



Memorandum

TO: Chris Jordan, City Manager

FROM: Peter Spir, Associate Planner

DATE: November 23, 2009

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

Purpose

The purpose of the proposed code amendments is to provide people with approved land use applications the opportunity to apply for a two-year extension in light of the current economic downturn. An extension would allow extra time for people to secure funding and proceed with the approved project in a potentially improved financial market.

Background

West Linn imposes time limits on land use applications like most other jurisdictions. For example, CDC 85.090 offers the following standard that pertains to subdivisions:

“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, the three-year time limit was reasonable, but the current recession, the associated slump in the housing market and tight credit market has slowed or stalled development. Numerous local property owners cannot get the loans for home remodels, boat docks and partitions. Developers report 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.

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.

The recession has affected all kinds of projects. The following is a sample of approved land use applications that will likely be voided within the next six months:

Natural drainageway permit MISC-06-42
32-lot Tamarisk subdivision SUB-05-06
Historic home remodel DR-06-37
7-lot PUD on Willamette SUB-06-05
Boat dock MISC-06-26
30-lot subdivision on Salamo SUB-07-02
19-lot subdivision on Weatherhill SUB-07-06
Marylhurst Park / City of West Linn DR-07-08
Holly Street Office Building DR-06-47
3-lot partition MIP-06-01
2-lot partition MIP-06-03
2-lot partition MIP-06-05
Tannler West Office Building DR-06-24
Historic home remodel DR-07-05
84-lot subdivision on WF Drive PUD-07-01
10-lot subdivision PUD-07-03
Variance and Natural Drainageway permit VAR-06-04

Under the current regulations, a voided approval means 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 would constitute 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 evidence that such an exercise would serve the public interest.

The Planning Commission's recommended language would amend 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 to provide for a two-year extension of land use approvals.

West Linn would not be alone in providing approval extensions. Lake Oswego offers one year to final plat plus one year extension plus additional extensions. It should be noted that there is the opportunity for an indefinite amount of extensions.

Portland's standard is more liberal than the one proposed for West Linn in that the approval is good for five years outright with no extension process necessary. It also requires that the application for final plat only be filed within 5 years, meaning the recording the final plat could take an additional year or more.

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

Discussion

The Planning Commission heard testimony that described the current hardships associated with the three-year time limit on approvals and reached consensus that providing the opportunity for extension was an appropriate response. The Planning Commission 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.

The Planning Commission determined that the approval criterion for the decision to approve or deny extensions should be based on demonstration that there is just cause for the extension and whether or not the application is consistent with "*changes to engineering, planning or environmental standards*" that have occurred since the original approval. The Planning Commission recommended approval.

At the October 19, 2009 City Council work session, the following concerns were expressed:

1. The approval criteria, as originally proposed, needed to be tightened up.
2. The hearings need to be “de novo”.
3. The decision making body needs to be able to re-visit any aspect of the original application.
4. The burden of proof should be on the applicant to demonstrate continued compliance with the CDC approval criteria.

Acting on these City Council concerns, staff subsequently added new approval criteria. Gone is the vague “just cause” clause. It is replaced by specific standards. Equally important is the fact that the proposed new language calls for the hearings to be “de novo” so any aspect of the application can be re-examined. The burden of proof is now on the applicant to demonstrate conformance with current approval criteria.

A continuing concern about the extensions: that they will be automatically granted should be quieted by this new language. Denial of the extension is expected when the applicant cannot readily accommodate new environmental, engineering, CDC or other standards. The extension request must demonstrate full agreement with, and not avoid, current standards.

Options

- A. The City Council could support the Planning Commission’s proposed language (Exhibit B) that offers a two-year extension of land use approvals when the applicant demonstrates “just cause” and that there have been no changes to the CDC or other regulations that would substantively modify the application.
- B. The City Council could adopt the revised version (Exhibit A) from staff subsequent to the Planning Commission hearing with more stringent approval criteria and de novo hearings.
- C. The City Council could accept the Planning Commission language but add the provision that the City Council will revisit the issue after January 1, 2012. At that time, the City Council would determine if the extensions should be terminated or continued indefinitely.
- D. The City Council could leave the code “as is” and not provide for extensions.

Recommendation

The Planning Commission recommends option “B”, while staff recommends option “A”.