



MEMORANDUM

Date: March 13, 2009

To: Portland Planning Commission

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Re: Proposed Amendment to the Zoning Code: Extension of Expiration Date for
Land Use Approvals and Related Actions

This memo outlines a proposed amendment to the Zoning Code to extend the expiration date for land use review approvals and related actions, explains the purpose of the amendment, and details the alternatives considered. The Bureau of Planning and Sustainability and the Bureau of Development Services worked together on this project, bringing it forward on a compressed timeline that limited opportunities for in-depth analysis and public discussion, but tried to provide for those to the extent possible.

THE PROBLEM

Portland, like the rest of the state and nation, is facing a significant economic downturn that has directly affected the construction industry. The impacts are reflected in a variety of economic indicators at the state and local level. Housing starts, a freeze in the credit markets, significant decreases in construction employment, and a large decline in the number of applications for building permits and land use reviews are all indicators of the state of our economy.¹

¹ According to the March 2009 *Oregon Economic and Revenue Forecast*, prepared by the Oregon Office of Economic Analysis, housing starts in the State of Oregon declined 48% between 2008 and the peak in 2006-2007, with housing starts estimated to drop another 47% between 2008 and 2009. The decline in housing starts, in combination with a freezing up of the credit markets, has resulted in a 9.2% reduction in the State's construction employment in 2008, with a projected decline of 16% in 2009. The Oregon Office of Economic Analysis forecasts declines in construction employment to continue well into 2010.

The local construction picture reflects that of the State. In April 2008, the number of building permit applications for any type of development submitted to BDS declined 22% compared to April 2007. By the end of 2008, building permit applications were down nearly a third compared to the previous year. Permits for new residential development showed an even sharper decline, with a 57% decrease in the number of such permits submitted compared to the number submitted in April 2007. By December 2008, there were 64% fewer permits for new residential development submitted than that seen in December 2007. Similarly, applications for land use reviews are down 36% from FY 2006/2007 to FY 2008/2009.

Most land use approvals (such as conditional uses, adjustments, land divisions, etc.) and related land use actions expire if a building permit is not issued by a specified deadline or, in some cases, if an application for a land use review is not submitted. These expirations are causing problems for applicants; the problems are directly related to the current economic climate.

The four types of timelines that are causing problems are:

- ❑ *Land Use Review Approvals* expire if a building permit for the project is not issued within three years of the final land use decision.
- ❑ *Pre-Application Conferences*, which are required before submitting many land use review applications, expire one year after the conference is held.
- ❑ *Preliminary Plan Approvals* for land divisions expire if a final plat application is not submitted within three years of the final decision on the preliminary plan.
- ❑ *Final Plat Applications* expire if information requested by the City is not submitted within 180 days of the request.

ANALYSIS/IMPACT ASSESSMENT

An impact assessment is conducted for legislative projects to identify and evaluate positive and negative impacts of regulations that are proposed. The impact assessment follows the procedures outlined in the Bureau of Planning and Sustainability's Model Impact Assessment Process.

Issues and Desired Outcomes

The purpose of this project and the proposed amendment is to directly address the current economic downturn by extending the expiration period for land use approvals and related land use actions.

In stable economic conditions, development projects typically can meet the deadlines in the current code. However, projects that would otherwise have proceeded to completion in a better economy are now delayed, and face the expiration of their approvals. Once expired, these projects have to go through the entire land use review process again at substantial cost and further delay. This cost and delay could further slow the City's economic recovery. Additionally, conducting such land use reviews for a second time would divert City staff resources from other priority projects.

The goal of the proposed extension is to allow sufficient time for approved projects to weather the current market situation, while also limiting the length of the extension so that conditions and regulations considered at the time of the approval remain valid.

Approaches Considered

More than a dozen solutions were discussed. We finally focused on three principal Zoning Code amendment approaches that we thought would best achieve the desired outcome.

- ❑ *Option 1: Extend the expiration date for land use review approvals and related land use actions for a limited period of time.* The existing expiration periods in the Zoning Code are intended to better ensure that regulations and policies that were applied at the time of land use approval (or considered at the pre-application conference) continue to be valid at the time the project is built. The longer the period between approval and actual construction, the greater the chance regulations and policies will change. Additionally, substantive changes in the neighborhood surrounding the site are more likely to occur with longer expiration periods; the neighborhood characteristics are often considered during land use approvals. Option 1 respects the value of the existing timeframes in the Zoning Code, but acknowledges that the current economic downturn supports extending these timelines for a limited period for this rare event.
- ❑ *Option 2: Permanently change the expiration period for land use review approvals and related land use actions.* This option would change the expiration for all land use review approvals, without a sunset date. For example, land use review approvals would expire in five years instead of three, pre-application conferences would be valid for two years instead of one, and so on. The most significant difference between Option 1 and Option 2 would be that the extensions allowed under Option 2 would be permanent, with no sunset date.

The extensions proposed under Option 2 would not be limited to the current economic downturn, but would be based on a conclusion that the existing timelines are inadequate. We felt that a conclusion this broad would require more analysis and public discussion, as would exploration of the impacts of further delaying the application of new rules and regulations to previously approved projects.

- ❑ *Option 3: Extend the expiration periods on a case-by-case basis if standards or discretionary approval criteria are met.* Option 3 would allow individual applicants to request an extension of the expiration period on a case by case basis. This approach acknowledges that there may be reasons beyond the current economic downturn to consider extensions. Before 1991, Portland had such a process; approvals were generally good for two years, and an additional year could be requested. Because such extensions were always granted, the code was amended to allow approvals to be valid for three years, and deleted the extension process. Many jurisdictions in the Metro area have an extension process. However, they also initially approve land use reviews and related actions for a period of one or two years, and then allow for a one-year extension.

Developing meaningful standards or discretionary criteria for an extension was of concern to us; we would have to develop standards or criteria that would be able to address the positive or negative impacts of granting an extension, that would not be so broad that they would always result in approval, but would not be so narrow that they wouldn't address a wide range of possible situations. We would also need to

create a new process for these requests, which would require additional discussions with permitting/service bureaus, and additional consideration of budget impacts. Without greater input from applicants, neighbors, and those who would review the requests, those goals cannot be met.

The considerable public discussion that is needed to pursue this approach—and the time that would take—in combination with the immediate need to implement extensions for current land use approvals affected by the economic situation, were factors we considered in not recommending Option 3.

Public Involvement

- ❑ On February 5, 2009, notice of the proposed amendment was mailed to the Department of Land Conservation and Development. The notice summarized the proposed amendment, identified applicable statewide planning goals, and included text for the proposed amendment.
- ❑ On February 20, 2009, notice announcing the Planning Commission public hearing on this project and the availability of this memo was mailed to all neighborhood associations and district coalitions, applicants who have attended a pre-application conference within the past year, applicants who have a land use approval that will expire shortly, and other interested persons.
- ❑ A notice of the hearing was published in *The Oregonian*, and an article appeared in the *Daily Journal of Commerce*. Notice was also published in the March/April 2009 issue of the *Plans Examiner*, a bi-monthly BDS publication intended to inform the building-design and construction community.
- ❑ Information was posted on the websites of both the Bureau of Development Services and the Bureau of Planning and Sustainability.
- ❑ The proposal was discussed at the Regulatory Improvement Stakeholder Advisory Team (RISAT) meeting on March 5, 2009. RISAT membership includes representatives from neighborhoods, housing providers, developers, the business community, and City bureaus.

STAFF RECOMMENDATION

Staff of the Bureau of Development Services and the Bureau of Planning and Sustainability recommend Option 1. We ask that the Planning Commission recommend that City Council adopt this memo and amend the Zoning Code to implement Option 1, as shown in Attachment A.

Option 1 extends the expiration date for a limited period of time, and covers only those land use approvals and related land use actions that are most affected by the current economic climate. Generally, these are instances where the applications were filed before the economic downturn. How the proposed Code language would affect the different timelines is summarized below:

- *Land Use Review Approvals:* Projects that received a land use approval between April 2006 (or three years prior to adoption of this Code amendment) and December 31, 2008 would have until June 30, 2012 to get a building permit for the approved project. The 2012 date was chosen to balance several factors. Staff wanted to pick a date far enough in the future to allow time for the economy to recover, after which the applicant must secure financing, prepare building plans, and receive a building permit. On the other hand, land use approvals are vested in the zoning regulations in place on the date of initial approval; we did not want to unreasonably delay implementation of newer regulations that might apply to these projects.

- *Preliminary Plans:* Similar to the timeline identified above, preliminary plans for a land division that received approval between April 2006 and December 31, 2008 would have until June 30, 2012 to file an application for Final Plat approval.

- *Pre-Application Conferences:* We recommend breaking the expiration approach into two periods. This allows pre-application conferences to remain valid through the duration of the economic downturn while not extending the timeframe to the point where information provided at the conference is outdated.
 - Pre-application conferences held during 2009 would be valid for two years.

 - Pre-application conferences held between April 1, 2007, and December 31, 2008, would be valid until December 31, 2010. We chose the April 2007 date because conferences held that month would have expired in April 2008, which marked the beginning of a substantial decline in applications for land use reviews and building permits.

- *Final Plat Applications:* For those submitted before December 31, 2009, the applicant would have a year to submit information requested by BDS. This would apply only to applications that have not expired or been voided.

Staff of the Bureau of Development Services and the Bureau of Planning and Sustainability also ask that the Planning Commission direct staff to continue to refine the recommended language as necessary.