.

Last week, the National Association of Realtors said sales of previously occupied homes unexpectedly jumped in February by the largest amount in nearly six years as first-time buyers took advantage of deep discounts on foreclosures and other distressed properties, the National Association of Realtors said last week. Some economists say that could help moderate declines.

"We still think there is a good chance the rate of (price) decline will slow through the spring as existing home sales stabilize and perhaps pick up a bit, but foreclosures are weighing heavily on prices," wrote Ian Shepherdson, chief U.S. economist at High Frequency Economics.

Prices in the 20-city index have plummeted 29 percent from their peak in summer 2006, while the 10-city index has fallen 30 percent. Prices have sunk back to levels not seen since late 2003.

To provide some relief, Congress in February passed a new \$8,000 tax credit for first-time homebuyers and President Barack Obama is directing \$75 billion to a new foreclosure prevention plan.

But the success of those efforts could well depend on how far the U.S. economy falls. While sales are showing some signs of stabilization, some economists expect prices to keep falling for the rest of this year — and maybe even longer.

"We continue to believe that it is unlikely that we are anywhere near a bottom in nationwide home prices," wrote Joshua Shapiro, chief economist at MFR Inc.

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April 28, 2009

**VIA E-MAIL**

Chris Jordon  
City of West Linn  
22500 Salamo Road, #100  
West Linn, OR 97068

**Re: Request for Amendment to West Linn Community Development Code to Extend Development Timelines.**

Dear Mr. Jordon and Members of the West Linn City Council:

My name is Garrin Royer and I live at 3050 S. Roxbury Drive in West Linn. Three years ago, I purchased a 1.7 acre parcel of land at 4111 Elmran Drive in the Cedar Oak neighborhood. After extensive and costly work with the City's planners, engineers and arborist, I received preliminary plat approval for a six (6) lot subdivision called "Bella Flats" on May 7, 2007. My wish is to some day live in the subdivision along with my new neighbors. To date, I have incurred approximately \$120,000 in engineering, surveying, planning and application fees. I have now been informed that if my entire project is not completed with installation of all the public improvements by May 7, 2010, my land division approval will be void and the money that I spent on the approval will have been wasted. Further, the time and money the City has spent to approve this project will also have been wasted.

In the current market, I cannot make these public improvements because I cannot sell the houses. The value of the land is now substantially less than what I paid for it. The City's required public improvements, while I could have afforded them in the prior market, at the current housing values now make this project infeasible.

I understand that Mr. Jeff Smith has asked the City to consider initiating an amendment to its Code that would allow some extensions to current land use approvals. I urge you to consider and approve this initiation so that my investment and the investments of other small business owners and West Linn residents are not lost. Were this an ordinary market, I would not be making this request. However, all of us can agree that this is an extraordinary time in Oregon's economy and we need to do everything we can to help West Linn businesses maintain their investments so that the City's economy and reputation for desirable housing remain strong.

I hope that this letter will persuade you to approve of this amendment to extend development timelines.

Respectfully yours,

*Garrin W. Royer*

Garrin W. Royer