



ORDINANCE 2010-006

AN ORDINANCE AMENDING SECTIONS OF THE DEVELOPMENT CODE REGARDING LAND USE APPROVAL TIME EXTENSIONS

WHEREAS, The Sherwood Zoning and Community Development Code currently requires applicants who receive preliminary Site Plan or Subdivision approval to begin construction of their project or record the final plat within two years from the approval date and applicants who receive preliminary Partition approval to record the final plat within one year from the approval date; and

WHEREAS, the Development Code provides for the applicant to apply for a one-year extension of their land use approval if the applicant is unable to begin construction within the one or two year time period; and

WHEREAS, recent poor economic conditions have stalled residential and commercial development progress in Sherwood and some projects approved by the City on or after January 1, 2007 through December 31, 2009 have not begun construction; and

WHEREAS, the City Council wishes to encourage development within the City; and

WHEREAS, the proposed amendments to Sections 16.90.020(6), 16.124.010 and 16.128.040 of SZDC would allow land use approvals granted on or after January 1, 2007 through December 31, 2009 until 2013 to begin construction or record the final plat; and

WHEREAS, the proposed amendments were reviewed for compliance and consistency with the Comprehensive Plan, regional and state regulations and found to be fully compliant; and

WHEREAS, the proposed amendments were subject to full and proper notice and review and a public hearing was held before the Planning Commission on March 23, 2010; and

WHEREAS, the Planning Commission voted to forward a recommendation of approval to the City Council for the proposed development code modifications in Exhibit 1 based on the analysis and findings of the staff report contained in Exhibit 2; and

WHEREAS, the City Council held a public hearing on April 6, 2010 and determined that the proposed changes to the Development Code met the applicable Comprehensive Plan criteria and continued to be consistent with regional and state standards.

NOW, THEREFORE, THE CITY OF SHERWOOD ORDAINS AS FOLLOWS:

Section 1. Findings. After full and due consideration of the application, the Planning Commission recommendation, the record, findings, and of the evidence presented at the public

hearing, the Council finds that the text of Sections 16.90.020(6), 16.124.010 and 16.128.040 of the SZCDC shall be amended as documented in Exhibit 1; therefore, the Council adopts the findings of fact contained in the Planning Commission recommendation attached as Exhibit 2.

Section 2. Approval. The proposed amendments for Plan Text Amendment (PA) 10-01 identified in the attached Exhibit 1 are hereby **APPROVED**.

Section 3 - Manager Authorized. The Planning Department is hereby directed to take such action as may be necessary to document this amendment, including notice of adoption to DLCD and necessary updates to Chapter 16 of the municipal code in accordance with City ordinances and regulations.

Section 4 - Applicability. The amendments to the City of Sherwood Zoning and Community Development Code by Sections 1 to 3 of this Ordinance apply to all land use decisions approved by the City on and after January 1, 2007 through December 31, 2009.

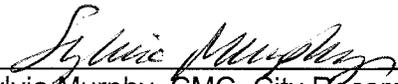
Section 5 - Effective Date. This ordinance shall become effective the 30th day after its enactment by the City Council and approval by the Mayor.

Duly passed by the City Council this 6th day of April 2010.



Keith S. Mays, Mayor

ATTEST:



Sylvia Murphy, CMC, City Recorder

	<u>AYE</u>	<u>NAY</u>
Folsom	<u>Absent</u>	_____
Clark	<u>✓</u>	_____
Weislogel	<u>✓</u>	_____
Henderson	<u>✓</u>	_____
Grant	<u>✓</u>	_____
Heironimus	<u>✓</u>	_____
Mays	<u>✓</u>	_____

Proposed Code Language

16.90.020.6 Community Design- Site Plan Review- Time Limits

Site plan approvals shall be void after two (2) years unless construction on the site has begun, as determined by the City. The City may extend site plan approvals for an additional period not to exceed one (1) year, upon written request from the applicant showing adequate cause for such extension, and payment of an extension application fee as per Section 16.74.010. For site plan approvals granted on or after January 1, 2007 through December 31, 2009, the approval shall be extended until December 31, 2013.

16.124.010 Subdivisions and Partitions- Final Plats- Generally

1. Time Limits

Within two (2) years after approval of the preliminary plat, a final plat shall be submitted. The subdivider shall submit to the City the original drawings, the cloth, and fifteen (15) prints of the final plat, and all supplementary information required by or pursuant to this Code. Upon approval of the final plat drawing, the applicant may submit the mylar for final signature.

2. Extensions

After the expiration of the two (2) year period following preliminary plat approval, the plat must be resubmitted for new approval. The City may, upon written request by the applicant, grant a single extension up to one (1) year upon a written finding that the facts upon which approval was based have not changed to an extent sufficient to warrant refiling of the preliminary plat and that no other development approval would be affected. For preliminary plat approvals granted on or after January 1, 2007 through December 31, 2009, the approval shall be extended until December 31, 2013.

16.128.040 Subdivisions and Partitions- Land Divisions- Filing Requirements

1. Generally

Within twelve (12) months after City approval of a minor land partition, a partition plat shall be submitted to Washington County in accordance with its final partition plat and recording requirements.

2. Extension

After expiration of the twelve (12) months period following partition approval, the partition must be resubmitted for new approval. The City Manager or his/her designee may upon written request by the applicant, grant an extension up to twelve (12) months upon a written finding that the facts have not changed to an extent sufficient to warrant refiling of the partition and that no other development approval would be affected. For partitions granted on or after January 1, 2007 through December 31, 2009, the approval shall be extended until December 31, 2013.

Proposal: The proposed code language amends the development code standards regarding the Land Use Approval Time Extension, Sections 16.90.020(6), 16.124.010 and 16.128.040 of the Sherwood Zoning and Community Development Code (SZCDC). The proposed code amendment language allows applicants who received land use approval between January 1, 2007 and December 31, 2009, an extension of the land use approval due to the current economic conditions. The Code amendments initially proposed at the Planning Commission Hearing are attached as **Exhibit A**. After hearing testimony, the Planning Commission found a longer time extension until a date certain would provide developers with the most flexibility in ensuring the development of their property. The Planning Commission's recommended Code language is attached as **Exhibit E** to this Planning Commission recommendation. The Planning Commission also recommended making it clear that, regardless of the specific language projects that may have already expired during this time should also be included in this time extension code amendment. With those modifications, the Planning Commission voted to forward a recommendation of approval to the City Council based on the analysis, public testimony and finding contained within this report.

Patrick Allen, Planning Commission Chair

I. BACKGROUND

- A. Legislative History: The current time extension provisions of SZCDC sections 16.90.020(6), 16.124.010 and 16.128.040 allow a one-year extension of time for land use approvals granted for those applicants who are unable to begin construction of their project or submit for final plat within the initial one- or two-year time period allowance. Applicants must pay a fee and provide an explanation for the need of an extension. Staff reviews the application and may authorize the initial one-year extension.
- B. Location: Citywide
- C. Review Type: The legislative change to the Development Code requires a Type V review with a public hearing before the Planning Commission who will make a recommendation to the City Council. The City Council will then hold a public hearing and make a decision after consideration of public comment. The Land Use Board of Appeals (LUBA) would hear an appeal.
- D. Public Notice and Hearing: Staff posted notice of the pending hearing in five locations throughout the City on March 2, 2010. The notice was published in the Tigard/Tualatin Times on March 11, and March 18, 2010 in accordance with Section 16.72.020 of the SZCDC.
- E. Review Criteria: The required findings for a "Plan Amendment" are identified in § 16.80 of the Sherwood Zoning and Community Development Code.

II. PUBLIC COMMENTS

Staff received comments from several applicants facing an expiration of their land use approval due to the poor economy and the inability to get funding for their projects thus prompting this action. Staff sent notice on March 3, 2010 to applicants who received land use approval from 2007-2009, but had not begun construction. After notice was sent, but prior to the hearing on March 23, 2010, staff received the following comments.

Scott Mazzuca, 3rd St. Partition (SP 08-01) supported the time extension and explained his situation. Mr. Mazzuca's email correspondence is attached as Exhibit B.

Lans Stout, Winslow Site Plan (SP 08-08) supported the time extension but preferred an automatic onetime extension for those projects approved during 2007-2009. He supported a waiver of fees and no application submittal for these projects to avoid further burden to these applicants. Mr. Stout's correspondence is attached as Exhibit C.

Staff Response: Mr. Stout's proposal was originally considered by the Planning Commission during a work session on February 23, 2010 and it was determined that it did not offer enough scrutiny of the land use approvals or knowledge of the applicant's intention to move forward on the project as approved.

At the hearing, the Planning Commission received public testimony from the following:

Jim Claus, 22211 SW Pacific Hwy, Sherwood testified that the development and approval processes that the City established were causing the delay the developers experienced. He took no position on the proposed Code amendment.

Susan Claus 22211 SW Pacific Hwy, Sherwood requested information regarding the hearing notice and a complete list of projects affected by this legislation. She noted the staff report states that requests from developers were made to staff for a time extension before the staff report was written and she wished to review this correspondence. She believed that notice of the time extension was not adequately distributed to affected developers and the list that was provided to her was not a complete list of those developers. She requested to leave the record open to review the extension requests planning staff received. She later rescinded her request in order for the legislation to move forward to the City Council.

Scott Mazzuca P.O. Box 2263, Tualatin, testified and reiterated his support of the proposed Code language. He described the difficulty he and other housing developers were having in receiving financing from the banks. He supported the proposal, but also requested a longer extension in order to ensure that the projects could be developed.

Patrick Huske, 23352 SW Murdock Road, Sherwood testified that he also was having difficulty completing his partition and requested the time extension. He stated that a one year extension was not long enough of an extension due to economic conditions and the environmental clean up on his subject

property was not foreseen at the time of the preliminary land use approval. He requested that Code language be developed to allow staff to have more flexibility allowing a longer extension provision in the event of an unforeseen hardship that befalls a developer.

III. AGENCY COMMENTS

Staff sent e-notice to affected agencies on March 4, 2010. The City received no response or no comment from the following agencies indicating that they had no comment or objections: Kinder Morgan, ODOT Signs, TVWD, Tri-met, NW Natural, Sherwood Broadband, BPA, CWS, DSL, Sherwood School District, TVF&R, Pride, Raindrops 2 Refuge, Portland Western RR, Metro, Washington County, ODOT, and PGE.

IV. PLAN AMENDMENT REVIEW

A. APPLICABLE DEVELOPMENT CODE CRITERIA

16.80.030.1

Text Amendment:

An amendment to the text of the Comprehensive Plan shall be based upon a need for such an amendment as identified by the Council or the Commission. Such an amendment shall be consistent with the intent of the adopted Sherwood Comprehensive Plan, and with all other provisions of the Plan, the Transportation System Plan and this Code, and with any applicable State or City statutes and regulations, including this Section.

Need: From the date of approval, most land use decisions expire after one year (partition) or two years (site plans and subdivisions). Historically, this has been sufficient time for applicants to complete their projects. If not, the City offers a one-year extension process. As most recent economic news indicates, progress on residential and commercial real estate has been stymied by poor economic conditions throughout the region and nation. Over twenty land use approvals in the City have languished in the preliminary approval phase and have not moved forward with construction due to a number of factors, but primarily due to the recession. Some of the approvals granted in 2007 have already received a one-year extension. A special extension for projects approved from 2007-2009 who have not begun construction would allow them the extra time needed to move forward with their development until the sunset date of December 31, 2013.

Plan Provisions: The plan amendment is reviewed for consistency with applicable Comprehensive Plan policies and the statewide planning goals within this report. No applicable Metro Functional Plan policies affect this decision.

FINDING: Based on the above discussion, the proposed amendment complies with this standard.

16.80.030.3 - Transportation Planning Rule Consistency

- A. Review of plan and text amendment applications for effect on transportation facilities. Proposals shall be reviewed to determine whether it significantly affects a transportation**

facility, in accordance with OAR 660-12-0060 (the TPR). Review is required when a development application includes a proposed amendment to the Comprehensive Plan or changes to land use regulations.

- B. "Significant" means that the transportation facility would change the functional classification of an existing or planned transportation facility, change the standards implementing a functional classification, allow types of land use, allow types or levels of land use that would result in levels of travel or access that are inconsistent with the functional classification of a transportation facility, or would reduce the level of service of the facility below the minimum level identified on the Transportation System Plan
- C. Per OAR 660-12-0060, Amendments to the Comprehensive Plan or changes to land use regulations which significantly affect a transportation facility shall assure that allowed land uses are consistent with the function, capacity, and level of service of the facility identified in the Transportation System Plan.

The proposed Code language does not allow for any changes in the already approved land use decision, only an extension of that approval. Through the approval process, the approval authority considered the impacts of the development on the transportation facilities. No changes have been made to the Transportation System Plan since 2006, prior to approval of any of the projects affected by the proposed approval extensions.

FINDING: The proposed language does not affect the transportation system and this section is not applicable.

B. APPLICABLE COMPREHENSIVE PLAN POLICIES

The purpose of the Comprehensive Plan is to guide the growth and development of the Sherwood Planning Area consistent with the City policy goals and State goals and guidelines. Each land use decision subject to the proposed amendment must meet the applicable development code criteria, including compatibility with the Comprehensive Plan. Additionally, the extensions criteria do not negatively affect any of the other Comprehensive Plan policies and have addressed the general themes found within the Comprehensive Plan.

FINDING: Based on the above discussion, this section is not applicable.

C. APPLICABLE STATEWIDE PLANNING GOALS

Goal 1 (Citizen Involvement) To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.

Staff posted notice of the text amendment at five locations throughout the City. Notice of this amendment was published in the local paper two times before the date of this hearing.

FINDING: Staff utilized the public notice requirements of the Code to notify the public of this proposed plan amendment. The City's public notice requirements have been found to comply with Goal 1 and therefore, this proposal meets Goal 1.

Goal 2 (Land Use Planning)

Goal 3 (Agricultural Lands)

Goal 4 (Forest Lands)

Goal 5 (Natural Resources, Scenic and Historic Areas and Open Spaces)

Goal 6 (Air, Water and Land Resources Quality)

Goal 7 (Areas Subject to Natural Hazards)

Goal 8 (Recreational Needs)

FINDING: The Statewide Planning Goals 2-8 do not specifically apply to this proposed plan amendment; however, the proposal does not conflict with the stated goals.

Goal 9 (Economic Development) To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens.

One of the primary reasons for the proposed land use time extension amendment has been a consideration of the recent economic situation. There are many uncertainties that have led applicants and developers to put their projects on hold and not begin construction outside of the normal control of the applicants. By extending the qualified approvals, this land use ordinance will have the positive effect of allowing development to proceed when the economy has recovered. This will help avoid the redundancy of a re-application and thus save the applicant time and money.

FINDING: Based on the above discussion, the proposed amendment satisfies the intention of Statewide Planning Goal 9.

Goal 10 (Housing)

Goal 11 (Public Facilities and Services)

Goal 12 (Transportation)

Goal 13 (Energy Conservation)

Goal 14 (Urbanization)

Goal 15 (Willamette River Greenway)

Goal 16 (Estuarine Resources)

Goal 17 (Coastal Shorelands)

Goal 18 (Beaches and Dunes)

Goal 19 (Ocean Resources)

FINDING: The Statewide Planning Goals 10-19 do not specifically apply to this proposed plan amendment; however, the proposal does not conflict with the stated goals.

Planning Commission assessment and recommendation on Plan Amendment:

Based on the discussion, staff recommendations, findings of fact and conclusions of law detailed above, the Planning Commission finds that the proposed plan amendment meets applicable local and state criteria and there are no applicable regional criteria.

The Planning Commission **RECOMMENDS APPROVAL** of *PA 10-01 Land Use Approval Time Extension* to the Sherwood City Council.

Exhibits

A – Proposed Staff Report Development Code amendments to Sections 16.90.020(6), 16.124.010, 16.128.040

B- Email Comment from Scott Mazucca, scott.mazucca@gmail.com

C- Email Comment from Lans Stout, LStout@tmrippey.com

D- Email Comment from Susan Claus ClausSL@aol.com submitted at the hearing

E- Planning Commission recommended Development Code amendments to Sections 16.90.020(6), 16.124.010, 16.128.040