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RESOLUTION NO. 2009-08-07

An interim zoning ordinance relating to land use; amending CCC 40.500.010 to extend certain land use approvals for up to twelve months.

WHEREAS, the Board finds that Clark County and its citizens are experiencing severe economic hardship due to the local and national economy; and

WHEREAS, the Board recognizes the substantial amount of administrative effort that has been invested by the public and private sector in obtaining preliminary land use approvals; and

WHEREAS, the short term extension of some soon to expire preliminary land use approvals is justified to avoid substantial hardship to persons possessing these approvals and to avoid substantial waste of County administrative resources; and,

WHEREAS, the Board intends that this ordinance apply retroactively; and,

WHEREAS, RCW 36.70A.390 and RCW 35.63.200 authorize the Board to adopt an interim zoning ordinance without holding a public hearing; and

Whereas, the Board has adopted the emergency ordinance and following a duly advertised public hearing finds that adoption of this ordinance will further the public health, safety, and welfare; now, therefore,

BE IT ORDERED, RESOLVED AND DECREED BY THE BOARD OF COUNTY COMMISSIONERS OF CLARK COUNTY, STATE OF WASHINGTON, AS FOLLOWS:

Section 1. Findings.

- A. RCW 35.63.200 authorizes adoption of interim zoning measures with certain limitations. In compliance with the requirements of this statute, the Board of County Commissioners adopts as findings the pronouncements contained in the above recital provisions.
- B. Counties throughout the state have also suffered the same effects of this economic hardship.
- C. The failure to maintain this remedial measure will slow recovery by requiring property owners and developers to begin anew the permitting



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29 processes, thereby incurring substantial costs without any
30 corresponding public benefit.

- 31 D. If the Board had failed to adopt an emergency ordinance, hundreds of
32 thousands of dollars in development expenditures would have been
33 lost. The Board concludes that such losses would have seriously
34 impaired construction at a time when credit is largely unavailable.
- 35 E. The Board finds and concludes that this resolution will serve to
36 jumpstart construction as soon as financing and demand allow.
- 37 F. It is unclear at present how long this resolution will need to remain in
38 effect. It is imperative for county staff to monitor projects impacted by
39 this resolution and provide a plan and possible ordinance amendment
40 for the Board's future consideration. It is anticipated that with analysis
41 of development, the Board will be better equipped to determine the
42 termination date for this resolution or consideration of other required
43 action.
- 44 G. At present the Board reaffirms its emergency ordinance as set forth
45 below.
- 46 H. Projects set to expire during the period of June 2, 2009- June 2, 2010
47 whose approvals included a phased development or development
48 agreement pursuant to RCW 36.70B.170-190 will be provided the
49 same consideration as those applicants approved in 2004-2005.

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51 Section 2. Amendatory. Section 1 of Ordinance 1983-03-46, as most recently
52 amended by Ordinance 2006-04-18, and codified as CCC 40.500.010(B), are hereby
53 amended to read as follows:

54 40.500.010 Summary of Procedures and Processes.

- 55 A. Purpose and Applicability.
- 56 1. This chapter describes how the county will process applications for development
57 subject to review under the UDC and Title 14 of this code, and is intended to identify
58 the procedure for determining whether development proposals are, or can be
59 conditioned or mitigated to be, consistent with applicable policies and standards.
60 Consistency is determined by consideration of substantial evidence in the record that is
61 relevant to these policies and standards.
- 62 2. Interpretations and Authority. Upon request, the responsible official shall issue a formal
63 written interpretation of a development regulation. A formal written interpretation shall
64 be a Type I action and shall be subject to the appeal provisions of Section
65 40.510.010(E). If an application for an interpretation is associated with another
66 application(s) subject to this title, then the application for the interpretation shall be
67 combined with the associated application(s) and is subject to the same procedure type
68 as the applications with which it is combined.
- 69 3. Authorization for Similar Uses. The responsible official may determine that a use, not
70 specifically named in the allowed uses of a district, may be included among the
71 allowed uses; provided, however, that a use already allowed in any other zoning
72 district, except the industrial zoning districts, may not be permitted. The responsible
73 official must find that the proposed use is similar in nature and has impacts on adjacent

74 land uses and property similar to uses already allowed in the district. When this
75 determination is made in conjunction with another application it shall be considered as
76 the same type and subject to the same appeals process, pursuant to Chapter 40.500, as
77 the associated application. When this determination is made without any associated
78 application, but for a specific lot, it shall be considered a Type II process. If this
79 determination is made without any associated application, and without a specific lot
80 identified, it shall be considered as a Type I process. This determination may be
81 appealed at this stage or when the determination is used in a subsequent application for
82 development.

83 B. Development Approvals Timeline – General.

- 84 1. Basic Rule. Preliminary approval of land divisions (Chapter 40.540), site plan approval
85 (Section 40.520.040), uses subject to review and approval (R/A) (Section 40.520.020),
86 approval of conditional use permits (Section 40.520.030), approval of planned unit
87 developments (Section 40.520.080), approval of mixed use developments (Section
88 40.230.020), approval of master plans (Section 40.520.070), and approval of variances
89 (Section 40.550.020), shall be valid for a period of five (5) years after approval. The
90 right to develop an approved land division, site plan, use permitted subject to review
91 and approval (R/A), conditional use permit, planned unit development or variance or
92 part thereof expires five (5) years after the effective date of the decision approving
93 such development, unless:
- 94 a. For land divisions – A fully complete application for a final plat has been submitted.
 - 95 b. For use approvals that do not require a building permit – The permitted use has
96 legally commenced on the premises.
 - 97 c. For all other approvals – A building permit for the approved development has been
98 issued and remains in effect, or a final occupancy permit has been issued.
- 99 2. Extensions – Phased Developments.
- 100 a. Those applications specifically approved for phased development may receive an
101 unlimited number of subsequent two (2) year extensions in accordance with the
102 following:
 - 103 (1) At least one (1) phase has met the general development approvals timeline
104 basic rule described in Section 40.500.010(B)(1), within the five (5) year time
105 limit;
 - 106 (2) The request for the extension has been submitted in writing to the responsible
107 official at least thirty (30) days prior to the five (5) year deadline, or in the case
108 of a subsequent extension request, at least thirty (30) days prior to the
109 expiration of the approval period;
 - 110 (3) The applicant has demonstrated an active effort in pursuing the next phase of
111 the application; and
 - 112 (4) The applicant has demonstrated that there are no significant changes in
113 conditions which would render approval of the application contrary to the
114 public health, safety or general welfare.
 - 115 b. The responsible official shall take one (1) of the following actions upon receipt of a
116 timely extension request:
 - 117 (1) Approve the extension request if no significant issues are presented under the
118 criteria set forth in this section,

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- (2) Conditionally approve the application if any significant issues presented are substantially mitigated by minor revisions to the original approval,
- (3) Deny the extension request if any significant issues presented cannot be substantially mitigated by minor revisions to the approved plan;
- c. A request for extension approval shall be processed as a Type I action. Appeal and post-decision review of a Type I action is permitted as provided in this subtitle.
- 3. Developer Agreements. Notwithstanding the foregoing, the board may approve a developer agreement under RCW 36.70B.170 through 36.70B.240 providing for a longer approval duration. The hearing examiner is delegated authority to conduct hearings and make recommendations for developer agreements, but final approval thereof is reserved to the board.
- 4. Extension.
 - a. Preliminary approvals of land divisions, (Chapter 40.540), site plan approval (Section 40.520.040), uses subject to review and approval (R/A) (Section 40.520.020), approval of conditional use permits (Section 40.520.030), approval of planned unit developments (Section 40.520.080), approval of mixed use developments (Section 40.230.020), approval of master plans (Section 40.520.070), and approval of variances (Section 40.550.020), that were approved on or between June 1, 2004 and June 1, 2005, are hereby granted an extension for up to one-year extension of the expiration of their five (5) year periods of validity under Section 40.500.010(B)(1)-(3), above, as limited in Section 3 below.
 - b. An extension granted under Section 40.500.010(B)(4)(a) shall not modify or excuse compliance with any of the conditions of approval provided for in those approvals.
- C. Reapplication.

No person, including the original applicant, shall reapply for a similar use on the same land, building, or structure within a period of one (1) year from the date of the final decision on such previous application, unless such decision is a denial without prejudice, or unless in the opinion of the review authority, conditions have substantially changed.
- D. Application Types and Classification.
 - 1. Applications for review pursuant to Section 40.500.010(A) shall be subject to a Type I, Type II, Type III or Type IV process as summarized in Table 40.500.010-1.
 - 2. Unless otherwise required, where the county must approve more than one (1) application for a given development, all applications required for the development may be submitted for review at one (1) time. Where more than one (1) application is submitted for a given development, and those applications are subject to different types of procedure, then all the applications are subject to the highest-number procedure that applies to any of the applications.
 - 3. If this code expressly provides that an application is subject to one (1) of the four (4) types of procedures or another procedure, then the application shall be processed accordingly. If this code does not expressly provide for review using one (1) of the four (4) types of procedures, and another specific procedure is not required by law, the responsible official for the application in question shall classify the application as one (1) of the four (4) types of procedures.

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- a. The act of classifying an application shall be a Type I action. Classification of an application shall be subject to reconsideration and appeal at the same time and in the same way as the merits of the application in question.
- b. Questions about what procedure is appropriate shall be resolved in favor of the type providing the greatest notice and opportunity to participate.
- c. The responsible official shall consider the following guidelines when classifying the procedure type for an application:
 - (1) A Type I process involves an application that is subject to clear, objective and nondiscretionary standards or standards that require the exercise of professional judgment about technical issues, and that is exempt from SEPA review. The responsible official is the review authority for Type I decisions.
 - (2) A Type II process involves an application that is subject to objective and subjective standards that require the exercise of limited discretion about non-technical issues and about which there may be a limited public interest. The responsible official is the review authority for Type II decisions.
 - (3) A Type III process involves an application for relatively few parcels and ownerships. It is subject to standards that require the exercise of substantial discretion and about which there may be a broad public interest. The hearing examiner is the review authority for Type III decisions.
 - (4) A Type IV process involves the creation, implementation or amendment of policy or law by ordinance. In contrast to the other three (3) procedure types, the subject of a Type IV process generally applies to a relatively large geographic area containing many property owners, and except for annual reviews, an application subject to a Type IV process can be filed only by the county. The board is the review authority for Type IV decisions.

Table 40.500.010-1. Summary of Development Approvals by Review Type					
	Type I	Type II	Type III	Type IV	Code Reference
Interpretations					
Code Interpretation – Written	X				40.500.010 (A)(2)
Classification of an Application	X				40.500.010 (D)(3)(a)
Similar Use Determination	X	X			40.500.010 (A)(3)
Pre-Application Waiver	X				40.510.020(A)(2) 40.510.030 (A)(2)
Counter Complete	X				40.510.010(A) 40.510.020(B) 40.510.030 (B)
Fully Complete	X				40.510.010(B) 40.510.020(C) 40.510.030(C)
Submittal Requirements Waiver	X				40.510.010(B) 40.510.020(C) 40.510.030(C)

Permits and Reviews					
Legal Lot Determination	X				40.520.010
Review and Approval (R/A)	X	X			40.520.020
Conditional Use Permit (CUP)			X		40.520.030
Site Plan Review	X	X	X		40.520.040
Final Site Plan Review	X				40.520.040(F)
Sign Permit	X				40.520.050
Post-Decision Review	X	X	X		40.520.060
Master Plans			X		40.520.070
Planned Unit Developments		X	X		40.520.080
Nonconforming Uses					
Nonconforming Use Determination	X				40.530
Expansion of a Nonconforming Use		X	X		40.530
Boundary Line Adjustments and Land Divisions					
Boundary Line Adjustment	X				40.540.010
Short Plat		X			40.540.030
Subdivision			X		40.540.040
Final Plat	X				40.540.070
Lot Reconfiguration		X			40.540.120
Plat Alteration		X	X		40.540.120
Plat Vacation			X		40.540.120
Modifications and Variances					
Road Modification	X	X	X		40.550.010
Variance	X	X	X		40.550.020
Sewer Waiver	X				40.370.010
Plan and Code Amendments					
Annual Reviews				X	40.560.010
Zone Change within CP designation			X		40.560.020
Zone Change Text Amendments				X	
Special Area-Related Reviews					
Columbia River Gorge Permit		X	X		40.240.050
Shoreline (special review process)			X		40.460
Historic Preservation (special review process)		X			40.250.030
Open Space				X	Chapter 3.08 40.560.010(P)(2)
Critical Areas					

Critical Aquifer Recharge Areas (CARAs) Permit	X	X	X		40.410
Floodplain Review	X	X	X		40.420
Geo-Hazard	X	X	X		40.430
Habitat Permit		X			40.440
Preliminary Wetland Permit		X	X		40.450.040(H)
Wetland Variance			X		40.450.040
Final Wetland Permit	X				40.450.040(I)
Emergency Wetland Permit	X				40.450.040(L)

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Section 3. Effective Date.

- A. This ordinance shall apply to and extend permits that were approved during the specified time period if the County has received the extension request, even if such request was received by the County prior to the adoption of this ordinance.
- B. This ordinance shall be effective upon adoption and shall expire upon adoption of a new ordinance following consideration of this matter by the Clark County Planning Commission or on June 22, 2010 whichever is earlier.

Section 4. Instructions to Clerk. The Clerk to the Board shall:

1. Record a copy of this ordinance with the Clark County Auditor.
2. Transmit a copy of this ordinance to the state within ten days of its adoption pursuant to RCW 36.70A.106.
3. Cause notice of adoption of this ordinance to be published forthwith pursuant to

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209 RCW 36.70A.290.

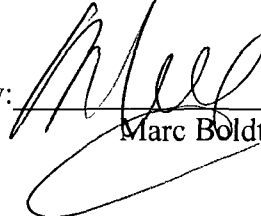
210 4. This ordinance is temporary in nature and is not to be codified.

211 ADOPTED this 25th day of August, 2009.

BOARD OF COMMISSIONERS
FOR CLARK COUNTY

Attest



Clerk to the Board

By: 
Marc Boldt, Chair

By: _____
Steven J. Stuart, Commissioner

By: _____
Tom Mielke, Commissioner

Approved as to form only:


Christopher Horne
Deputy Prosecuting Attorney