

Amy Dibble

From: Amy Dibble
Sent: Thursday, January 7, 2021 12:33 PM
To: Katy Eymann
Cc: Planning Department
Subject: RE: File # AP-20-001 appealing File # EXT-20-005

Ms. Eymann,

Please remember to submit a hard copy of your testimony.

Thank you,
Amy Dibble

-----Original Message-----

From: Amy Dibble
Sent: Thursday, January 7, 2021 12:30 PM
To: 'Katy Eymann' <keymann@climateclean.net>
Subject: RE: File # AP-20-001 appealing File # EXT-20-005

Ms. Eymann,

Received. Thank you.

Thank you,
Amy Dibble

-----Original Message-----

From: Katy Eymann <keymann@climateclean.net>
Sent: Thursday, January 7, 2021 12:59 AM
To: Planning Department <planning@co.coos.or.us>
Subject: File # AP-20-001 appealing File # EXT-20-005

This Message originated outside your organization.

Please find attached my submission for the record in this case.

Exhibit 27
Date: 01/07/2021

To: Coos County
From: Katy Eymann
Re: File # AP-20-001 appealing File # EXT-20-005
Date: January 6, 2021

The staff report lists the relevant criteria for *EXPIRATION AND EXTENSION of Conditional Uses* as follows:

CCLDO 5.2.600 (2)

a. Extensions for Non-Residential Development as described in Subsection (2) above may be granted if:

iii. The applicant states reasons that prevented the Applicant from the 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.

The above provision fails to include the amendments to CCLDO 5.2.600 (2). On October 2, 2018, Coos County adopted Ordinance 18-09-009PL, which included a Final Draft Attachment "A" to Ordinance 18-09-009PL. See attached Order with pages 91 and 92. The new CCLDO 5.2.600 is quoted in full below:

1. Permit Expiration Dates for all Conditional Use Approvals and Extensions :

a. On lands zoned Exclusive Farm, Forest, and Forest Mixed Use:

(1) Except as provided for in section (5) of this rule, a discretionary decision, except for a land division, made after the effective date of this division approving a proposed development on agricultural or forest land outside an urban growth boundary under ORS 215.010 to 215.293 and 215.317 to 215.438 or under county legislation or regulation adopted pursuant thereto is void two years from the date of the final decision if the development action is not initiated in that period.

(2) A county may grant one extension period of up to 12 months if:

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

(b) The request 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 within the approval period; and

(d) 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. Coos County has and will continue to accept reasons for which the applicant was not responsible as, but limited too, financial hardship, death or owner, transfer of property, unable to complete conditions of approval and projects that require additional permits. The County's Ordinance does not control other permitting agency processes and the County shall only consider if the applicant has requested other permits as a valid reason and to show they are attempting to satisfy conditions of approval. This is a different standard than actually showing compliance with conditions of approval. This also, does not account for other permits that may be required outside of the land use process. October 2, 2018, Final Draft Attachment "A" Ordinance 18-09-009PL on page 91. Emphasis added. Also attached.

This rule is clear, *"the County shall only consider if the applicant has requested other permits as a valid reason"* for failure to begin or continue development. I argued at the oral hearing that the Applicant did not have a current application for a permit from the Oregon Department of Environmental Quality ("DEQ") for the federal 401 Water Quality Certification. DEQ denied that permit without prejudice on May 6, 2019. I argued that the Applicant's failure to reapply for that permit means its extension request, in this case, should be denied. I have since learned that the Applicant asked FERC to rule that the Oregon DEQ waived its ability to deny a Clean Water Permit because it issued its decision more than one year from Applicant's first application for that permit. The State of Oregon is contesting that request to FERC, stating Oregon ruled within one year from the date of the Applicant's second application for the permit. FERC has not yet ruled on the matter. Consequently, the Applicant's Clean Water Permit application is arguably pending; therefore, the Applicant can be said to have a valid reason for its failure to continue development.

Additionally, I argued that necessary permits governed by the federal Coastal Zone Management Act ("CZMA") did not have current applications. In January of 2020, the Applicant withdrew its application with the Oregon Division of State Land for a Dredge and Fill permit. Another matter governed by the CZMA is the Oregon Department of Land and Conservation Development's determination that the project is not consistent with CZMA. The Applicant has asked the federal Department of Commerce to review and vacate the need for these permits. Consequently, these permits are arguably pending.

Nonetheless, the Applicant has not applied for the following permits required by its conditional use permit. According to current information provided by the Oregon Department of Environmental Quality, Jordan Cove needs stormwater permits for:

- Its liquefied natural gas facilities on the North Spit of Coos Bay
- The Trans Pacific Lane road improvements for the road into the facility from Highway 101
- The Kentuck mitigation site in Coos County
- The former Al Pierce Lumber Co. site in North Bend
- The Pacific Connector pipeline from Malin to the North Spit terminal

DEQ requires these National Pollutant Discharge Elimination System permits for stormwater discharges to surface waters from construction and industrial activities and municipalities if stormwater from rain or snowmelt leaves a site through a "point source" and reaches surface waters either directly or through storm drainage. Projects that disturb more than one acre of land are required to obtain a 1200-C permit. DEQ reports on its website that it is waiting for Jordan Cove to submit a permit application.

Further, according to the DEQ website, a Water Pollution Control Facilities permit is needed to manage the land application of the spent hydrostatic testing water. Hydrostatic testing will be used to check for leaks during the construction of the Pacific Connector pipeline.

The spent water will be land applied in several locations along the pipeline route. DEQ reports on its website that it is waiting for Jordan Cove to submit a complete permit application.

The Applicant's failure to apply for necessary permits means it fails to have a valid reason for its failure to begin or continue development, and therefore the extension must be denied.

A detailed examination of the relevant rule to be applied here reveals problems. CCZLDO SECTION 5.2.600 appears to have typographical errors that would not be picked up by a computerized spell checker, which confuse and muddle its meaning. I respectfully suggest the following corrections represent the intended meaning. The added words below are in bold, and words to be deleted are crossed through.

Coos Co Coos County has and will continue to accept reasons for which the applicant was not responsible ~~such~~ as, but limited ~~to~~ to, financial hardship, death ~~of~~ ~~of~~ owner, transfer of property, ~~unable~~ inability to complete conditions of approval ~~and~~ ~~for~~ **for** projects that require additional permits. The County's Ordinance does not control other permitting agency processes and the County shall only consider if the applicant has requested other permits as a valid reason and to show ~~they are~~ **the applicant is** attempting to satisfy conditions of approval. This is a different standard than actually showing compliance with conditions of approval. This also, does not account for other permits that may be required outside of the land use process.

Too is an adverb that can mean "excessively" or "also." The context of using the word "too" after "limited" seems to suggest it should be the preposition "to." In any event, the plain and existing language establishes that acceptable reasons for an applicant's failure to begin or continue development are limited and listed. The reasons are financial hardship, death of owner, property transfer, or an inability to complete conditions of approval for projects that require additional permits.

The County's Ordinance expressly acknowledges that the County does not control other permitting agency processes. So the County decided that when an Applicant seeks an extension of its permit, the County will only consider as a valid reason for the failure to begin development if the applicant has requested other permits to show it is attempting to satisfy conditions of approval. In this situation, the Applicant has failed to apply for permits required by its conditional permit. Therefore, the Applicant does not have a valid reason for its failure to begin development.

Consequently, the Applicant's request to have its pipeline permit extended must be denied.

BOARD OF COMMISSIONERS

COOS COUNTY

STATE OF OREGON

ORDINANCE No.: 18-09-009PL

In The Matter of Adopting language in the Coos County Zoning and Land Development Ordinance.

SECTION 1. TITLE

This Ordinance shall be known as the "Coos County Ordinance No. 18-09-009PL".

SECTION 2. AUTHORITY

This ordinance is enacted pursuant to the provisions of ORS 203.035 and Chapter 215;

SECTION 3. PURPOSE

The purpose of this Ordinance is to amend the Coos County Zoning and Land Development Ordinance which will, in part,

This ordinance amends Coos County Ordinances 85-03-005L, 84-5-016L and 82-12-022L which adopted Volume I of the Coos County Comprehensive Plan;

SECTION 4. FINDINGS

The Hearings Body reviewed this matter in accordance with Article 5.1 of the Coos County Zoning and Land Development Ordinance. The Board of Commissioners reviewed the matter in both work sessions and in a public hearing. The Board of Commissioners recognizes the needs for legislative updates to include any new land use requirements and improvements to the current requirements. The process in Section 5.1.120 was followed. The Board of Commissioners made a motion to consider that the text amendments were appropriate.

SECTION 5. AMENDMENT TO THE COOS COUNTY ORDINANCE

Exhibit "A", attached hereto and incorporated herein by this reference, is adopted as amendment to Ordinances 85-03-005L, 84-5-016L and 82-12-022L.

SECTION 6. SEVERANCE CLAUSE

If any section, subsection, provision, clause or paragraph of this ordinance shall be adjudged or declared by any court of competent jurisdiction to be unconstitutional or invalid, such judgment shall not affect

the validity of the remaining portions of this ordinance; and it is hereby expressly declared that every other section, subsection, provision, clause or paragraph of this ordinance enacted, irrespective of the enactment or validity of the portion thereof declared to be unconstitutional or invalid, is valid.

SECTION 7. REPEAL OF INCONSISTENT ORDINANCES

Coos County Ordinances 85-03-005L, 84-5-016L and 82-12-022L are repealed to the extent that they are in conflict with this ordinance. Coos County Ordinances 85-03-005L, 84-5-016L and 82-12-022L shall remain in full force and effect in all other respects.

SECTION 8. EMERGENCY CLAUSE

The Board of Commissioners for the County of Coos deems this Ordinance necessary for the immediate preservation and protection of the public peace, safety, health and general welfare for Coos County and declares an emergency exists, and this Ordinance shall be in full force and effective upon its passage.

Dated this 2nd day of October

ATTEST

Jill Kalle
Recording Secretary

Approved as to form:

Elizabeth Plummer
Office of Legal Counsel

BOARD OF COMMISSIONERS

Absent
Chair

[Signature]
Sec Chair

[Signature]
Commissioner

First Reading: September 6, 2018

Second Reading: October 2, 2018

Effective Date: October 2, 2018

SECTION 5.2.600 EXPIRATION AND EXTENSION OF CONDITIONAL USES:

1. Permit Expiration Dates for all Conditional Use Approvals and Extensions :

a. On lands zoned Exclusive Farm, Forest and Forest Mixed Use:

(1) Except as provided for in section (5) of this rule, a discretionary decision, except for a land division, made after the effective date of this division approving a proposed development on agricultural or forest land outside an urban growth boundary under ORS 215.010 to 215.293 and 215.317 to 215.438 or under county legislation or regulation adopted pursuant thereto is void two years from the date of the final decision if the development action is not initiated in that period.

(2) A county may grant one extension period of up to 12 months if:

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

(b) The request 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 within the approval period; and

(d) The county determines that the applicant was unable to begin or continue development during the approval period³

³ The approval period is the time period the original application was valid or the extension is valid. If multiple extensions have been filed the decision maker may only consider the time period that the current extension is valid. Prior approval periods shall not be considered. For example, if this is the third extension request up for review the information provided during the period within last extension time frame shall be considered and not the overall time the application has been approved. This prevents a collateral attack on the original authorization

for reasons for which the applicant was not responsible. Coos County has and will continue to accept reasons for which the applicant was not responsible as, but limited too, financial hardship, death or owner, transfer of property, unable to complete conditions of approval and projects that require additional permits. The County's Ordinance does not control other permitting agency processes and the County shall only consider if the applicant has requested other permits as a valid reason and to show they are attempting to satisfy conditions of approval. This is a different standard than actually showing compliance with conditions of approval. This also, does not account for other permits that may be required outside of the land use process

(3) Approval of an extension granted under this rule is a ministerial decision, is not a land use decision as described in ORS 197.015 and is not subject to appeal as a land use decision.

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

(5) (a) 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.

(b) An extension of a permit described in subsection (5)(a) of this rule shall be valid for two years.

(6) For the purposes of section (5) of this rule, "residential development" only includes the dwellings provided for under ORS 215.213(3) and (4), 215.284, 215.705(1) to (3), 215.720, 215.740, 215.750 and 215.755(1) and (3).

(7) There are no limit on the number of extensions that can be applied for unless this ordinance otherwise allows.

b. On lands not zoned Exclusive Farm, Forest and Forest Mixed Use:

(1) All conditional uses for residential development including overlays shall not expire once they have received approval.

(2) All conditional uses for non residential development including overlays shall be valid for period of four (4) years from the date of final approval.

(3) Extension Requests: a. For all conditional uses subject to an expiration date of four (4) years are eligible for extensions so long as the property has not been: or i. Reconfigured through a property line adjustment or land division; and ii. Rezoned to another zoning district.

(4) An extension shall be applied for on an official Coos County Planning Department Extension Request Form with the fee.

(5) An extension shall be received prior the expiration date of the conditional use or the prior extension.

2. Changes or amendments to areas subject to natural hazards² do not void the original authorization for a use or uses, as they do not determine if a use can or cannot be sited, but how it can be sited with the least amount of risk possible. Overlays and Special Development Considerations may have to be addressed to ensure the use can be sited with an acceptable level risk as established by Coos County.