

Exhibit B

FINDINGS OF FACT FOR PROPOSED AMENDMENTS (CDC-09-04):

This section of the report addresses the required contents pursuant to Section 98.040(A)(2)(b) of the Community Development Code. The required subheadings appear in enlarged bold type.

1. The facts found relevant to the proposal and found by the Director to be to be true:

The relevant facts and the rationale for the proposed changes are found below and were the basis for the adoption of the amendments in Exhibit A.

1. People with approved land use applications in West Linn generally had three years from date of approval to either submit final platting, in the case of land divisions, or initiate substantial construction in the case of design review or other non land-division applications. If they did not meet the deadline, the applications were voided and the applicant must re-apply.
2. The problem was defined by the fact that the pre-2008 economic environment was a period of great growth and development but the post-2008 economic environment has, thanks to the recession and housing industry collapse, seen many developers delaying the platting of subdivision plans. Some of these approved plans were in danger of expiring. Developers testified that banks will not even consider loans on subdivisions. And even if they could get a loan to build the required infrastructure necessary for final platting, there is scant incentive given the oversupply of recently completed homes and empty platted lots on the market. The tight credit market means many prospective buyers are no longer qualified to buy homes, while others are fearful of incurring debt. These conditions resulted in approximately 20 land use approvals that have recently been voided or will be voided in 2010.
3. Certainly there is debate regarding how long the recession will persist. Current unemployment levels are below the August peak of 12.5%; however the number of available jobs has declined. David Cooke, an Oregon Employment Department economist, stated in an October 13, 2009 "Oregonian" article that the state lost 10,300 jobs in September 2009 and the slight decline to 11.5% unemployment does not factor in discouraged workers who have ceased looking for work. Economics is an inexact field of endeavor. It is not possible to accurately forecast when the recession and associated hardships will end.
4. The purpose of the proposed code amendments is to provide people who have approved land use applications the opportunity to apply for a two-year extension in light of the current economic recession. An extension would allow extra time for people

to secure funding and proceed with the approved project, hopefully, in an improved financial environment.

5. Under the former regulations, a voided approval meant that the applicant would have to re-apply: to start from scratch. Where no codes or regulations have changed, reviewing and deciding upon the exact same application that they approved earlier constituted a waste of Planning Commission and city staff time. In addition, it needlessly expends the applicant's resources and requires citizens to once again attend public hearings and meetings. There was no credible evidence presented at the hearings that such an exercise would serve the public interest given the proposed approval criterion that would be required for extensions.

6. A two-year extension was seen by the Planning Commission and City Council as a reasonable and responsible way to allow developers extra time to complete their projects. Other cities are ahead of West Linn on that score in that they already identified the problem then adopted and codified solutions.

7. While not all cities offer longer extensions, it is clear that for those cities who have decided to take action, there are sufficient economic grounds to justify the case for extensions. Those cities include Lake Oswego, Portland, Wilsonville, Tualatin, Hillsboro, Beaverton, Gresham, Salem with a modal average approval and extension period of five years.

8. The adopted amendments will allow two-year extensions for land use approvals for 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.

9. The Planning Commission endorsed the proposed extensions and recommended approval to the West Linn City Council (WLCC).

10. WLCC heard testimony that described the current hardships and reached consensus that providing the opportunity for extension was an appropriate response. The WLCC acknowledged that Oregon Revised Statutes (ORS) 92.285 prohibits retroactive ordinances. Thus, the city cannot simply increase the approved time to five years. Instead the city must offer an extension. Such extensions are themselves land use approvals and, as such, approval criteria is required.

11. WLCC adopted a version with a de novo hearing to allow extensions. The approval criterion asks whether there were errors, omissions, and misinterpretations of Community Development Code (CDC) by earlier decision making bodies and applies new CDC and other regulations passed since the application was vested. The burden of proof is on the applicant to demonstrate continued compliance, or the ability to comply

through minor modifications, with current CDC approval criteria. Failure to do so means denial of the extension request.

2. 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

The proposed amendments will require review by the initial decision making authority which may include the Planning Commission or Historic Review Boards, both of which require public notice and hearings for citizen input. Decisions by the Planning Director require public notice and opportunities for citizen input. All decisions may be appealed to City Council for further hearings and citizen involvement.

Goal 2: Land Use Planning

Goal 2 requires that the City establish a factual basis for its decisions and assure that such decisions are coordinated with the appropriate governmental agencies. These findings and the oral and written testimony submitted into the record provide the factual base for this legislative decision. The City has coordinated its decision in this matter with appropriate governmental agencies in accordance with the Comprehensive Plan (which has been acknowledged by the State Land Conservation and Development Commission). Further, the City provided notice of the application and hearing to the State Department of Land Conservation and Development (pursuant to ORS 197.610) and to other affected governmental agencies (pursuant to CDC 98.070.C.1.a). The City can find that its review and approval of the application is consistent with Goal 2."

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

The critical part of the amendment is that the applicant must be able to demonstrate that the extension will be in agreement with all CDC and other regulations that have been passed since the land use application was initially approved. There have been significant changes relating to protection of water resource areas (natural drainageways and wetlands), the Tualatin and Willamette River. It is expected that this criterion will have a significant effect upon extension applications. Some will be able to meet the environmental standards outright or by minor modification. Others will not and will be denied.

Goal 9: Economic Development

One of the reasons justifying the two-year extension was economic. By extending the qualified approved land use applications, these amendments will have the positive effect of allowing development to go ahead when economic conditions are more favorable in terms of recapturing initial investment costs and realizing some reasonable profit in the future. The process also avoids the cost and redundancy of time wasting re-application.

Goal 10: Housing

Providing the opportunity for approved development permit applications to get an extension hastens the development and construction of new subdivisions and housing once the market conditions are more favorable. Thus, for the public, a greater number of housing options will be made available in the short to middle term.

Goal 12: Transportation

Goal 12 is primarily implemented by the Oregon Transportation Planning Rule ("TPR"), which requires that a local government impose mitigation measures when an amendment to a land use regulation would "significantly affect an existing or planned transportation facility." OAR 660-012-0060(1). Under the TPR, an amendment to a land use regulation will significantly affect a transportation facility when it would: (1) Change the functional classification of an existing or planned facility (or standards implementing a functional classification system); or (2) As measured at the end of the applicable planning period, allow land uses or development that would result in levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility or would reduce performance of the facility below the minimum performance standard (or below existing conditions, if already below the applicable performance standard). The City Council finds that adoption of the ordinance will not impact any streets, roads, travel patterns, or approved levels of development. Therefore, adoption of the ordinance will not significantly affect any transportation facilities. This statement does, however, recognize that new regulations and transportation plans may be adopted in the years after the initial land use application approval period which would have to be addressed by applicants for extensions.

The proposed amendments have no impact on any of the other Statewide Planning Goals.

3. Any federal or state statutes found applicable:

None

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

None

5. Those portions of the Comprehensive Plan found to be applicable, and if any portion of the plan appears to be reasonably related to the proposals and not applied, the reasons why such portions are not applicable:

Goal 1: Citizen Involvement

Policy 4: Provide timely and adequate notice of proposed land use matters to the public to ensure that all citizens have an opportunity to be heard on issues and actions that affect them.

The proposed amendments will require review by the initial decision making authority which may include the Planning Commission or Historic Review Boards, both of which require public notice and hearings for citizen input. Decisions by the Planning Director require public notice and opportunities for citizen input. All decisions may be appealed to City Council for further hearings.

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

Within that chapter are goals 2 and 3 of the Natural Environment subsection.

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

3. Preserve trees in park lands, natural areas, and open space wherever possible.

The critical part of this amendment is that the applicant must be able to demonstrate that the extension will be in agreement with all CDC and other regulations that have been passed since the land use application was initially approved. There have been significant changes relating to protection of water resource areas (natural drainageways and wetlands), the Tualatin and Willamette River. It is expected that this criterion will have a significant effect upon extension applications. Some will be able to meet the environmental standards outright or by minor modification. Others will not and will be denied.

Goal 9: Economic Development

The main reason justifying the two year extension was economic. By extending the qualified approved land use applications for two years, these amendments will have the positive effect of allowing development to go ahead when economic conditions are more favorable in terms of recapturing existing investment costs and realizing some profit. The process also avoids the cost and redundancy of time wasting re-application.

Goal 10: Housing

Providing the opportunity for approved development permit applications to get an extension hastens the development and construction of new subdivisions and housing once the market conditions are more favorable. Thus for the public, a greater number of housing options will be made available by the extension process in the short to middle term.

6. Those portions of the implementing ordinances relevant to the proposal; and if provisions are not considered, the reasons why such portions of the ordinances were not considered:

Since the proposed amendments are to the City's implementing ordinances, this section is not relevant.

7. An analysis relating the facts found to be true by the Director to the applicable criteria and a statement of the alternatives:

- A. It was found that the problem began with the 2008 recession, the banking and housing industry collapse, plus dramatic increases in unemployment.
- B. In that environment, developers reported that banks will not even consider loans on subdivisions. And even if they could get a loan to build the required infrastructure necessary for final platting, there was scant incentive given the oversupply of recently completed homes and empty platted lots on the market. The tight credit market meant many prospective buyers were no longer qualified to buy homes, while others were fearful of incurring debt. Thus, City Council found that there was neither the investment capitol nor incentive for applicants of approved land use applications to proceed towards completion of their projects.
- C. Approved land use applications generally had three years from date of approval to either submit final platting in the case of land divisions or initiate substantial construction in the case of design review or other non land-division applications. If they did not meet the deadline, the applications were voided and the applicant must re-apply.
- D. The economic conditions led to numerous applications either become void after West Linn's approval period of three years expired. Specifically, 20 land use approvals were found to have recently been voided or will be voided in 2010.
- E. Under the former regulations, a voided approval meant that the applicant would have to re-apply: to start from scratch. Where no codes or regulations have changed, reviewing and deciding upon the exact same application that they approved earlier constituted a waste of Planning Commission and city staff time. In addition, it needlessly expends the applicant's resources and requires citizens to once again attend public hearings and meetings. There is no credible evidence presented, at either Planning Commission or City Council hearings, that such an exercise would serve the public interest.
- F. The solution was to amend the Community Development Code (CDC) to provide the opportunity for individuals with approved land use applications to apply for a two-year extension. An extension would allow extra time for people to secure funding and proceed with the approved project in an improved financial environment. This solution was found to be consistent with numerous other cities in the Metro area which had recently approved similar legislation.

G. It was found that a two-year extension was a reasonable and responsible way of allowing developers extra time to complete their projects.

H. While it was acknowledged that not all cities offer longer extensions, it is clear that for those cities who have decided to take action, there are sufficient grounds to justify the case for extensions. Those cities include Lake Oswego, Portland, Wilsonville, Tualatin, Hillsboro, Beaverton, Gresham, and Salem with a modal average extension period of five years.

Survey of other cities

City	Period approval is valid, including extensions
Gresham	5-7 years w/ inactive status and phased
Lake Oswego	1 year + unlimited 1-year extensions
Portland	5 years (6+ years to record plat)
Wilsonville	5 years
Tigard	2.5 years
Salem	5 years
Oregon City	2 years
Milwaukie	1.5 years
Beaverton	6 years
Tualatin	2 years (blanket extension to mid-2012 for design review)
Hillsboro	2 years + unlimited/unspecified extensions
West Linn	3 years

I. The adopted amendments will allow two-year extensions for land use approvals for 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.

J. The Planning Commission endorsed the proposed extensions and recommended approval to the City Council.

K. City Council heard testimony that described the current hardships and reached consensus that providing the opportunity for extension was an appropriate response. Countervailing testimony in opposition to the extensions was noted. Specifically, testimony was heard that the approvals that could potentially be extended were processed during a period where numerous staff errors had occurred. Another individual testified that public cost would be increased as a result of allowing extensions of land use approvals. However, the majority of City Council found that the approval criterion for extensions would ensure that all land use applications receiving extensions would be required to demonstrate compliance with current regulations, including the CDC. Also, the majority finding determined that in the event of errors or omissions in

the original review of the application, the extension would be denied if they were not corrected. Further, applicants would be charged the cost of processing their applications for extensions.

L. Thus, the City Council considered a motion to allow two year extensions in a de novo hearing format. The motion also required that the approval criterion ask whether there were errors, omissions, and misinterpretations of CDC by earlier decision making bodies and applies new CDC and other regulations passed since the application was vested. The burden of proof is on the applicant to demonstrate continued compliance, or the ability to comply through minor modifications, with current CDC approval criteria. Failure to do so means denial of the extension request. The majority vote by City Council affirmed these findings and the amendments were approved.