0145-0012

95-13795

REVIEWED
BWW
LEGAL COUNSEL

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending Chapter 22.36 of the Deschutes County Code, the County Procedures Ordinance, the Various Zoning Ordinances and the Subdivision Ordinance Regarding Expiration of Land Use Approvals and Declaring an Emergency. *

ORDINANCE NO. 95-018

WHEREAS, standards included in OAR 660-33-140, Permit Expiration Dates, for land use permits granted in conjunction with development of farm or forest lands do not correspond with the Limitations on Approvals for land use permits in Chapter 22.36 of the Deschutes County Procedures Ordinance; and

WHEREAS, the the standards for Limitations on Approvals of land use approvals included in Chapter 22.36 of the County Code should correspond with the State Rule; and

WHEREAS, it is appropriate that all land use approvals granted by the County be subject to the same standards for expiration; and

WHEREAS, public hearings have been held on the proposed amendments consistent with state and county law; and

WHEREAS, the Deschutes County Planning Commission recommended that the proposed amendments be adopted by the Board of County Commissioners; now therefore,

THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY ORDAINS as follows:

Amendments to Title 22 (Procedures Ordinance)

Section 1. Section 22.36.010 of Title 22 is repealed and replaced with the following new provision, as follows:

"22.36.010 Expiration of Approval

A. Scope

1. Except as otherwise provided herein, this section shall apply to and describe the duration of all approvals of land use permits provided for under the Deschutes County Land Use Procedures Ordinance, the various zoning ordinances administered by Deschutes County and the subdivision/partition ordinance.

KEYPUNCHED MAY 02 1995

MICROFILMED MAY 02 1995

2. This section does not apply to:

   a. Those determinations, such as verifications of non-conforming uses, lot of record determinations and expiration determinations, that involve a determination of the legal status of a property, land use or land use permit rather than whether a particular application for a specific land use meets the applicable standards of the zoning ordinance. Such determinations, whether favorable or not to the applicant or land owner, shall be final, unless appealed, and shall not be subject to any time limits.

   b. Temporary use permits of all kinds, which shall be governed by applicable ordinance provisions specifying the duration of such permits; and

   c. Quasi-judicial map changes.

B. Duration of Approvals

1. Except as otherwise provided under this section or under applicable zoning ordinance provisions, a land use permit is void two years after the date the discretionary decision becomes final if the use approved in the permit is not initiated within that time period.

2. Except as otherwise provided under applicable ordinance provisions, preliminary approval of plats or master plans shall be void after two years from the date of preliminary approval, unless the final plat has been submitted to the Planning Division for final approval within that time period, an extension is sought under this section or the preliminary plat or master plan approval has been initiated as defined herein.

3. In cases of a land use approval authorized under applicable approval criteria to be completed in phases, each phase must be initiated within the time specified in the approval, or initiated within two (2) years of completion of the prior phase if no timetable is specified.

C. Extensions

1. The Planning Director may grant one extension of up to one year for a land use approval or a phase of a land use approval, regardless of whether the applicable criteria have changed, if:

   a. An applicant makes a written request for an extension of the development approval period;

   b. The request, along with the appropriate fee, is submitted to the county prior to the expiration of the approval period;

   c. The applicant states reasons that prevented the applicant from beginning or continuing development or meeting conditions of approval within the approval period; and

   d. The county determines that the applicant was unable to begin or continue development or meet conditions of approval during the approval period for reasons for which the applicant was not responsible, including, but not limited to, delay by a state or federal agency in issuing a required permit.

2. Up to two additional one-year extensions may be granted under the above criteria by the Planning Director or his designees where applicable criteria for the decision have not changed.

D. Procedures

1. Any holder of a permit may apply for a determination of whether a land use has been initiated. In addition, the Planning Director may cause such a review to be initiated without receipt of an application from the permit holder. Such determinations, if they involve discretion, shall be treated under this chapter as a land use action.

2. Approval of an extension granted under this rule is an administrative decision, is not a

land use decision described in ORS 197.015 or this title and is not subject to appeal as a land use decision.

E. Effect of Appeals

The time period set forth in subsection B of this section shall be tolled upon filing of an appeal to LUBA until all appeals are resolved."

Section 2. Section 22.36.020 of Title 22 is repealed and replaced with the following new provision, as follows:

"22.36.020 Initiation of Use

A. For the purposes of this Chapter, development action undertaken under a land use approval described in Section 22.36.010, has been "initiated" if it is determined that:

1. The proposed use has lawfully occurred;

2. Substantial construction toward completion of the land use approval has taken place; or

3. Where construction is not required by the approval, the conditions of a permit or approval have been substantially exercised and any failure to fully comply with the conditions is not the fault of the applicant.

B. For the purposes of this section, "substantial construction" has occurred when the holder of a land use approval has physically altered the land or structure or changed the use thereof and such alteration or change is directed toward the completion and is sufficient in terms of time, labor or meny spent to demonstrate a good faith effort to complete the development."

Section 2A. A new provision is added to Chapter 22.36 of Title 22 of the Deschutes County Code as Section 22.36.025, as follows:

"22.36.025 Transition Rules - Applicability

A. The two-year duration period set forth in section 22.36.010(B) shall be applied only to land use approvals issued after the effective date of Ordinance 95-018.

B. Notwithstanding any condition to the contrary in an individual approval, a determination may be made for any land use approval described in Section 22.36.010(B) whether or not issued prior to the effective date of Ordinance 95-018, under Section 22.36.010(D)(1) as to whether a use was "initiated"

within the duration of the land use approval. If it is determined that the use was "initiated" during the life of the permit, the permit will be considered to be a valid subsisting permit and any land use described in the permit will be deemed to be authorized under the County's ordinances, subject to any applicable revocation provisions.

C. For any land use approvals whose initial term had not expired as of the effective date of this ordinance, extensions may be granted under Section 22.36.010(C) or, except for permits in the farm zones, as a matter of discretion by the Planning Director as set forth under former DCC Section 22.36.020 otherwise repealed by Ordinance 95-018."

Amendments to Title 18 (County Zoning Ordinance)

Section 3. Section 18.128.040(T), "Conditional Uses - Specific Use Standards - Shopping Complex," of Title 18 is amended to read as follows:

"T. Shopping Complex.

1. Such uses may be authorized as a conditional use only after a determination is made by the Planning Director or Hearings Body.

a. That the public interest will be served by approval of the proposal based on analysis of environmental, social and economic and energy impacts likely to result from the development. Analysis may include, but not be limited to, consideration of impacts on public facilities such as roads, water supplies, sewer systems and police and fire protection.

b. That the entire complex shall be completed within [one year] **two years** or a master plan shall be submitted that explains the phased development of the project. The master plan shall specify a timetable of completion for all phases of the project. The master plan shall be fully implemented within five years or [extended] **an extension shall be sought** subject to the terms of Deschutes County Code Title 22, the Uniform Development Procedures Ordinance.

c. That there is adequate area for the buildings, landscaping, parking, septic systems and access to serve the proposed development.

d. That the use is consistent with the character of the area and is not detrimental to the land use pattern of the area.

e. That the proposed shopping complex is to be

developed and managed as a total entity, with a plan for maintenance of all elements of the site plan.

f. The proposed shopping complex is appropriate for serving the needs of rural residents in the area.

g. The proposed shopping complex will not attract residents outside the rural area to be serviced."

Section 4. Section 18.128.060, "Conditional Uses - Time Limits on a Permit for a Conditional Use," of Title 18 is repealed and replaced with the following provisions:

"18.128.060 Time Limits on a Permit for a Conditional Use

Duration of permits issued under this chapter shall be as set forth in chapter 22.36 of the Deschutes County Code."

Section 5. Section 18.140.080, "Revocation," of Title 18 is amended to read as follows:

"18.140.080 Revocation.

The Planning Director or Hearings Body may revoke or modify any permit granted under the provisions of this title on one or more of the following grounds:

A. A permit may be revoked on the basis of fraud, concealment, misrepresentation or inaccurate information supplied on the application or offered by the applicant or his representative at a public hearing.

[B. A permit may be revoked on the basis that the use for which such permit was granted is not being exercised within the time limit set for the by the Planning Director or Hearings Body or this title.]

B[C]. A permit may be revoked on the basis that the use for which such permit was granted has ceased to exist or has been suspended for one year or more.

C[D]. A permit may be revoked or modified on the basis that the use for which the permit was granted was so exercised as to be detrimental to the public health, safety or welfare, or in such a manner as to constitute a nuisance.

D[E]. Any permit granted pursuant to this title shall become null and void if not exercised within the time period specified in such permit or, if no time period is specified in the permit, within [one year] **two years** from the date of approval of said permit. The Planning Director or Hearings Body shall hold a public hearing on any proposed revocation

after giving written notice to the permittee and other affected persons as set forth in Deschutes County Code Title 22, the Uniform Development Procedures Ordinance. The Planning Director or Hearings Body shall render his decision within 45 days after the conclusion of the hearing. Appeals from the action of the Planning Director or Hearings Body shall be filed in the manner provided in Deschutes County Code Title 22, the Uniform Development Procedures Ordinance."

Amendments to Title 19 (Bend Urban Area Zoning Ordinance)

Section 6. Section 19.100.060, "Conditional Use Permits - Action on Application," of Title 19 is amended to read as follows:

"19.100.060 Action on Application

The Planning Director or Hearings Body may approve, approve with conditions or disapprove the application for a conditional use permit subject to the land use procedures ordinance. In permitting a conditional use, the Planning Director or Hearings Body may impose, in addition to the regulations and standards expressly specified in this Ordinance, other conditions found necessary to protect the best interests of the surrounding property or neighborhood or the urban area as a whole. Any future enlargement or alteration of the use shall be reviewed by the County and new conditions may be imposed.

A. In order to grant any conditional use, the Planning Director or Hearings Body must find that the establishment, maintenance or operation of the use applied for will not, under the circumstances of the particular case, be detrimental to the health, safety or general welfare of persons residing or working in the neighborhood of such proposed uses, or be detrimental or injurious to the property and improvements in the neighborhood or the the general welfare of the urban area.

[B. A conditional use permit shall become void one year after approval, or after such greater or lesser time as may be specified as a condition of approval, unless within that time the required building construction, alteration, or enlargement has been commenced and diligently pursued or, if no such construction, alteration, or enlargement is required, unless the permitted activity is being regularly conducted in the premises. Upon request, the Planning Director or Hearings Body may extend the permit for a period of one year.]

B. Duration of permits issued under this chapter shall be as set forth in chapter 22.36 of the Deschutes County Code."

Section 7. Section 19.104.090, "Planned Unit Development Approval -Hearings Body Action," of Title 19 is amended to read as follows:

"19.104.090 Hearings Body Action

In taking action, the Planning Director or Hearings Body may approve, approve with conditions or deny an application as submitted. Any planned unit development as authorized shall be subject to all conditions imposed and shall be excepted from other provisions of this Ordinance only to the extent specified in said authorization. Any approval of a planned unit development granted hereunder shall lapse and become void within [12 months] **two years** after the final granting of approval or within such other period of time as may be stipulated by the Hearings Body or Planning Director as a condition of such approval, construction of the buildings or structure involved in the development has begun and been diligently pursued. The Planning Director or Hearings Body may further impoe other conditions limiting the time within which the development of partions thereof must be completed. The decision of the Planning Director or Hearings Body shall be final unless appealed in accordance with the procedures set forth in the land use procedures ordinance."

Amendments to Title 20 (Redmond Urban Area Zoning Ordinance)

Section 8. Section 20.96.010, "Final Development Plan and Program (P.U.D. District) - Time Limit for Filing," of Title 20 is amended to read as follows:

"20.96.010 Time Limit for Filing

Upon acceptance in principle by the Hearings Body or acceptance in principle with modifications required by the Hearings Body of planned unit development, the owner-applicant shall file with the Hearings Body within [one year] **two years** of the preliminary approval of the Hearings Body, a final develdopment plan and program. The Hearings Body may grant an extension for filing an additional [180 days] one year upon request by the owner-applicant. In addition, the developer may submit such additional data as may be required by the subdivision code of the county seeking contemporaneous approval of the subdivision plat with approval of the final plan and program."

Section 9. Section 20.116.080, "Conditional Use - Time Limit," of Title 20 is repealed and replaced to read as follows:

"20.116.080 Time Limit on a Permit for a Conditional Use

Duration of permits issued under this chapter shall be as set forth in chapter 22.36 of the Deschutes County Code."

Section 10. Section 20.124.060, "Time Limits on Approval of a Variance," of Title 20 is repealed and replaced to read as follows:

"20.124.060 Time Limits on Approval of a Variance

Duration of variances issued under this chapter shall be as set forth in chapter 22.36 of the Deschutes County Code."

Amendments to PL-17 (Sisters Urban Area Zoning Ordinance)

Section 11. Paragraph 6(B) of Section 20, "Conditional Use Permits," of PL-17 is repealed and replaced to read as follows:

"B. Duration of permits issued under this chapter shall be as set forth in chapter 22.36 of the Deschutes County Code."

Section 12. Paragraph 7 of Section 21, "Variances," of PL-17 is repealed and replaced to read as follows:

"7. Time Limit on Approval of a Variance. Duration of variances issued under this chapter shall be as set forth in chapter 22.36 of the Deschutes County Code."

Section 13. Paragraph 1 of Section 22, "Revocation of Permits or Variances," of PL-17 is repealed:

"[1. Revocation of Permits Automatic if Not Used. Any conditional use permit or variance granted in accordance with the terms of this Ordinance shall be deemed revoked if not used within one year from the date of approval or such time as specified by the Planning Commission. Said permit shall not be deemed used until the applicant has actually obtained a building permit and commenced construction thereunder, or has actually commenced the permitted use on the premises.]"

Section 14. Paragraph 9 of Section 30, "Planned Unit Development Approval," of PL-17 is amended to read as follows:

"9. Hearings Body Action. In taking action, the hearings body may approve, approve with conditions or deny an application as submitted. Any planned unit development as authorized shall be subject to all conditions imposed and shall be excepted from other provisions of this Ordinance only to the extent specified in said authorization. Any approval of a planned unit development granted hereunder shall lapse and become void within [12 months] **two years** after the final granting of approval or within such other period of time as may be stipulated by the Hearings Body or Planning Director as a condition of such approval, construction of the buildings or structure involved in the development has begun and been

diligently pursued. The Hearings Body may further impose other conditions limiting the time within which the development of partions thereof must be completed. The decision of the Planning Director or Hearings Body shall be final unless appealed to a higher hearings body according to the procedures set forth in [Section 35] title 22."

Amendments to Title 17 (Subdivision/Partition Ordinance)

Section 15. Section 17.24.020, "Final Plat - Submission - Extension," of Title 17 is amended to read as follows:

"17.24.020 Submission - Extension.

A. Filing Time Period Requirements. Except as provided for in Section 17.24.030 of the chapter, the applicant shall prepare and submit to the planning department a final plat that is in conformance with the tentative plan as approved. Within [one year] **two years** of the approval date for the tentative plan for a subdivision or partition, the applicant shall submit an original drawing, a filing fee NS ny supplementary information required by this title and the hearings body. If the applicant fails to proceed with a submission before the expiration of the [one-year] **two-year** period following the approval of the tentative plan, the plan approval shall be void. The applicant may, however, submit a new tentative plan together with the appropriate filing fee.

B. Extension

[1. If it appears the applicant will not be able to comply with the filing time requirements of this title, he may submit a written application to the planning director or his designee requesting an extension of the filing time requirement. The application shall be filed no earlier than sixty days and no later than ten days prior to the date the one-year period expires. It shall also be accompanied by the appropriate fee.]

[2.] An extension may only be granted in conformance with the applicable provisions of the Deschutes County Development Procedures Ordinance."

Section 16. Section 17.24.030, "Final Plat - Submission for Phased Development," of Title 17 is amended to read as follows:

"17.24.030 Submission for Phased Development

A. If a tentative plan is approved for phased development, the final plat for the first phase shall be filed within [one year] **two years** of the approval date for the tentative plan.

B. The final plats for any subsequent phase shall be filed within three years of the [approved] **recording** date [for] **of** the [tentative plan] **final plat for the first phase.**

C. The applicant may request an extension for any final plat under this section in the manner provided for in Section 17.24.020(B) of this chapter.

D. If the applicant fails to file a final plat, the tentative plan for those phases shall become null and void."

Section 17. CODIFICATION. County Legal Counsel shall have the authority to format the provisions contained herein in a manner that will integrate them into the County Code consistent with the County Legal Counsel form and style for ordinance codification. Such codification shall include the authority to make format changes, to make changes in numbering systems and to make such numbering changes consistent with interrelated code sections. In addition, as part of codification of these ordinances, County Legal Counsel may insert appropriate legislative history reference. Any legislative history references included herein are not adopted as part of the substance of this ordinance, but are included for administrative convenience and as a reference. They may be changed to correct errors and to conform to proper style without action of the Board of County Commissioners.

Section 18. REPEAL OF ORDINANCES AS AFFECTING EXISTING LIABILITIES. The repeal, express or implied, of any ordinance, ordinance provision, code section, or any map or any line on a map incorporated therein by reference, by this amending ordinance shall not release or extinguish any duty, condition, penalty, forfeiture, or liability previously incurred or that may hereafter be incurred under such ordinance, unless a provision of this amending ordinance shall so expressly provide, and such ordinance repealed shall be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such duty, condition, penalty, forfeiture, or liability, and for the purpose of authorizing the prosecution, conviction and punishment of the person or persons who previously violated the repealed ordinance.

Section 19. SEVERABILITY. The provisions of this ordinance are severable. If any sentence, clause, or phrase of this ordinance is found to be invalid by a court of competent jurisdiction that decision shall not affect the validity of the remaining portions of this ordinance.

Section 20. CORRECTIONS. This ordinance may be corrected by order of the Board of County Commissioners to cure editorial and clerical errors and to insert appropriate legislative history references.

\\
\\

Section 21. EMERGENCY. This Ordinance being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this Ordinance takes effect on its passage.

DATED this 26 day of April, 1995.

BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

BARRY H. SLAUGHTER, Chairman

NANCY POPE SCHLANGEN, Commissioner

ROBERT L. NIPPER, Commissioner

ATTEST:

Recording Secretary