

ANDREW H. STAMP, P.C.
ATTORNEY AT LAW
Kruse-Mercantile Professional Offices, Suite 16
4248 Galewood St.
Lake Oswego, OR 97035

Admitted in Oregon.

Tele: 503.675.4318
Fax: 503.675.4319
andrewstamp@comcast.net

VIA EMAIL

Coos County Planning Dept.
Attn: Jill Rolfe
250 N. Baxter Street
Coquille, OR 97423

Re: AP-18-001 and AP 18-002

Dear Ms. Rolfe:

At the hearing last Friday, opponents raised an issue as to whether more extension can be granted under CCZLDO § 5.2.600(2). Although the County has in the past granted multiple extensions in these pipeline cases, I do not think this precise issue has been raised in previous appeals.

During the hearing, I mentioned the case of *Scovel v. City of Astoria*, 60 Or LUBA 371 (2009). The Astoria Code at issue allowed "the Commission" "at its discretion" to "extend authorization for an additional period up to one year" if there is a "request" by the permit holder. In finding that only one appeal period was authorized, LUBA noted that the use of the indefinite article "an" suggests a single extension period, as does the choice of the singular noun "period."

The Coos County Code appears to expressly allow serial extensions for permits issued on Farm and Forest lands, which is consistent with state administrative law. *See* CCZLDO § 5.2.600(1)(c) (implementing OAR 660-033-0140(4)). However, there does not appear to be a corresponding provision applicable to non-resource zoned property. *Compare* CCZLDO § 5.2.600(2). Given CCZLDO § 5.2.600(1)(c), my first impression is that a simple application of ORS 174.010 precludes an interpretation of CCZLDO § 5.2.600(2) that allows serial extensions on non-resource zoned property because it "inserts" what has been "omitted."

The criteria set forth in CCZLDO § 5.2.600 are reproduced below, with the key provisions highlighted.

*Any conditional use not initiated within the time frame set forth in subsection (3) of this section may be granted **an extension** provided that an applicant has made a request and provided the appropriate fee for **an extension** prior to the expiration of the conditional use permit approval. Such request shall be considered an Administrative Action and shall be submitted to the Director.*

1. Extensions on Farm and Forest (Resource) Zoned Property shall comply with OAR 660-033-0140 Permit Expiration Dates which states:

a. Except as provided for in subsection (e) of this section, a discretionary decision, except for a land division, made after the effective date of this section approving a proposed development on agricultural or forest land outside an urban growth boundary is void two years from the date of the final decision if the development action is not initiated in that period.

*b. Coos County may grant **one extension period** of up to 12 months if:*

- i. An applicant makes a written request for an extension of the development approval period;*
- ii. The request is submitted to the county prior to the expiration of the approval period;*
- iii. The applicant states reasons that prevented the applicant from beginning or continuing development within the approval period; and*
- iv. The county determines that the applicant was unable to begin or continue development during the approval period for reasons for which the applicant was not responsible.*

c. Additional one-year extensions may be authorized where applicable criteria for the decision have not changed.

d. If a permit is approved for a proposed residential development on agricultural or forest land outside of an urban growth boundary, the permit shall be valid for four years. An extension of a permit described in subsection (e) of this section shall be valid for two years.

e. For the purposes of subsection (e) of this section, "residential development" only includes the dwellings provided for under in the EFU and Forest zones in Chapter 4.

f. Extension requests do not apply to temporary use permits, compliance determinations or zoning compliance letters.

2. Extensions on all non-resource zoned property shall be governed by the following.

*a. The Director shall grant **an extension** of up to two (2) years so long as the use is still listed as a conditional use under current zoning regulations.*

b. If use or development under the permit has not begun within two (2) years of the date of approval and an extension has not been requested prior to the expiration of the conditional use then that conditional use is deemed to be invalid and a new application is required.

*c. If **an extension** is granted, the conditional use will remain valid for the additional two years from the date of the original expiration.*

3. Time frames for conditional uses and extensions are as follows:

a. All conditional uses within non-resource zones are valid four (4) years from the date of approval; and

b. All conditional uses for dwellings within resource zones outside of the urban growth boundary or urban unincorporated community are valid four (4) years from the date of approval.

c. All non-residential conditional uses within resource zones are valid (2) years from the date of approval.

d. For purposes of this section, the date of approval is the date the appeal period has expired and no appeals have been filed, or all appeals have been exhausted and final judgments are effective.

Ltr to: Jill Rolfe
Re: AP 18-001 & AP 18-002
16 July 2018
Page 4

The hearings officer would greatly appreciate additional briefing from the parties on this potentially dispositive issue. Please distribute this letter to the parties with the attached courtesy copy of the *Scovel* decision.

Sincerely,

ANDREW H. STAMP, P.C.

Andrew H. Stamp

Andrew H. Stamp

AHS:ahs