



CITY OF
West Linn
 PLANNING AND DEVELOPMENT

STAFF REPORT

**CITY OF WEST LINN
 PLANNING COMMISSION PUBLIC HEARING
 SCHEDULED HEARING DATE: APRIL 15, 2009**

FILE NO: CDC-09-04

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

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

TO: West Linn Planning Commission

FROM: Planning Department (Peter Spir, Associate Planner)

DATE: March 30, 2009
(for April 15, 2009 Planning Commission meeting)

FILE NO.: CDC-09-04

SUBJECT: Proposal to create a review process that could allow a two year extension to approved land use applications which typically expire after three years

Planning Director's Initials



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 and offer the City some assurance that the final product will still be in substantial agreement with the current Community Development Code (CDC).

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 a two year extension of land use approvals. A two year extension 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.

To staff, the two year extension sounded like a reasonable solution. But in order to safeguard against "locking in" or vesting applications for five years and thus protecting them from tougher regulations (e.g. environmental) brought about by amendments to

the CDC during the intervening years, there needs to be approval criteria for the extensions.

Staff recommends that the two year extension should only be approved when it can be demonstrated that there have been no changes to the CDC since the approval date that would result in modification to or an amendment to their application's design or plan.

The proposed language is in Exhibit A attached

STAFF RECOMMENDATION

Staff recommends approval of the amendments (Exhibit A) mindful of the fact that they will only be approved after the applicant has shown that no applicable CDC amendments have been approved in the intervening years which could modify the application.

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.

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 absolutely supports re-application when conditions and code provisions would result in a different product. But 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 the cost factor. The average partition application costs a property owner between 25,000 and 35,000 dollars for consultants, lawyers and application fees. Larger 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.

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. So long as there are simple and objective approval criteria, the Planning Director should be able to make the extension decision. 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.

All cities had some approval criteria which would be the basis for the decision as to whether the extension should be allowed. The most common approval criterion was best articulated in Beaverton's code where a finding must be made that:

“ 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.”

By having this language, (see Exhibit A) it assures the City and citizenry that in the event that significant changes to the CDC or other applicable regulations were made during the period between the original approval and the date of the extension request which would result in, for example, the reconfiguration of the subdivision, increased environmental protection or changes to the conditions of approval then the extension would be denied. This criterion speaks directly to Mr. Schwarz' concern that extensions might allow applicants to avoid more stringent development and environmental standards that were adopted by the city during the five year period. As proposed, if nothing has changed in the CDC , then the extension would be approved. But if a new standard is adopted and it applies to the application then the extension would be denied.

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

- 2. Plans should be developed in a manner that insures the provision of appropriate types and amounts of land within urban growth boundaries. Such land should be necessary and suitable for housing that meets the housing needs of households of all income levels.*
- 3. Plans should provide for the appropriate type, location and phasing of public facilities and services sufficient to support housing development in areas presently developed or undergoing development or redevelopment.*

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.

B. IMPLEMENTATION

- 1. Plans should provide for a continuing review of housing need projections and should establish a process for accommodating needed revisions.*
- 2. Plans should take into account the effects of utilizing financial incentives and resources to (a) stimulate the rehabilitation of substandard housing without regard to the financial capacity of the owner so long as benefits accrue to the occupants; and (b) bring into compliance with codes*

adopted to assure safe and sanitary housing the dwellings of individuals who cannot on their own afford to meet such codes.

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

4. Ordinances and incentives should be used to increase population densities in urban areas taking into consideration (1) key facilities, (2) the economic, environmental, social and energy consequences of the proposed densities and (3) the optimal use of existing urban land particularly in sections containing significant amounts of unsound substandard structures.

FINDING 3: Central to this amendment is the criterion that says 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. This provision shows clear deference to the highlighted section above that requires a commitment to the environmental carrying capacity of the site. The other highlighted section is addressed by the fact that this process is being proposed so as to expedite already approved development but at the same time assure the City that applicants cannot use the language to shield themselves from new or more restrictive code provisions.

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 drainage 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". If the two year extension procedure lacked the provision calling for review of CDC changes in the intervening years then it could be interpreted to discourage habitat friendly development practices. But since any CDC changes would result in denial of the extension, staff finds that the recommended action measure is properly served.

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 have been received from Mr. Michael Robinson and Mr. Ed Schwarz. These statements 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 some arbitrary 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 two year extension option or to delete it depending on current conditions and/or the effectiveness of this change.
-

FILE NO: CDC-09-04

**Exhibit A:
Proposed Code
Amendments**

EXHIBIT A: PROPOSED CODE AMENDMENTS

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 **unless an extension is granted per CDC 99.335.**

89.010 SUBMISSION OF SUBDIVISION OR PARTITION PLAT

- A. Within ~~one year~~ **three years** after approval of the tentative plan, **unless an extension is granted per CDC 99.335,** 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:

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.
(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

Approvals shall be extended by two years by the Decision Making Authority 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 following approval criteria is met:

- A. 1. The request for an extension is not sought for the purposes of avoiding any responsibility imposed by this code or the original permit or conditions of approval; and,
- 2. There has been no change in circumstances or the applicable regulations or Statutes, excluding engineering standards, likely to necessitate modification of the decision or conditions of approval since the effective date of the decision for which the extension is sought; and,
- 3. The previously approved land use decision is not being modified in design, number of lots, housing type, use, or conditions of approval.

- B. Infrastructure changes in response to adopted engineering standards that do not modify the plan, such as substitutions on water line size, storm water treatment, etc. would not compromise or invalidate the extension approval.

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 (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	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:	

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**Exhibit B:
Survey of Other Cities**

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

Devrev2009-staffreport-CDC-09-04-extensions

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 refiling 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.

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FILE NO: CDC-09-04

**Exhibit C:
Correspondence**

Spir, Peter

From: Robinson, Michael C. (Perkins Coie) [MRobinson@perkinscoie.com]
Sent: Tuesday, February 17, 2009 12:30 PM
To: Spir, Peter; Kerr, Chris; bill.monahan@jordanschrader.com; Robinson, Michael C. (Perkins Coie)
Subject: Text Amendment

Peter, thanks for your voicemail message to me. I'll leave it to Bill to advise you but I would prefer that the city give DLCD 45 day notice prior to the initial evidentiary hearing. Opening the hearing on March 18 and continuing to April 1, while a good idea, doesn't meet the requirements of ORS 197. 615 and OAR Chapter 660, Division 18. As I said before, this probably isn't fatal but why take a risk and, incidentally, give opponents (and I would expect them) the chance to say that the city didn't follow the rules on notice to DLCD?

Additionally, I think you have to have criteria for review of an extension (based on the Gold Beach case) and the city is required to mail the proposed text with the notice (there are 3 LUBA decisions that require this: No Tram v Portland; SEIU v Happy Valley; and Mosier). If you are going to provide criteria, then I would want the city to give new notice that meets both requirements.

I appreciated the City Council's initiation of the text amendment last November and I'm glad that your department is moving quickly on the amendment but I'd rather wait a little longer and get the notice to DLCD right and not give any opponents an appeal issue that could result in remand.

I'd also like to work with you on the criteria.

Thanks. Mike

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: Ryan, Corinne F. (Perkins Coie) [CRyan@perkinscoie.com] on behalf of Robinson, Michael C. (Perkins Coie) [MRobinson@perkinscoie.com]

Sent: Wednesday, February 18, 2009 11:21 AM

To: Spir, Peter

Cc: Kerr, Chris; bill.monahan@jordanschrader.com; jsmith@jtsmithco.com; Robinson, Michael C. (Perkins Coie)

Subject: Amendment to City of West Linn Development Code to Allow Extensions of Discretionary Approvals

Dear Peter:

Thanks for speaking with me last week about this matter. I understand that the City will reschedule the initial evidentiary hearing in order to give the Oregon Department of Land Conservation and Development 45 days notice prior to the that hearing as required by both statute and administrative rule. As you previously did, please attach the proposed text to the notice to DLCD so that the City fully complies with DLCD requirements. There have been several recent cases where LUBA has remanded decisions to cities because of the failure to attach the proposed text to the notice of the initial evidentiary hearing.

Additionally, I would encourage you to provide criteria for the extension. I have discussed this with Bill and he is in agreement that there needs to be some minimum criteria by which the City can grant the extensions.

Thanks for including me in this matter.

Mike

Michael C. Robinson | Perkins Coie LLP
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Spir, Peter

From: Ed Schwarz [ed.schwarz@comcast.net]
Sent: Wednesday, February 18, 2009 9:37 AM
To: Spir, Peter
Cc: Galle, Patti; Jordan, Chris; Kerr, Chris; Carson, Jody; Kovash, John; **Burgess, Scott; Teri Cummings**
Subject: RE: File No. CDC-09-04 -- Extend Period Between Preliminary to Final Plat

Mr. Spir,

Thank you for your prompt response.

I continue to have deep concerns about this issue.

Regards,
Ed

From: Spir, Peter [mailto:PSpir@westlinnoregon.gov]
Sent: Wednesday, February 18, 2009 7:51 AM
To: Ed Schwarz
Cc: Galle, Patti; Jordan, Chris; Kerr, Chris
Subject: RE: File No. CDC-09-04 -- Extend Period Between Preliminary to Final Plat

Mr. Schwarz:

Regarding the origin of the amendment, I note that in the file there are two letters from land use attorney Michael Robinson. One was addressed to Mayor King and City Council dated November 3, 2008 and another was addressed to Gordon Howard, staff attorney, dated September 17, 2008 proposing the amendment on behalf of developer Jeff Smith. I do not know what action they took.

I was only recently directed by former Planning Director Bryan Brown to prepare the code language. Mr. Brown presented a memo I subsequently prepared at a Planning Commission work session. I was not in attendance. It is my understanding that they asked him to proceed with the amendment.

The proposed amendment would allow citizens and developers who have previous land use approvals that would otherwise lapse to apply for a two year extension. The two year extension would be a land use decision in itself. As currently proposed, it would be a Planning Director's decision with public notice and appealable to City Council.

There would also be approval criteria which, as proposed, would be the basis for the decision to grant or deny the extension. **The most important criteria would be whether or not the community development code (CDC) had been amended in the years since the original approval in a way that would require the modification of the application.** For example, if the CDC was amended to require a 200 foot setback from wetlands and that would result in the need to reconfigure a minor partition then the extension would not be granted. This criterion is consistent with other cities and provides assurance that the extension is not being used to avoid the application of stricter CDC measures.

Regarding your "inventory" question, the answer is that no inventory has been prepared. The amendment would apply to a wide range of applications such as variances, CUPs, design review, partitions and subdivisions.

A rough estimate of the number of lots that would otherwise become void in 2009 and would be affected by this proposal is 54. (five minor partitions and two subdivisions)

There is no measurable data used by staff to "trigger the amendment" other than the fact that all levels of government: federal, state, regional and local agree that an economic disaster is upon us. Unemployment is up, home sales and building starts are down, the national debt continues to spiral upwards, and the litany goes on.

Assuming the economy will recover, there is the opportunity for the final version of this proposed amendment to have a sunset clause which would say that the extension provision would be void by January 1, 2012 or some other agreed upon date.

Peter Spir
Associate Planner

From: Ed Schwarz [mailto:ed.schwarz@comcast.net]
Sent: Tuesday, February 17, 2009 6:41 PM
To: Spir, Peter
Cc: Jordan, Chris; Carson, Jody; Kovash, John; Galle, Patti; Burgess, Scott; Teri Cummings
Subject: File No. CDC-09-04 -- Extend Period Between Preliminary to Final Plat

Dear Mr. Spir,

I have some questions and comments regarding the subject file which, if passed, would amend the West Linn Community Development Code (CDC) and extend the amount of time applicants have to construct improvements allowed by design review, conditional use, variances, and final platting of partitions, planned unit developments and subdivisions from three to five years.

1. Will the implementation of this change be retroactive? In other words, will it cover developments which have been approved in the past three years but not constructed? If so, has an inventory of these approved but not built developments been created and may I see a copy?
2. The impetus behind this change is given as "current economic conditions." While no one doubts that our current conditions are not good, what is the measurable data that triggered this amendment? How are the economic conditions measured by the city to determine when it is time to implement this change?
3. Will these changes be rescinded once economic conditions improve (as we all hope they do)?
4. When economic conditions improve, how will the city measure this improvement and at what point will these changes be rescinded? It appears to me that these changes will require quite a bit of management to implement and then rescind.
5. I have concerns that the five year period does not take into account all of the changes that may occur in those five years near a site approved for development. Other development may move forward impacting the traffic capacity of streets which were judged acceptable when the development was first approved but which may deteriorate in their traffic carrying capacity as other development comes along. Additionally, a neighborhood's character could change to the point that what was once a reasonable project no longer fits within that neighborhood. In short, lengthening the time period to five years seems to have the potential to create more problems than it solves.
6. I would like to point out that when we were experiencing the recent housing and construction "boom" I did not hear a suggestion to shorten the time period from three to two (or even one) years so that development would be built more expeditiously.
7. Finally, my understanding is that our immediate past City Council considered similar changes to these in the

CDC but rejected them. Why is this being brought up again so soon?

Thank you for your prompt response.

Regards,
Ed Schwarz
2206 Tannler Drive

1 ½¢

Spir, Peter

From: Robinson, Michael C. (Perkins Coie) [MRobinson@perkinscoie.com]
Sent: Thursday, March 26, 2009 8:37 AM
To: Spir, Peter; Kerr, Chris; Robinson, Michael C. (Perkins Coie); bill.monahan@jordanschrader.com
Subject: Notice for CDC Text Amendment Hearing on April 15

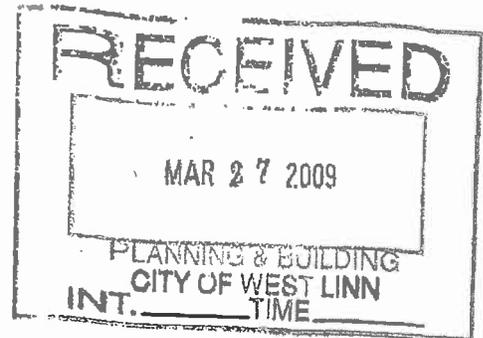
Peter, the hearing notice contains elements that apply only to quasi-judicial hearings and this is a legislative hearing. The last 3 sentences of the final paragraph are not applicable to this hearing (no right to request continuance if new information submitted; no right for hearing to remain open for 7 days; and no raise it or waive it requirement). None of these requirements are found in CDC 98.120. I am not suggesting that you renounce the hearing but that you have Chair Jones make the correct announcement for the legislative hearing process.

Thanks. Mike

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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 days 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: Landforming LLC

Signature: John DeCosta
John DeCosta

Signature: Larry Vinton
Larry Vinton

Dear Chris,

Thanks for talking with me last Thursday about the text amendment currently scheduled to be heard by the Planning Commission on April 15. I understand that the current City position is that the Planning Commission will make its recommendation and present it to the City Council. It does not sound like we have resolved the uncertainty of whether the City Council will hear the application. In response to a letter from Ed Schwarz, Peter thinks that the City can "sunset" the ordinance. I would not be adverse to that concept as long as it was long enough to do some good, i.e., 2011. Perhaps if a sunset provision is desired, staff could simply propose that City Council take a look at the economic situation in 2011 and determine whether to sunset the ordinance then or whether to continue it for a few years.

Thanks for your time. Please keep me informed of any correspondence you might receive.
Mike

Michael C. Robinson | Perkins Coie LLP
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sent by Corinne F. Ryan | Perkins Coie LLP
LEGAL SECRETARY TO:
Michael C. Robinson | Seth J. King
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Spir, Peter

From: Spir, Peter
Sent: Thursday, February 12, 2009 7:09 AM
To: Kerr, Chris
Subject: FW: extension of approval for land use applications

From: Spir, Peter
Sent: Thursday, February 12, 2009 7:09 AM
To: 'Bill Monahan'
Subject: RE: extension of approval for land use applications

Bill
Thanks for your advise I will get onto that ASAP.
Peter

From: Bill Monahan [mailto:Bill.Monahan@jordanschrader.com]
Sent: Wednesday, February 11, 2009 5:50 PM
To: Spir, Peter
Cc: Jenny De Gregorio
Subject: RE: extension of approval for land use applications

Hi Peter,

I have discussed this question with Mike Robinson so I have some of the background. What Mike has suggested is that a code amendment by the city to change the time period from 3 to 5 years will not automatically apply to projects previously approved by the city. ORS 92.285 prohibits retroactive land division ordinances.

Another issue is that those who appeared in opposition to a proposal may leave a hearing with an understanding of the decision made and the code requirements that applied to the approval. Someone may not have appealed thinking that if there is no platting in 3 years the application expires. They may have appealed if they thought the applicant had 5 years. This is probably a stretch but the point is the public and the applicant are entitled to know what the rules are when an application is processed.

Mike Robinson is in agreement that if a code revision to allow for 5 years is passed the right to have the 5 year period must be asked for by a property owner with a previously approved subdivision. The code revision should provide for a process to request the additional two years. Such extensions are themselves land use approvals. When the City processes the code amendment to extend to 5 years you should also have discussion of the process to be used to grant the extension because it could be a simple act by the council to grant an extension based on some simple criteria without a public hearing or it can be a hearing situation. I have seen some jurisdictions grant extensions to land use approvals without much fanfare. Given West Linn's active citizenry, that process may not be acceptable. I suggest that you provide the options and a recommendation in the staff analysis for this proposed code amendment.

By the way, when this is scheduled for the planning commission and city council to review you should make sure that Mike Robinson is advised of the dates of the hearings so he can participate. While he is not the applicant for the change his input will be valuable for all to understand the need.

Bill

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

From: Spir, Peter [mailto:PSpir@westinnoregon.gov]
Sent: Wednesday, February 11, 2009 1:49 PM
To: Bill Monahan
Subject: extension of approval for land use applications

Bill

Mike Robinson, acting on behalf of Jeff Smith, asked that we develop an amendment to our CDC that would grant a period longer than the current three years for a final plat to be filed with the Planning Director. Seems reasonable given the current state of the economy to allow more time. We propose five years.

Ideally this new time limit would apply also to applications that have already been approved.

Acting Planning Director Chris Kerr said that Mike thought that we could not apply the revised code language to applications that have already been approved. Do you have any thoughts on that front?

I have attached the memo which also amends the time allowed for design review, CUPs etc.

Peter

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November 3, 2008

VIA EMAIL

Mayor Norm King
City of West Linn
22500 Salamo Road, #100
West Linn, OR 97068

Re: Initiation of Text Amendment Relating to Land Division Approval Extensions

Dear Mayor King and Members of the City Council:

This office represents Jeff Smith on his request for the initiation of a text amendment to the West Linn Development Code relating to extensions of land division approvals. We wrote to Mr. Gordon Howard on September 17, 2008 asking the City Council to initiate an amendment to CDC 85.090 to allow extensions of the tentative plat approval. We have not suggested a specific amount of time but we would like the City Council to consider allowing two, one-year extensions approved by the Planning Director.

We thought it would be helpful for you to see how other jurisdictions treat extensions and final plat filings. We have surveyed other Portland area jurisdiction's provisions for extensions of land division approvals and have attached a summary of our survey.

Most of the jurisdictions surveyed allow extensions of land division approvals. The most common length of time for extensions is six (6) months to one (1) year, although several jurisdictions allow longer periods for phased development and some allow multiple extensions. The Planning Director or the authority which granted the original land division approval usually has the discretion to allow an extension. Only two (2) jurisdictions that we surveyed did not allow extensions of land division approvals.

Jeff's request is to allow additional time to record the final plat after the expiration of the approval period for three (3) reasons. First, unlike virtually every other jurisdiction, West Linn requires that the final plat be recorded before the expiration of time, whereas other jurisdictions simply require the final plat to be submitted. Second, Jeff must have all of the public improvements installed prior to recording, unlike most other jurisdictions which allow bonding. Third, the downturn in the economy means that the housing market has slowed and Jeff, like

37891-0014/LEOAL14855445.1

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Perkins Cole *up* and Affiliates

Mayor Norm King
November 3, 2008
Page 2

other residential developers, needs to wait for the market to turn around before developing the subdivision. This requires additional time, which means an opportunity for an extension should be available.

If you have any questions regarding any aspect of this survey or would like additional information regarding these code provisions, please feel free to call me. Thank you for your time and attention to this matter.

Very truly yours,



Michael C. Robinson

MCR:cr1

Enclosure

cc: Mr. Jeff Smith (w/encl.) (via email)

DEVELOPMENT CODE/LAND USE EXTENSION SURVEY

City	Subdivision time limitation	Extension allowed?	Required: submission of final plat or recording?
Forest Grove	<p>Tentative Plat approval effective for one year, within in which time a final plat must be submitted. Approval may be extended for additional six (6) months. §9.104(2)</p> <p>Phased Development: When the tentative plat for a large subdivision has been approved, showing proposed phases of platting, if any, such phases of that large subdivision may be submitted for review, approval, and recording as a final plat if the approved tentative plat of the large subdivision is adhered to without significant alteration. In such cases, the one-year limitation for presenting the final plat, shall be waived if one logical phase of the larger subdivision has been submitted, approved, and recorded as a final plat within one year of the tentative plat approval. §9.104(3)</p>	<p>Yes, six (6) months. Also allow phased development</p>	<p>The Final Plat shall be recorded within one year of final plat approval. §9.105(5)</p>
Gladstone	<p>Tentative Plan approval shall expire if final plat not submitted within one year of tentative plan approval. The one-year period may be renewed once for not more than one (1) year. §17.32.030</p>	<p>Yes, for up to one year. No mention of phased development.</p>	<p>No deadline for recording.</p>

City	Subdivision time limitation	Extension allowed?	Required: submission of final plat or recording?
Hood River	<p>Preliminary plat approval shall be effective for a period of two (2) years from the date of approval, within which the final plat shall be submitted. §16.08.010.B; 16.08.030</p> <p>One extension is allowed not to exceed one year. §16.08.010.C.3</p> <p>Phased Development: The City may approve a time schedule for developing a subdivision in phases, but in no case shall the actual construction time period (i.e., for required public improvements, utilities, streets) for any partition or subdivision phase be greater than five (5) years with one 1-year extension possible, without reapplying for a preliminary plat. §16.08.010.D.1</p> <p>Within sixty (60) days of the City approval of the final plat, the applicant shall submit the final plat to the County for signatures of County officials §16.08.040.A</p>	<p>Yes, not to exceed one year.</p> <p>Phased development allowed not to exceed five (5) years, with one (1) year extension allowed.</p>	<p>The Final Plat shall be recorded prior to the issuance of any building permits for the newly created lots. §16.08.040.B</p>

City	Subdivision time limitation	Extension allowed?	Required: submission of final plat or recording?
Lake Oswego	<p>The final plan or plat shall be submitted within one year of the date of the order setting forth the final decision. A one-year extension is allowed and shall be granted upon written request. Additional extensions 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. §50.87.010</p> <p>Approval of a final plan or plat authorizes the issuance of development permits for actions or uses as approved therein. §50.87.015(5)</p>	<p>Yes, appears to be as of right for an additional year, but more extensions are allowed.</p>	<p>Final plats shall be recorded with the appropriate County within thirty (30) calendar days of signature. Any plat not so recorded is void. §50.87.015(2)</p>
McMinnville	<p>Within twelve (12) months after approval of the tentative plan, the subdivider shall prepare a final plat in conformance with the tentative plan as approved. §16 of Land Division Ord.</p>	<p>No</p>	<p>Approval of the final plat shall be null and void if the plat is not recorded within thirty (30) days after the date the last required signature has been obtained. §23</p>
Milwaukie	<p>Within six (6) months of city approval the applicant shall submit the final plat for city signatures. Approval of the final plat shall be null and void if the plat is not submitted within the time specified or if the plat is not recorded within thirty (30) days after the date the last required signature has been obtained. §17.24.040</p>	<p>Yes, one approval is allowed up to six (6) months upon submission of formal request to the original decision-making authority. §17.04.050(B)</p>	<p>Approval of the final plat shall be null and void if the plat is not submitted within the time specified or if the plat is not recorded within thirty (30) days after the date the last required signature has been obtained. §17.24.040</p>

City	Subdivision time limitation	Extension allowed?	Required: submission of final plat or recording?
Newberg	<p>Within two (2) years following the effective date of the approval of a tentative land division plan, the subdivider shall complete all required conditions, submit the final plat to the Director for review and approval, and record the final plat with the County Recorder. §151.248</p> <p>A one time six-month extension is allowed following the Type I procedure, if the facts upon which the approval was based have not significantly changed. If the Director makes a finding that the circumstances have changed to a minor extent, through the Type II process, or Type III process, an extension may be granted. If conditions have substantially changed the Director shall direct the applicant to refile the application for a new subdivision. §151.249(B)</p> <p>Phased subdivisions. Each filing of a final plat (phase) shall extend the expiration of the tentative plan by twelve (12) months from the date of its expiration or the date of the previously filed final plat, whichever is later. Prior to the expiration of each phase, the applicant may apply for an extension to the phase which is about to expire for a six-month extension as described above. The six-month extension of a phase shall also extend any subsequent phases. The total number of extensions shall not extend the tentative plan more than five (5) years from its approval. §151.249(C)</p>	<p>Yes, but only one time for six (6) months and after Type I, II or III procedure. §151.249(B)</p> <p>Phased subdivisions are allowed which can extend the expiration of the tentative plan, but for no more than five (5) years. §151.249(C)</p>	<p>If the conditions set at the time of tentative land division approval are not fulfilled and the final plat or final map is not recorded by the tentative plan expiration date, the tentative land division approval is null and void. §151.250.2</p>

City	Subdivision time limitation	Extension allowed?	Required: submission of final plat or recording?
Oregon City	The applicant must apply for final subdivision plat approval within twelve months following approval of a preliminary subdivision plat. §16.08.090	Yes, the planning manager may extend the expiration period for a maximum of two (2) six-month periods, for an aggregate of up to one (1) year. §16.04.080	No stated deadline for recording.

17.50-210

City	Subdivision time limitation	Extension allowed?	Required: submission of final plat or recording?
Salem	<p>Tentative plan approval shall be valid for a period of two years following the date of the final decision of the planning administrator, commission, or council. §63.049(a)</p> <p>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 (2) years, upon a written finding that the facts upon which the approval was based have not changed to an extent sufficient to warrant refiling of the tentative plan. No more than two (2) such extensions shall be granted for any one (1) partition or subdivision, resulting in a maximum time extension of four (4) years. §63.049(b)</p> <p>Phased subdivision: 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. §63.049(c)</p>	<p>Yes, for an additional two (2) years, not to exceed four (4) years.</p>	<p>A final plat of a proposed subdivision shall be recorded by the first day of the seventh month following the date of final approval.</p> <p>Upon application of the subdivider of a subdivision, the planning administrator in his discretion may waive the time period for recording and permit the final plat to be recorded in phases within whatever extended time limitations he deems proper. 63.060(d) and (e)</p>

City	Subdivision time limitation	Extension allowed?	Required: submission of final plat or recording?
Sherwood	<p>Within two (2) years after approval of the preliminary plat, a final plat shall be submitted. §16.124.010.1</p> <p>The City may, upon written request by the applicant, grant a single extension up to one (1) year upon a written finding that the facts upon which approval was based have not changed to an extent sufficient to warrant refiling of the preliminary plat and that no other development approval would be affected. §16.124.010.2</p> <p>Phased Subdivision: The City may authorize platting and development to proceed in stages that exceed two (2) years, but in no case shall the total time period for all stages be greater than five (5) years. §16.124.010.3</p>	Yes, only once for one (1) year.	<p>Required: submission of final plat or recording? Approval of the final plat shall be null and void if the plat is not recorded within sixty (60) days after the date of the last required approving signatures have been obtained. §16.124.020.5</p>

City	Subdivision time limitation	Extension allowed?	Required: submission of final plat or recording?
Tigard	<p>Preliminary plat approval by the Approval Authority shall be effective for a period of 1-1/2 years from the date of approval. §18.430.030(C)</p> <p>One extension of the approval period is allowed not to exceed one (1) year; §18.430.030(D)</p> <p>The Approval Authority may approve a time schedule for developing a subdivision in phases, but in no case shall the actual construction time period for any phase be greater than two (2) years without reapplying for a preliminary plat, §18.430.030(E)</p>	Yes, only one (1) for one (1) year.	<p>Within sixth (60) days of the City review and approval, the applicant shall submit the final plat to the County for signatures of County officials. §18.430.100</p> <p>No deadline for recording.</p>
Troutdale	<p>The final plat shall be delivered to the Director for approval within one year following approval of the tentative plat. The Director may, upon written request by the subdivider, grant an extension of the approval period, not to exceed six months, upon a written finding that the facts upon which the approval was based have not changed to an extent sufficient to warrant refileing of the tentative plat. §7.080</p>	Yes, for six (6) months.	<p>The documents effectuating a subdivision shall become null and void if not recorded with the County Recorder within one (1) year following approval. §7.150</p>
Tualatin	<p>Within 24 months after approval of the subdivision plan, the applicant shall submit the subdivision plat. §36.170</p> <p>Phased Subdivision: The subdivision plan approval for the first phase shall expire 24 months from the date of subdivision plan</p>	No	No deadline for recording of final plat.

City	Subdivision time limitation	Extension allowed?	Required: submission of final plat or recording?
Wilsonville	<p>approval by the City Engineer. Future phases shall expire 24 months after the date of recording of the subdivision plat of the immediately preceding phase. §36.130</p> <p>Tentative plat approval shall be effective for a period of two (2) years. §4.210.01.C.5</p> <p>Phased Development: The Planning Director or Development Review Board may set time limits for the completion of the phasing schedule which, if not met, shall result in an expiration of the tentative plat approval. §4.210.01.D</p>	<p>Yes, extensions are allowed, but not more than three (3) such extensions may be granted, for not more than one (1) year each. §4.023</p>	<p>Approval shall be effective for a period of ninety (90) days, and if the final plat is not offered for record by the applicant in the office of the County Clerk within such time, the final plat shall be submitted again to the Planning Director. §4.220.06.01</p>

Brown, Bryan

From: Spir, Peter
Sent: Tuesday, November 04, 2008 12:03 PM
To: Brown, Bryan
Subject: citizen initiated code amendments

The only reference I could find in the CDC regarding citizen initiated code amendments are found in CDC Chapter 98.

The language of 98.030(A)(1)(e) below suggests that either body has authority to reject or endorse a private individual's petition to hold a hearing to consider a CDC or Comp Plan amendment.

In the event that the petition receives the endorsement of either the PC or CC it goes to hearing. CDC 98.030(B) states that the PC vote is only "advisory" and that the case must then go on to the CC for the final decision.

98.030 ***THE APPLICATION PROCESS: WHO MAY APPLY, TIME PERIOD, THE REQUIREMENTS***

- A. *Who may apply.*
1. *A proposed legislative change may be initiated by:*
 - a. *Motion by the City Council;*
 - b. *Motion by the Planning Commission;*
 - c. *The Planning Director;*
 - d. *Recognized neighborhood association. The association must transmit its requested change to the Planning Director, accompanied by documentation as to the vote of the association and the minutes of its discussion;*
 - e. *Any other party wishing to propose a legislative change may petition the Planning Commission or City Council to consider such change. The Planning Commission or City Council, after considering the petition, may choose to initiate a legislative change or deny the petition.*

(ORD. 1474)

B. Time period.

A proposed legislative change will be heard by the Planning Commission, which acts in an advisory capacity to the Council, within 60 days of initiation of proposal. The proposed legislative change will then be heard by the City Council at the next available meeting, but in any circumstance, no later than 60 days after the Planning Commission recommendation. The date of initiation is the date the motion for change is adopted by the City Council or Planning Commission, or the date the Planning Director has received a proposal from a recognized neighborhood association. (ORD. 1474)

C. The City Council may, by same or separate motion, adopt a longer time period for Planning Commission hearings of proposed legislative changes. (ORD. 1474)



Michael C. Robinson
PHONE: (503) 727-2264
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September 17, 2008

VIA E-MAIL

Mr. Gordon Howard
City of West Linn
Suite 1000
22500 Salamo Road
West Linn, OR 97068

Re: Petition for Amendment to West Linn Development Code

Dear Mr. Howard:

This office represents Jeff Smith. This letter is a request that the City Council authorize the initiation of a legislative amendment to the West Linn Community Development Code ("CDC") as explained below. Mr. Smith would appreciate your placing this matter on the next available City Council agenda.

CDC Section 85.090 provides that tentative land division approvals are valid for three (3) years. The applicant for a tentative land division approval is required to record the subdivision by the third anniversary of the approval. In the event the recording does not occur, the tentative plat approval is void. In order to record a final plat by the third anniversary, the applicant must construct the public improvements and have them accepted by the City prior to recording. The CDC does not presently provide for either an opportunity to bond for public improvements to be constructed after recording of the final plat, nor for an extension of a tentative plat approval. As you know, in this economy, many tentative land division applicants must postpone their development until the demand for housing improves.

Mr. Smith received land division approval for his property about a year ago. Because of the economy, Mr. Smith wishes to defer the final plat approval. In order to do so, the

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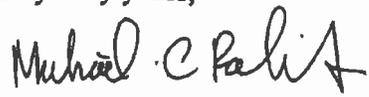
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Perkins Cole LLP and Affiliates

Mr. Gordon Howard
September 17, 2008
Page 2

CDC must be amended to allow either bonding or an extension of the tentative plat approval. This is the amendment that Mr. Smith wishes the City Council to initiate pursuant to CDC 98.030.A.1.e.

Please call me if you have any questions.

Very truly yours,

A handwritten signature in black ink that reads "Michael C. Robinson". The signature is written in a cursive, flowing style.

Michael C. Robinson

MCR/cfr

cc: Mr. Jeff Smith (via email)

Brown, Bryan

From: Howard, Gordon
Sent: Wednesday, September 17, 2008 12:21 PM
To: Jordan, Chris; Wright, Dennis; Green, Gene; Brown, Bryan
Subject: FW: Petition for Amendment to West Linn Development Code

I received this letter from Mike Robinson representing Jeff Smith. It is a request to reverse the Dodds-era decision to eliminate the possibility of bonding for subdivision improvements in lieu of actually making those improvements prior to platting.

He is making the request for this legislative code amendment pursuant to CDC Chapter 98, which does not allow a private application for a legislative change. It has to be initiated by the Planning Director, Planning Commission, or City Council.

He also has indicated to me that he would like it considered before the January change in Council – I told him I didn't know whether this was feasible.

We should discuss this at our Wednesday meeting.

Gordon

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From: Ryan, Corinne F. (Perkins Cole) [mailto:CRyan@perkinscole.com] **On Behalf Of** Robinson, Michael C. (Perkins Cole)
Sent: Wednesday, September 17, 2008 12:09 PM
To: Howard, Gordon
Cc: jtsmith@jtsmithco.com; Robinson, Michael C. (Perkins Cole)
Subject: Petition for Amendment to West Linn Development Code

Dear Mr. Howard:

Per Mike Robinson's request, attached is a copy of his letter addressed to you regarding the above-referenced.

Please contact Mike at (503-727-2264) if you have any questions. Thank you.

<<Howard letter.PDF>>

Michael C. Robinson
Attorney at Law
Perkins Cole LLP

1120 N.W. Couch Street, Tenth Floor
Portland, OR 97209-4128
Phone: 503-727-2264
Mobile: 503-407-2578
Fax: 503-346-2264
www.perkinscoie.com

sent by Corinne F. Ryan
Legal Secretary to Michael C. Robinson
and Seth J. King
Perkins Coie LLP
1120 N.W. Couch Street, Tenth Floor
Portland, OR 97209-4128
Phone: (503) 727-2000
Direct: (503) 727-2137
Fax: (503) 727-2222

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**West Linn City Council Meeting Minutes
November 24, 2008**

Council Present: Acting Mayor Michele S. Eberle, Councilor Scott A. Burgess, Councilor Jody Carson and Councilor Mike Jones

Council Absent: Norman B. King, Mayor

Staff Present: Chris Jordan, City Manager; Rhett Bernstein, Prosecuting Attorney; Gene Green, Public Works Director; Gordon Howard, Staff Attorney; Richard Seals, Finance Director; Terry Timius, Police Chief; Ken Worcester, Director Of Parks and Recreation; Jim Whynot, Water Utility Supervisor; City Attorney Bill Monahan; and Shirley Richardson, Minute Taker

8. Agenda Bill 08-11-09 CDC Amendment – Final Platting

Acting Mayor Eberle opened the meeting to Council consideration of a request to initiate an amendment to the West Linn Community Development Code that would allow extensions of approval for land divisions, allowing them more time to proceed to a final plat than is currently allowed by the City. She asked for a staff report.

Gordon Howard reported this matter is before the Council based upon a request that was received (letter from Michael Robinson representing Jeff Smith the property owner) to initiate a legislative amendment to the Community Development Code. Pursuant to Chapter 98 a private individual cannot initiate such a change to the City's code. Therefore Mr. Smith is making the request for the City to make this change.

The request is to allow more time between the tentative approval of the subdivision and the time required to get approval of a final plat of recording that subdivision. It must be approved by the City and then recorded by the County Surveyor.

Oregon law authorizes a two-stage process for approval of proposed land divisions. First the local jurisdiction reviews a tentative application for a land division and approves or denies it based upon the jurisdiction's adopted development codes. Second, if the land division is tentatively approved, the subdivider records a final plat, which legally creates the discrete lots for subsequent sale. A tentative approval will set forth a series of conditions that the subdivider must meet before recording the final plat.

The jurisdiction's development code sets a three-year deadline by which a tentatively approved land division must be recorded as a final plat or expire. An expired application must be resubmitted as a new tentative land division and begin the entire process over again. The City requires not only that the map be approved by the City within three years, but also that all public improvements required by the land division ordinance (roads, utilities) be in place and accepted by the City prior to the City approving the final plat.

A majority of other cities allow bonding or guaranteeing of those improvements instead of installation prior to the final plat. The staff memorandum included in the packet reviews the options raised by this request for initiation in dealing with this issue. The decision is not whether this idea should be approved, but whether it has enough merit to be initiated and studied by the Planning Commission and then reviewed and approved by Council.

The options reviewed were:

- Not to change the current code (leave three year requirement in place)
- Review whether the three-year period should be extended to a longer period
- Allow time extension applications which require discretionary review on an individualized basis with a specific request for an extension of time to get the tentative approved subdivision plat to the point where it can be recorded as a final plat
- Review allowing bonding for the improvements instead of the actual construction
- Bond and allow time extensions

This is a policy decision whether there are changes in circumstance where the City should allow more time to record a final once a tentative plat is approved. In the past the City has had no issues with applicant's promptly recording their final plats in the three-year period. However, there are changed economic circumstances and these two applicants have stated it is likely they will be in a position to put the major investment of public improvements into the subdivisions and get them recorded prior to the three-year limit.

Council will decide if this is enough change in the national situation to have the City look at necessity of the three-year requirement as to whether it should be longer. Staff recommends the Council initiate a code amendment regarding the final plat issues raised and any potential code amendments be limited to addressing the following matters:

Allowance of limited bonding of public improvements prior to final plat approval to address minor issues such as weather-related concerns. The bonding should only be allowed if a majority of the public improvements have been successfully installed, and only a few outstanding items remain.

Consideration of a blanket amount of additional time for approved projects beyond three years; considering the increased flexibility and fairness for applicants in balance with the desire of the City to not have approved projects built that don't reflect subsequent policy changes.

Councilor Jones asked if Planning staff ever raised this issue. Mr. Jordan said no. Staff met with Council a month ago and discussed what the priorities should be and where staff believed was the best places to spend their time. This item was not on that list at the time. The City would absorb the cost of this review because the property owner is petitioning the Council. Council will give staff direction. This will be a Council initiated legislative action.

Public Testimony

Michael Robinson stated he was here representing Jeff Smith a West Linn resident who has approval for division of his property. They are in complete support of the staff report to initiate a change to review two narrow amendments to the Code. The economy is not good right now and he has never seen the inability of his residential clients to borrow money to make public improvements. These are the largest home builders in the State of Oregon and Portland.

He is asking that Council needs to balance the need for having subdivisions timely against the needs to allow extensions where appropriate. Given the circumstances the economy is in and the investment of time and money that have been put into approvals, they feel taking a look at a longer period outweighs the other issues. They are asking that Council initiate the amendment that staff and the Planning Commission take a narrow look at it.

There is a time obligation in Section 98.030(B), which requires the Planning Commission to hold a hearing within 60 days of the Council initiation and then Council has to act within 60 days. Subsection (C) gives Council the ability to direct a different timeline.

Most jurisdictions have a much shorter time period; there is no other jurisdiction that requires the final plat to be recorded on the anniversary of the end of the approval period. In order for his client to start the development and get it done in that period, he would have to start now, get the construction drawings done, get the drawings approved and then go out and construct. This will not happen in this economic environment. For these reasons they are asking Council to consider initiating this.

Jeff Smith stated that he has been before the City several times for subdivisions. It is not just hard to get a development loan, it is impossible. The issue is not past experience or financial situation today, the issue is there is no funding to do development. Today there is no need for more homes or more lots in West Linn. There are a lot of developers who need to request extensions. He is asking that Council give this issue to Planning and let him work with the Planning Commission to come up with something that is reasonable and bring it back to Council at that time.

Alice Richmond, 3939 Parker Road stated that she is in favor of this initiative because of the economic situation. In these economic times three years do not give enough time for development. She would like to see a developer build houses at a slower pace and sell them as they are built without going into bankruptcies.

Kerry Oaks, 1125 Marylhurst Drive stated she is not prepared to testify tonight because the agenda item didn't seem clear. She doesn't feel that the description for this item clearly lets the public know what was to be discussed tonight. She feels that if people were more informed, there would be other private citizens here tonight to testify. The City will bear the cost for this initiative; the citizens will have to pay the taxes.

Councilor Burgess asked for clarification of the timeline. Mr. Howard stated the Code states the initiative will be heard by the Planning Commission in 60 days and the Council 60 days. The Council may by the same or separate motion adopt a longer time period for Planning Commission hearings of proposed legislative changes. Council can specify a longer period for the staff and Planning Commission to review it before returning it to Council.

Chris Jordan stated because of the new Council changes, staff changes, and the holidays coming, 60 days will be an incredibly fast turn-around to get this to the Planning Commission. Perhaps 150-180 days would be helpful to staff.

Acting Mayor Eberle asked what happens to the developers who are in the process of development if this initiative is not passed. Mr. Howard stated if the three years expire and they haven't recorded nor has a final plat approved and the improvements put in, they would have to start over with a new application process. The new application would have to conform to any new standards that may be in effect at the time of application.

Hearing no further questions from Council and no further response from staff, Acting Mayor Eberle closed the public hearing portion of the meeting.

Councilor Burgess moved to initiate a code amendment application to look at the issue of overall subdivision time limits and limited bonding of subdivision improvements, and refer it to the Planning Commission for analysis and a recommendation per Agenda Bill 08-11-09 with a change in the language for timeline to reflect 120/120 days. Acting Mayor Eberle seconded the motion.

Councilor Burgess feels there is no need to get into individual situations regarding reasons why developers need additional time. There is a reason to have a time limit in terms of approval. Staff has reviewed the request and feels there is merit in taking a look at this issue to see if there is a need in West Linn.

Councilor Jones stated he can go either way on this request. He feels this is no different from any other urgent or pressing need to change the CDC that rises to the top of the priority list, it should be reviewed.

Councilor Carson stated she could go either way. She understands the developers concerns on this issue. If this had not been raised as an issue by staff eventually it would have come from the citizens. She would like to see this brought forth with other code changes that are a part of the prioritizing process. She stated that when and if this issue comes before the Council, it is noticed in such a way that the citizens clearly know what the issue is.

Discussion followed on what time line would be appropriate for the Planning staff consideration and Council decision.

Councilor Carson moved to amend the motion to change the time limit for the application to return from the Planning Commission to Council up to one year. Councilor Jones seconded the motion.

Chris Jordan suggested that Council table the issue and let the new Council decide if this is a priority issue for them.

Councilors Burgess and Carson agreed it would be prudent to move this issue into the Planning staff domain and they can come back to the Council with a decision within a year whether there is merit to move forward on this issue.

Ayes: Carson, Burgess, Jones, Eberle

Nays: None

The motion carried 4-0.

Vote on the main motion to initiate a code amendment application to look at the issue of overall subdivision time limits , limited bonding of subdivision

improvements, and refer it to the Planning Commission for analysis and a recommendation per Agenda Bill 08-11-09 with a change in the language for the timeline to reflect up to a year.

Ayes: Carson, Burgess, Eberle

Nays: Jones

The motion carried 3-1.