



CITY OF
West Linn
 PLANNING AND DEVELOPMENT

SECOND ADDENDUM TO STAFF REPORT
POST WORKSESSION: REVISED LANGUAGE FOR 5-20-09 HEARING

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>
<u>STAFF REPORT:</u>	
EXECUTIVE SUMMARY & STAFF RECOMMENDATION.....	2
SPECIFIC DATA	4
PUBLIC INVOLVEMENT.....	4
DISCUSSION.....	5
APPROVAL CRITERIA.....	8

<u>EXHIBITS:</u>	
EXHIBIT A: PROPOSED CODE AMENDMENTS.....	13
EXHIBIT B: CORRESPONDENCE.....	30

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

TO: West Linn Planning Commission

FROM: Planning Department (Peter Spir, Associate Planner)

DATE: May 7, 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.

Planning Director's Initials _____

EXECUTIVE SUMMARY

From the date of approval, most land use decisions expire after three years. Consequently, approved subdivisions and partitions must be final platted and recorded within three years or the approval is void. Similarly, conditional use permits, design reviews and variances must be constructed within three years. Once the approval is void 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.

The current economic crisis has changed all of that. Home remodel projects plus small and large scale land use development including subdivisions have ground to a halt. Banks are not willing to make loans to finance projects, especially large ones. Land divisions involving 90 lots are expected to expire this year. The City's approval to construct Marylhurst Park is on the verge of becoming invalid. 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 would allow extra

time for people to secure funding and loans and proceed with the approved project in an improved and a more secure market.

At their May 6, 2009 work session, the Planning Commission discussed a variety of alternatives including bonding. The Planning Commission determined that the most appropriate and timely course of action would be to consider amendments relating only to a two year extension with the possibility of a sunset clause. Bonding could be looked into at some later date.

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

An earlier staff report and survey showed that most cities and counties allow only one or two years to final plat a subdivision. West Linn allows three years. However, most cities and counties allow extensions and, most importantly, virtually all allow bonding. West Linn offers no extensions and no bonding. Thus most cities provide many more years than West Linn for homeowners and developers to complete or record their project.

Comparisons aside, let's look at just how long or short three years actually is. 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. And now you throw in a downward spiraling real estate market and you have the perfect storm.

Certainly it makes sense to require applicants to re-apply, to start all over again, if during the past three years the CDC has changed and new standards are in place. But if nothing has changed, what is the point of making people re-apply unless it is to be punitive?

STAFF RECOMMENDATION

Staff recommends approval of the amendments (Exhibit A) with the opportunity to re-visit the extension issue in 2012.

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:

Public comment has been extensive from both the development community and West Linn residents. Their comments and correspondence is attached as an exhibit.

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.

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 will increase in 2010. 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. Staff proposes amending the Design Review, Planned Unit Development, Land Division, Variance, Conditional Use Permit, Water Resource Area, Willamette and Tualatin River Protection, Willamette Falls Drive Commercial Overlay Chapters as well as Chapter 99: Procedures.

Why not make these applicants re-apply? Staff absolutely supports a re-submittal when new CDC provisions would result in changes to the project or where the extension would allow someone to avoid tougher standards. But staff does not support re-application just for its own sake: where nothing has changed. To do so would constitute a waste of Planning Commission and city staff time. 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.

Re-application can also result in 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. 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.

Please note that Staff is proposing that if CDC changes would only result in fewer lots (as in a subdivision) and the applicant agreed to eliminate those lots, then the original approval would not be voided and an extension could be granted.

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: ECONMOIC 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.

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.

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 85.095, which would then require the final plat to be recorded with the County within two years of the approval date of extension.** **If not,** the approval expires.

85.095 EXTENSIONS OF APPROVAL

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 two years of the date of approval of the extension.

B. Submittal Requirements:

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

(2) The applicant's submittal shall include:

(a) Completed application form and payment of fees.

(b) Written request for two year extension to include discussion of whether or not new engineering, environmental and other changes to the CDC are applicable to the proposal. If there are changes that are deemed applicable, the applicant shall discuss

their impact on the proposal. Drawings, to scale, shall communicate any changes to the design or layout.

(c) CD of submittal

B. Approval Criteria:

(1) 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 new environmental, engineering or other regulations approved during the intervening years since the original approval date of the application that apply specifically to this project and, if applied, would significantly modify the application’s design or layout.

(2) The applicant has no burden of proof to demonstrate compliance with the original approval criteria. This extension application shall not constitute a re-hearing of the original application.

(3) Where new environmental, engineering or other regulations approved during the intervening years since the original approval date of the application would result in the loss of lots to meet those regulations, the elimination of those lots shall not render the application invalid.

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 55.045.

55.045 EXTENSIONS OF APPROVAL

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 design review, the applicant must begin substantial construction per 55.040 within the two year extension period.

B. Submittal Requirements:

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

(2) The applicant's submittal shall include:

(a) submittal of application form and fees.

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

(c) CD of submittal

B. Approval Criteria:

(1) 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 new environmental, engineering or other regulations approved during the intervening years since the original approval date of the application that apply specifically to this project and, if applied, would significantly modify the application’s design or layout.

(2) The applicant has no burden of proof to demonstrate compliance with the original approval criteria. This shall not constitute a re-hearing of the original application.

(3) Where new environmental, engineering or other regulations approved during the intervening years since the original approval date of the application would result in the loss of lots to meet those regulations, the elimination of those lots shall not render the application invalid.

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 56.045. Phased improvements to a park or natural area, with clearly stated timeline, are permitted under the provisions of CDC 56.060.

However, substantial construction of the final phased improvement must be begun within five years of the original approval date.

56.045 **EXTENSIONS OF APPROVAL**

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 park design review, the applicant must begin substantial construction per 56.040 within the two year extension period.

B. Submittal Requirements:

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

(2) The applicant’s submittal shall include:

(a) submittal of application form and fees.

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

(c) CD of submittal

B. Approval Criteria:

(1) 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 new environmental, engineering or other regulations approved during the intervening years since the original approval date of the application that apply specifically to this project and, if applied, would significantly modify the application’s design or layout.

(2) The applicant has no burden of proof to demonstrate compliance with the original approval criteria. This shall not constitute a re-hearing of the original application.

(3) Where new environmental, engineering or other regulations approved during the intervening years since the original approval date of the application would result in the loss of lots to meet those regulations, the elimination of those lots shall not render the application invalid.

58.110 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 58.115.

58.115 EXTENSIONS OF APPROVAL

A. Approvals shall be extended by two years by the Historic Review Board 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 Willamette Falls Drive Commercial District design review, the applicant must begin substantial construction within the two year extension period.

B. Submittal Requirements:

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

(2) The applicant’s submittal shall include:

(a) submittal of application form and fees.

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

(c) CD of submittal

B. Approval Criteria:

(1) The applicant shall demonstrate “just cause” that the two year extension should be allowed. The Historic Review Board shall have reasonable and appropriate latitude to interpret “just cause” to include new environmental, engineering or other regulations approved during the intervening years since the original approval date of the application that apply specifically to this project and, if applied, would significantly modify the application’s design or layout.

(2) The applicant has no burden of proof to demonstrate compliance with the original approval criteria. This is shall not constitute a re-hearing of the original application.

(3) Where new environmental, engineering or other regulations approved during the intervening years since the original approval date of the application would result in the loss of lots to meet those

regulations, the elimination of those lots shall not render the application invalid.

60.010 PURPOSE

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

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

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

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

60.040 TIME LIMIT ON A CONDITIONAL USE APPROVAL

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

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

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

60.045 **EXTENSIONS OF APPROVAL**

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 a conditional use permit, the applicant must begin substantial construction per 60.040 within the two year extension period.

B. Submittal Requirements:

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

(2) The applicant’s submittal shall include:

(a) submittal of application form and fees.

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

(c) CD of submittal

B. Approval Criteria:

(1) 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 new environmental, engineering or other regulations

approved during the intervening years since the original approval date of the application that apply specifically to this project and, if applied, would significantly modify the application's design or layout.

(2) The applicant has no burden of proof to demonstrate compliance with the original approval criteria. This shall not constitute a re-hearing of the original application.

(3) Where new environmental, engineering or other regulations approved during the intervening years since the original approval date of the application would result in the loss of lots to meet those regulations, the elimination of those lots shall not render the application invalid.

75.040 TIME LIMIT ON A VARIANCE

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

75.045 EXTENSIONS OF APPROVAL

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 a variance, the applicant must begin substantial construction per 75.040 within the two year extension period.

B. Submittal Requirements:

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

(2) The applicant's submittal shall include:

(a) submittal of application form and fees.

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

(c) CD of submittal

B. Approval Criteria:

(1) 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 new environmental, engineering or other regulations approved during the intervening years since the original approval date of the application that apply specifically to this project and, if applied, would significantly modify the application's design or layout.

(2) The applicant has no burden of proof to demonstrate compliance with the original approval criteria. This shall not constitute a re-hearing of the original application.

(3) Where new environmental, engineering or other regulations approved during the intervening years since the original approval date of the application would result in the loss of lots to meet those

regulations, the elimination of those lots shall not render the application invalid.

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 24.035, which would then require the final plat to be recorded with the County within five years. (ORD. 1408)

24.035 EXTENSIONS OF APPROVAL

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 a PUD, the applicant must record the final plat within the two year extension period.

B. Submittal Requirements:

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

(2) The applicant's submittal shall include:

(a) submittal of application form and fees.

(b) written request for two year extension to include discussion of whether or not new engineering, environmental and other changes to the CDC are applicable to the proposal. If there are

changes that are deemed applicable, the applicant shall discuss their impact on the proposal. Drawings, to scale, shall communicate any changes to the design or layout.

(c) CD of submittal

B. Approval Criteria:

(1) 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 new environmental, engineering or other regulations approved during the intervening years since the original approval date of the application that apply specifically to this project and, if applied, would significantly modify the application’s design or layout.

(2) The applicant has no burden of proof to demonstrate compliance with the original approval criteria. This shall not constitute a re-hearing of the original application.

(3) Where new environmental, engineering or other regulations approved during the intervening years since the original approval date of the application would result in the loss of lots to meet those regulations, the elimination of those lots shall not render the application invalid.

28.080 TIME LIMIT ON APPROVAL

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

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

28.085 EXTENSIONS OF APPROVAL

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 a Willamette and Tualatin River protection permit, the applicant must begin substantial work per 28.080 within the two year extension period.

B. Submittal Requirements:

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

(2) The applicant's submittal shall include:

(a) submittal of application form and fees.

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

(c) CD of submittal

B. Approval Criteria:

(1) 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 new environmental, engineering or other regulations approved during the intervening years since the original approval date of the application that apply specifically to this project and, if

applied, would significantly modify the application's design or layout.

(2) The applicant has no burden of proof to demonstrate compliance with the original approval criteria. This shall not constitute a re-hearing of the original application.

(3) Where new environmental, engineering or other regulations approved during the intervening years since the original approval date of the application would result in the loss of lots to meet those regulations, the elimination of those lots shall not render the application invalid.

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 the provisions of the specific chapters.

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

HISTORIC REVIEW BOARD AUTHORITY

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

8. Extensions of Approval

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	A A

New Home Construction	B
Major Renovations or Additions	B
Minor Renovations or Additions	B
Construction of non-exempt accessory structures/ garages	B
Home Occupation:	No Notice
Lot Line Adjustment	No Notice
Minor Partition	A
Planned Unit Development	A
Revocation of Approval	A
Sidewalk Use Permit	No Notice
Sign Permit	No Notice
Subdivision	A
Temporary Use Permit:	
60 days or less; 60-day extension	No Notice
Over 60 days, up to 1 year	A
Tualatin River Setback:	
Uses permitted outright & not subject to design review	No Notice
Uses permitted outright & subject to design review	B
Uses requiring conditional use permit & design review	A
Street Vacations	(per state statute requirements)
Variances:	
Class I (involves a small change with minor or no effect)	B
Class II (involves a significant change from code requirements)	A
Water Resource Area Permit (NDW)	A**
Willamette River Greenway:	
Development Permit	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)

Exhibit B
Recent correspondence

(prior correspondence in earlier staff reports)

Spir, Peter

From: Ed Schwarz [ed.schwarz@comcast.net]
Sent: Sunday, May 10, 2009 8:14 PM
To: Spir, Peter
Subject: RE: Ed Schwartz's Emails Regarding City of West Linn File No. CVC-09-04

Mr. Spir,

Thank you for sending me a copy of Mr. Robinson's remarks concerning my email and letter regarding CVC-09-04.

As you know, I am not paid to do this stuff so I have limited time to devote to it. I would like you to pass along to the Planning Commission this brief response to Mr. Robinson's comments. Also, please include this email in the public record for this file.

To try to keep this simple, I will respond in the same format used by Mr. Robinson. I do not have the time to address every one of his points but I thought there were a few significant points I should discuss.

A. February 17, 2009 Email.

1. My concern here is that the amendment not allow **previously approved** land use decisions to be extended. As my previous correspondence has made clear, I am opposed to this amendment but, should the Planning Commission be inclined to approve it, then it should only apply to land use approvals made on or after the date the amendment takes effect. As I have described previously, I agree with Mr. Monahan's determination that if this amendment is made to apply to previously approved land use decisions, the conditions under which said previous land use decisions were made will have changed and the public, who may have appealed those decisions under these new conditions, would be adversely affected by not having the opportunity to appeal.

2. Again, **even without extensions and allowing for other jurisdictions' standard time frame plus extensions**, West Linn's current three year time frame is the longest of any existing time periods allowed by any metropolitan area jurisdiction that we could find. I see no need to add a one or two year extension to the current three year period.

As far as Mr. Robinson's contention that "If a subdivider nevertheless is able to finance the improvements and records the final plat, he or she is at risk that the lots will have been created but without buyers." I would like to state that land speculation is just that -- speculation.

3. I am not sure exactly what "...Jeff was trying to achieve" but should the Planning Commission be inclined to approve this amendment then a sunset provision should definitely be included.

4. As I have stated previously, I do see a difference between three years and five years in terms of impact. Mr. Robinson refers to "...this economic environment..." but this amendment does not seem to include any provision for taking the economic environment into account.

As far as vesting is concerned, if a plat is recorded it can, and should be, taken into account as future land use approvals come up before governing bodies. For example, traffic that will be generated by approved subdivision "A" should be taken into account in approving subdivision "B" -- even if subdivision "A" has not yet been built.

I think it just makes common sense that if the time period for recording a plat is extended by two years, more changes in a neighborhood are likely to occur that could have been taken into account when the development was first approved had the full time period been known at that time.

5. Quoting Mr. Robinson, "...when times are good builders wanted to bring their project to market as quickly as possible." So why not shorten the time frame to one or two years from our current three and then offer one or two six month extensions under extreme circumstances?

B-1

5/11/2009

B. May 5, 2009 Letter.

1. This amendment was put forth at the request of Mr. Jeff Smith for the benefit of himself and other builders. I do not believe that city staff, which is already quite busy, would have put forth this amendment on their own. Approval of this amendment, in my opinion, favors builders over the citizens of West Linn.

2. We could get into a long discussion of the "benefits" that builders bring to the local economy. No one, however, can dispute that once the homes are built and the builders have moved on, local residents are left to make up for the lack of SDC money contributed by builders to cover the costs of maintaining the roads, sewers, schools, fire, police, etc. that are required by their developments. To get to the point of Mr. Robinson's question as to the harm that would be caused, I believe that I have already stated that should this amendment be applied to already approved land use decisions, then the citizens of West Linn will have been harmed by having the rules changed after the fact.

C. Conclusion.

This is not a case of being punitive. This is simply asking for the rules to not be changed after the fact. As I stated above, land speculation is just that – speculation. Mr. Smith and other builders made significant profits when times were good. When times are bad, I believe they need to take their lumps like everyone else in this economy. They should not be able to come to a Planning Commission or City Council and ask for the rules to be changed in their favor to the detriment of the citizens.

Thank you.

Regards,
Ed Schwarz

From: Spir, Peter [mailto:PSpir@westlinnoregon.gov]
Sent: Wednesday, May 06, 2009 12:45 PM
To: Ed Schwarz
Subject: FW: Ed Schwartz's Emails Regarding City of West Linn File No. CVC-09-04

FYI

From: Lundgren, Christina (Perkins Coie) [mailto:CLundgren@perkinscoie.com] **On Behalf Of** Robinson, Michael C. (Perkins Coie)
Sent: Wednesday, May 06, 2009 12:03 PM
To: Spir, Peter
Cc: Jordan, Chris; Kerr, Chris; erniep@hbapdx.org; jtsmith@jtsmithco.com
Subject: Ed Schwartz's Emails Regarding City of West Linn File No. CVC-09-04

FROM MICHAEL ROBINSON :

Dear Peter,

I have reviewed both of Ed Schwartz's emails and thought it would be helpful if I responded to them.

A. February 17, 2009 Email.

1. If the City Council chooses to adopt the text amendment to allow applications for extensions, as originally proposed by staff, it will not be retroactive and an extension will not automatically occur. Consistent with applicable case law, if the text amendment is adopted, then any applicant could apply for an extension prior to the expiration of their land use or limited land use decision.

2. I have previously provided a copy of a staff report prepared for the City of Portland

B-2

which is undertaking the same amendments. The staff report contains some important information about the decline in construction.

Please keep in mind that although the City of West Linn has one of the longer periods for recording of a final plat after approval of a tentative plat (3 years), unlike virtually every other city in the metropolitan area or the State of Oregon, it has no option for extensions or for bonding improvements to allow for recording of a final plat. In other words, a subdivider in West Linn must make sure that he or she submits construction drawings for the public improvements, must make sure that he or she is able to have the public improvement construction drawings prepared, have them submitted and approved (generally going through several redline versions) to the City, construct the improvements, have them reviewed and approved by the City, and then submit the final plat for approval to the City and County and have it recorded, all before the third anniversary of the tentative plat approval. This often requires that the work begin 18 months in advance of the three-year time limit. In this economic environment, it is almost impossible to obtain financing for subdivision improvements, let alone have the faith and confidence that there will be a market for the homes once built. If a subdivider nevertheless is able to finance the improvements and records the final plat, he or she is at risk that the lots will have been created but without buyers.

3. The City Council always retains the ability to modify the West Linn Community Development Code. However, if the Planning Commission and City Council believe this amendment is a good idea, I see no prohibition on a "sunset" provision providing that the laws are effective only for a certain date. That date would need to be long enough to actually accomplish what Jeff was trying to achieve.

4. I see no difference between three years and five years in terms of impact. Moreover, in this economic environment, it is highly unlikely that vehicular traffic will increase; all of the anecdotal information I have heard is that traffic is actually decreasing because of loss of jobs. Additionally, it is highly unlikely that a neighborhood's "character" will change. Change of such a dramatic nature as Mr. Schwartz believes might occur would be unlikely in the time period we are talking about.

I would also encourage Mr. Schwartz to think about Oregon's vesting law. If a subdivider records a plat and lets it sit, it is vested. He or she is entitled to build houses even though, as he suggests, the neighborhood character might change over time. Once platted, lots can be constructed and all of the standards apply and the standards that are applicable are vested under Oregon law back to the time the application was submitted and the project constructed.

The issue that Mr. Schwartz raised in this point exists now and is not related to the problem that we are trying to solve.

5. The reason no one suggested shortening the approval period is that when times were good, every builder wanted to bring their project to the market as quickly as possible. For those who delayed, the result is easy to see — unsold lots and, in some cases, bankruptcy.

6. The City Council did not reject the changes. The City Council at the conclusion of the November 24, 2008 public hearing voted 3-1 to authorize the initiation of the amendment but gave Planning staff one (1) year to bring it back. West Linn Community Development Code ("CDC") Section 99.830(A) provides that a legislative amendment such as this may only be initiated by the Planning Director, the Planning Commission or the City Council. This is why the matter was before the City Council in November and it was placed there at the request of Jeff Smith. To my knowledge, the City Council has not rejected the initiation of the text amendment.

B. May 5, 2009 Letter.

1. The City is not favoring any group. All that has been done so far is to authorize the Planning Department and Planning Commission to review the proposal. Just like Jeff Smith did, Mr. Schwartz can ask the City Council to take any action that he thinks is necessary.
2. What harm is caused by this proposal if adopted? We need to get past the idea that fair land use ordinances are harmful. Most home builders like Jeff are local and employ local residents. They build homes for West Linn families. Their work benefits the public and the City - they improve streets, sidewalks and roads. They plant trees. They pay system development charges. Their work results in increased property tax revenues, which support the City and the school district, among others.
3. Allowing bonding is not a retroactive approval and is not inconsistent with ORS 92.285 because it does not change the land use approval. Allowing bonding, as is done by every other city with which I have had any experience, does not require new applications.
4. As noted above, few other cities do not allow extensions or bonding. The 3-year period requires much advance work to be done. Most other cities simply allow a final plat to be submitted, not recorded, within one (1) or two (2) years after tentative plat approval.
5. There is a harm to the community and to applicants in requiring them to return with new applications: lost "soft" costs in pursuing the original approvals, lost financing, lost market opportunities, families that cannot move into their homes, lost city and school district revenue and the administrative burden of processing applications a second time.

This amendment does no harm to anyone and is an appropriate response to an unprecedented economic situation. The City regulates land use, so it is appropriate to ask the City to consider this change.

C. Conclusion.

These are fair questions and appropriate to be asked in this process. Jeff and I hope, however, that this not a case of people being punitive. This economic situation is a real problem and for family-owned businesses like Jeff's, it is a serious and potentially devastating problem. Many well known local home builders, such as Renaissance Homes and Matrix Development, have already filed bankruptcy. Forcing home builders to either develop lots for which there is no market or allow exploration of an approval is a waste of resources and hard-earned approvals. It also means that the City is at risk of a declining

permit and revenue stream when the economy does begin to improve.

This amendment is about fairness in a time of hardship. Jeff is not asking for a long period. He is simply asking for the ability to apply for a 24-month extension of his time in which to record the final plat. Jeff would even be satisfied if the City were willing to reinstate the provision allowing bonding of public improvements followed by recording of the subdivision plat. However, when I began this process, City staff said they did not want to propose this solution; they now support bonding.

Michael C. Robinson | Perkins Coie LLP

1120 N.W. Couch Street

Tenth Floor

Portland, OR 97209-4128

PHONE: 503.727.2264

MOBILE: 503.407.2578

FAX: 503.346.2264

E-MAIL: mrobinson@perkinscoie.com

Sent by Christina R. Lundgren | Perkins Coie LLP

Legal Secretary

1120 N.W. Couch Street

Tenth Floor

Portland, OR 97209-4128

PHONE: 503.727.2101

FAX: 503.727.2222

E-MAIL: clundgren@perkinscoie.com

Public Records Law Disclosure

This e-mail is a public record of the City of West Linn and is subject to public disclosure unless exempt from disclosure under Oregon Public Records Law. This email is subject to the State Retention Schedule.

* * * * *

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

* * * * *

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

B-5

Spir, Peter

From: Lundgren, Christina (Perkins Coie) [CLundgren@perkinscoie.com] on behalf of Robinson, Michael C. (Perkins Coie) [MRobinson@perkinscoie.com]
Sent: Wednesday, May 06, 2009 12:03 PM
To: Spir, Peter
Cc: Jordan, Chris; Kerr, Chris; erniep@hbapdx.org; jtsmith@jtsmithco.com
Subject: Ed Schwartz's Emails Regarding City of West Linn File No. CVC-09-04

Dear Peter,

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laws are effective only for a certain date. That date would need to be long enough to actually accomplish what Jeff was trying to achieve.

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B. May 5, 2009 Letter.

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This amendment does no harm to anyone and is an appropriate response to an unprecedented economic situation. The City regulates land use, so it is appropriate to ask the City to consider this change.

C. Conclusion.

These are fair questions and appropriate to be asked in this process. Jeff and I hope, however, that this not a case of people being punitive. This economic situation is a real problem and for family-owned businesses like Jeff's, it is a serious and potentially devastating problem. Many well known local home builders, such as Renaissance Homes and Matrix Development, have already filed bankruptcy. Forcing home builders to either develop lots for which there is no market or allow exploration of an approval is a waste of resources and hard-earned approvals. It also means that the City is at risk of a declining permit and revenue stream when the economy does begin to improve.

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Michael C. Robinson | Perkins Coie LLP

1120 N.W. Couch Street

Tenth Floor

Portland, OR 97209-4128

PHONE: 503.727.2264

MOBILE: 503.407.2578

FAX: 503.346.2264

E-MAIL: mrobinson@perkinscoie.com

Sent by Christina R. Lundgren | Perkins Coie LLP

5/6/2009

B-8

Spir, Peter

From: Mark Braverman [mbraverman33@MSN.COM]

Sent: Wednesday, May 06, 2009 11:04 AM

To: Spir, Peter; Carson, Jody; Kovash, John; Galle, Patti; Burgess, Scott; Teri Cummings

Subject: allowing the developers in our community to have extensions on the approvals they were given which are about to expire.

Re: allowing the developers in our community to have extensions , two years instead of one, on the approvals they were given which are about to expire.

Please add my "no" comment on the record tonight. Council has given too much to a special interest group of Developers here in West Linn. Time to stop that I say!

**Mark Braverman
2190 River Heights Circle
West Linn. Oregon 97068**

Spir, Peter

From: JoEllen Hagerty [j.hagerty@comcast.net]

Sent: Wednesday, May 06, 2009 1:49 PM

To: Spir, Peter; Teri Cummings

Subject: West Linn Planning commision

To Mr. Peter Spir and other members of the Planning Committee:

I would like to state that I fully support Mr. Ed Schwarz's request to the West Linn Planning Committee regarding:

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

Sincerely,
JoEllen Hagerty
2237 St. Moritz Lp.
West Linn, OR, 97068

May 5, 2009

Via Email

Mr. Peter Spir
City of West Linn
22500 Salamo Road
West Linn, OR 97068

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

Dear Mr. Spir,

Only yesterday was I made aware that the Planning Commission will be accepting public testimony tomorrow on CDC-09-04, a proposal to allow extensions of up to two additional years for previously approved land use approvals. Unfortunately, I will not be able to attend the meeting but I request that this letter be made a part of the public record.

I am opposed to the request to extend the time limit allowed for land use approvals. My concerns include:

1. It appears to me in putting forth this proposal that the city is favoring one group over others. In this case, developers, citing the current state of the economy, are asking to be allowed additional time for their land use approvals. Other groups in the city who are also facing difficult times are not being granted any such extensions by the city. As an example, I am aware of a homeowner in West Linn who recently had his water cut off because of late payment. Shouldn't the city consider the tough economic times before cutting off water to a household? Perhaps staff should look into granting extensions of water bills, fines, and other payments to the city by citizens until our economy recovers. **It is time to consider what is best for the citizens of West Linn when making decisions such as this – and I do not see how it is in the best interests of the citizens to allow this change to go forward.**
2. If the Planning Commission decide to grant the requested extended time frame, it should not be applied retroactively to already existing land use approvals. As the city's attorney, Mr. Monahan, states in his email of February 11, 2009, when a land use case is decided, all the participants leave the meeting assuming that a three year period is in effect. **To retroactively change that period would irreversibly harm any participant who might have appealed the decision had it been known at the time that the time period was not three, but potentially as many as five years.**
3. Similarly, in his email Mr. Monahan also states that **ORS 92.285 prohibits retroactive land use ordinances.** So, again, this ordinance should not be made retroactive to existing land use approvals.

4. My understanding in reading the information sent in by the development community in support of this amendment is that they are citing the current economic conditions as the reason for the need for this change. I have stated in a previous email that I have questions about how and who would make the determination that a particular economic downturn would qualify as a “hardship” and trigger the time extension. Similarly, at what point in the economic cycle are things once again “good enough” to trigger stopping the ability to request extensions? And who would make this determination?
5. One very important point is that West Linn’s current three-year time frame is **already the longest in the region**. In the past two days my wife and I have called up many of the cities in the Portland Metro region and determined that **only one city** (Portland) currently allows three years from the approval of a land use decision and it does not currently allow for extensions. Most other cities grant one or two years and may allow one or two extensions of six months each. **Adding up those potential time frames, even assuming that all extensions are granted, would still leave these cities with a total time frame of three years or less – matching West Linn’s current time frame**. If anything, our survey of surrounding cities indicates that **West Linn could shorten its existing time frame to one or two years while allowing one or two extensions of six months each and be more in line with other cities than we are now**.
6. Requiring a developer to come back to the city with a new land use request after the three year time frame harms no one and may make for better land use decisions in the future. Three years is a long time when it comes to land use decisions. Conditions (traffic, surrounding development, codes, needs of the city, etc.) can change drastically in that time frame, let alone five years. **What was appropriate development three years ago may not be appropriate in one or two more years**.

I oppose this change in the CDC because of the reasons above. Doing this favor for the development community would, in my opinion, do harm to the citizens of West Linn, the very citizens that our government should be trying to protect.

Please see that the Planning Commission members and City Councilors receive a copy of this letter and make sure it is placed in the file for CDC-09-04.

Regards,

Edward Schwarz
2206 Tannler Drive
West Linn, OR 97068

Spir, Peter

From: Roberta Schwarz [roberta.schwarz@comcast.net]
Sent: Wednesday, May 06, 2009 7:28 AM
To: Spir, Peter; Carson, Jody; Kovash, John; Galle, Patti; Burgess, Scott; Teri Cummings
Subject: FW: CDC-09-04 -- CDC Amendment for a Two-Year Extension to Previously Approved Land Use Approvals

Dear Peter,

Please see the attached letter from my husband, Edward Schwarz. I agree with all of the points he made in this letter and wish to have standing as does he. Please place his correspondence and mine in the public record.

Thanks so much, Peter.

Roberta Schwarz

From: Ed Schwarz [mailto:ed.schwarz@comcast.net]
Sent: Wednesday, May 06, 2009 7:13 AM
To: Roberta Schwarz
Subject: Fwd: CDC-09-04 -- CDC Amendment for a Two-Year Extension to Previously Approved Land Use Approvals

----- Forwarded Message -----

From: "Ed Schwarz" <ed.schwarz@comcast.net>
To: pspir@westlinnoregon.gov
Cc: jcarson@westlinnoregon.gov, jkovash@westlinnoregon.gov, pgalle@westlinnoregon.gov, sburgess@westlinnoregon.gov, tcummings@westlinnoregon.gov
Sent: Tuesday, May 5, 2009 11:15:32 PM GMT -08:00 US/Canada Pacific
Subject: CDC-09-04 -- CDC Amendment for a Two-Year Extension to Previously Approved Land Use Approvals

Peter,

Please see attached letter and make sure it is presented to the Planning Commission prior to Wednesday night's meeting.

Thank you.

Ed Schwarz

Spir, Peter

From: K. Snow [KSnow@GVNW.COM]
Sent: Wednesday, May 06, 2009 9:26 AM
To: Spir, Peter
Cc: Carson, Jody; Kovash, John; Galle, Patti; Burgess, Scott; Teri Cummings
Subject: FW: CDC-09-04 -- CDC Amendment for a Two-Year Extension to Previously Approved Land Use Approvals

Peter:

I also do not support extending land use planning decisions beyond the 3 year period. City policy should recognize and embrace the dynamic nature of the economic, environmental and social conditions of the community. 'Sun-setting' at 3 years allows the City, its citizens and developers to perform a fresh look at previously approved yet un-built developments to ensure they will now reflect the conditions and needs as envisaged today...not of the past.

It is my expectation of both the Commission and Council to act accordingly.

Thanks,

Ken Snow

2125 Fircrest Drive

5/6/2009

B-14

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

Spir, Peter

From: Kathie Halicki [khalicki@msn.com]
Sent: Wednesday, May 06, 2009 4:13 PM
To: Spir, Peter
Subject: Metting tonight

We agree with Ed Schwarz's email about the extensions of the land use permits. We are not in favor of the extensions. Please put us on record.

Thank you,
The Halicki's (Mike, Kathie, Jim, and Maria)
2307 Falcon Dr.
West Linn, Or. 97068

I can't express my thoughts about this any better than Ed Schwarz did in his letter to Peter Spir. So I second what Ed Schwarz wrote here in opposing extensions beyond the present time frame for any developers. It's not an obligation of the Planning Department or the Planning Commission to favorably treat developers in this economic downturn. Bob Thomas

May 5, 2009

Via Email

Mr. Peter Spir
City of West Linn
22500 Salamo Road
West Linn, OR 97068

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

Dear Mr. Spir,

Only yesterday was I made aware that the Planning Commission will be accepting public testimony tomorrow on CDC-09-04, a proposal to allow extensions of up to two additional years for previously approved land use approvals. Unfortunately, I will not be able to attend the meeting but I request that this letter be made a part of the public record.

I am opposed to the request to extend the time limit allowed for land use approvals. My concerns include:

1. It appears to me in putting forth this proposal that the city is favoring one group over others. In this case, developers, citing the current state of the economy, are asking to be allowed additional time for their land use approvals. Other groups in the city who are also facing difficult times are not being granted any such extensions by the city. As an example, I am aware of a homeowner in West Linn who recently had his water cut off because of late payment. Shouldn't the city consider the tough economic times before cutting off water to a household? Perhaps staff should look into granting extensions of water bills, fines, and other payments to the city by citizens until our economy recovers. **It is time to consider what is best for the citizens of West Linn when making decisions such as this – and I do not see how it is in the best interests of the citizens to allow this change to go forward.**
2. If the Planning Commission decide to grant the requested extended time frame, it should not be applied retroactively to already existing land use approvals. As the city's attorney, Mr. Monahan, states in his email of February 11, 2009, when a land use case is decided, all the participants leave the meeting assuming that a three year period is in effect. **To retroactively change that period would irreversibly harm any participant who might have appealed the decision had it been known at the time that the time period was not three, but potentially as many as five years.**
3. Similarly, in his email Mr. Monahan also states that **ORS 92.285 prohibits retroactive land use ordinances.** So, again, this ordinance should not be made retroactive to existing land use approvals.

rec'd 5-6-09