

(Second Reading 2-2-10)

Memorandum



Date: December 1, 2009

To: Honorable Chairman Dennis C. Moss
and Members, Board of County Commissioners

Agenda Item No. 7(G)

From: George M. Burgess
County Manager

Subject: Ordinance Providing Option to Extend Development Permits, Agreements and Reservations of Concurrency Capacity Affected by Economic Crisis

Recommendation

It is recommended that the Board of County Commissioners (Board) adopt the proposed ordinance providing emergency relief for construction affected by the current economic crisis. The ordinance is intended to provide relief to affected construction by creating a development permit or agreement holder option to request a one time, two (2) year time extension for certain administratively-issued development permits and agreements, and reservations of concurrency capacity under Chapter 33G of the Miami-Dade County Code issued by the Departments of Planning and Zoning (DPZ), Public Works (PWD), Environmental Resources Management (DERM), and Water and Sewer (WASD).

Scope

The scope of this item applies to a time extension option for certain administratively-issued active development permits and agreements, and reservations of concurrency capacity under Chapter 33G of the Miami-Dade County Code in good standing granted between October 1, 2008 and October 1, 2010 by DPZ, PWD, DERM, and WASD for projects located in these departments' service area jurisdictions. The extended development permit, agreement or reservation of concurrency capacity shall for all purposes be considered the same permit, agreement or reservation of concurrency capacity previously applied for. By exception, any construction requiring a material change to the plans or new evaluation, analysis or load and flow calculations, as determined in the reasonable discretion of the initially issuing Department, shall require the issuance of a new development permit, agreement, or reservation of concurrency capacity subject to all the requirements attendant to a new permit, agreement or reservation of concurrency capacity including the payment of a new fee.

The permit, agreement, and reservation of concurrency capacity types for this optional two (2) year extension are listed in the proposed ordinance. The scope will be impacted by the number of existing County permit, agreement, and concurrency reservation holders who opt to extend said permits and agreements. While it is difficult to predict the number of holders who may avail themselves of this proposed option, the following data is reported for your information. Since the January 2009 creation of the County's Stop Work Order ordinance providing for abatement of expiration of building permits (Ordinance No. 09-10), twenty-seven (27) Stop Work Orders have been issued by the Building Department (effectively extending permit time on those projects) and, of those, fifteen (15) have been lifted allowing the permitted work to proceed. As well, the local development industry who requested the proposed two-year (2) extension under consideration by this proposed ordinance advised that they informally surveyed industry members whom indicated that while significant numbers are not expected to apply, this extension capability and incentive are critical for those existing holders who need it.

Fiscal Impact Analysis/Funding Source

If this time extension option is established, an overall positive fiscal impact is expected for our community due to continued progress and spending on planned and permitted development activity

that may otherwise cease or continue to be substantially curtailed absent this option that provides a two-year (2) extension on individual development permits, agreements, and reservations of concurrency capacity upon simple written application request and departmental review at a fee to be recommended to the Board for approval under a separate item. An Implementing Order recommending a proposed \$79.00 extension fee or 10 percent of the initial permit fee, whichever is greater will accompany this item during the First Public Hearing at Committee and 2nd Public Hearing for the Board's final consideration and approval.

It is important to note that time extensions on these permits, agreements, and reservations of concurrency capacity exist today and vary in extension time from a few days to typically six (6) months to a year, depending on the particular type of permit or agreement. The extension option under consideration by the proposed ordinance does not change these historically allowed time extensions and the corresponding extension fees charged by the County. However, one who opts for and whose permit, agreement, or reservation of concurrency capacity qualifies for this one time two-year (2) extension, upon Departmental approval, would only pay the fee set by the Board for such extensions. This amount is less than the amount on most of today's permit and agreement extension types and therefore the holder obtains more time (two years) at less County charge. Due to the current condition of the economy, and the inability to predict the number of holders who may avail themselves of this proposed option, it is challenging to estimate a fiscal impact to the County. Overall, the four (4) subject departments estimate unrealized fees may total approximately \$342,000 across the departments over the two (2) years of the program.

Track Record/Monitor

The individual departments initially issuing and subsequently extending permits, agreements, and reservations of concurrency capacity will track and monitor these extensions.

Background

Due to the effect of the economy on construction in Miami-Dade County, development industry representatives met with staff seeking a simple single period, two (2) year time extension to certain development permits, agreements and reservations of concurrency capacity at a low fee, issued by the County within its corresponding service area jurisdictions. After staff review, it was determined that such a two (2) year extension recommendation as an option on administratively-issued permits, agreements, and reservations of concurrency capacity would increase the likelihood that the existing permit or agreement holder will carry these planned and permitted projects forward to completion.

As stated above, it is important to note that this Board has recently approved similar relief on building permits (Ordinance No. 09-10 on January 22, 2009) and extension of expiration dates, build-out dates and phasing deadlines in certain previously approved Developments of Regional Impacts (Ordinance No. 09-76 on September 1, 2009). Also note that presently the permit, agreement and concurrency reservation types listed in the proposed ordinance have the ability to be extended beyond their initial issuance periods. Holders of such permits do apply, pay a fee as provided for, and receive time extensions when allowed. The permit and agreement types in the proposed ordinance have been identified by the four (4) development approval departments of DPZ, PWD, DERM, and WASD as administratively-issued approvals where such requested time extension will likely benefit the holder, and be in the overall best interest of the County due to current economic conditions. A request to extend development permits, agreements and reservations of concurrency capacity under this proposed ordinance would be at the sole option of the development permit or agreement holder; and it would not eliminate any existing time extension capability.

Some of the advantages of this proposed two (2) year extension are as follows.

- The holder, who receives the extension, will be given a full two (2) year extension – more time than most currently allowed extensions provide.
- The request to the County Department Director would be a short, simple holder-written application request, per permit; and thus, no form to fill-out.
- The proposed extension fee will be comparatively low.
- Most importantly, the extensive work earlier done by the holder and the County that resulted in a development permit, agreement, or concurrency reservation can carry forward for the planned and permitted project via the two (2) year extension, potentially improving our local economy.

While we considered a “blanket” versus “optional” development permit extension process, it was not recommended due to the following: The holder’s action in opting for this two (2) year time extension is an important notification to the County that the development permit or agreement holder, and property owner as the case may be, are knowledgeable and desirous of the two year time extension impacting the project and the land. Further, four (4) approving County departments (DPZ, PWD, DERM, and WASD) may have issued individual permits or agreements on a particular project and it is important that each authorizing department determine if the permit or agreement issued is in fact both active and in good standing, prior to approving the two (2) year extension.

These extensions will be simple to complete – both for the holder and County staff. The single period, two (2) year extension is proposed as follows in this example of a WASD-issued water and sewer service agreement. The development permit or agreement holder (to include property owner, or other signatory when required by the department), with an active agreement issued between October 1, 2008 and October 1, 2010, would decide, prior to expiration, whether to request via his or her written application of the WASD Director, a single period, two (2) year extension of the particular service agreement. Thus, this is an optional holder-written request for a two year time extension sufficiently identifying the agreement and signing and dating the request. Along with the written request, the holder would pay the non-refundable extension fee. The extension fee to be proposed to the Board for approval will be the same amount currently charged on similar relief on building permits under Ordinance No. 09-10 (\$79.00) or 10 percent of the initial permit fee, whichever is greater. Upon determining that the subject service agreement is active, in good standing and the appropriate extension fee has been received, the Director or designee would respond in writing granting the single period, two (2) year extension from the date of the upcoming subject expiration; otherwise, the Director or designee would respond in writing denying the request for cause. Nothing in this proposed ordinance would affect any currently-allowed development permit, agreement and concurrency reservation extension process. The Department’s records would be updated to reflect the Director’s or designee’s decision.



Assistant County Manager



MEMORANDUM
(Revised)

TO: Honorable Chairman Dennis C. Moss and Members, Board of County Commissioners **DATE:** February 2, 2010

FROM: R. A. Cuevas, Jr. County Attorney *[Signature]* **SUBJECT:** Agenda Item No. 7(G)

Please note any items checked.

- "3-Day Rule" for committees applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Ordinance creating a new board requires detailed County Manager's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous ____) to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 7(G)
2-2-10

ORDINANCE NO. _____

ORDINANCE PROVIDING FOR EXTENSIONS OF DEADLINES FOR CERTAIN DEVELOPMENT PERMITS AND AGREEMENTS; PROVIDING FOR EXTENSION OF RESERVATION OF CONCURRENCY CAPACITY FOR CERTAIN INTERMEDIATE AND FINAL DEVELOPMENT ORDERS; PROVIDING EXCEPTIONS; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

WHEREAS, Miami-Dade County is experiencing a period of serious economic hardship; and

WHEREAS, the economic slowdown is having a severe impact on the real estate market and on real estate development, which in better economic conditions have been significant components of the local economy and a source of jobs for local residents; and

WHEREAS, during this period, real estate developers may be unable to commence and carry to completion projects that have been approved and duly permitted, often due to the credit crisis and a resulting inability to obtain financing, without regard to whether the developer is otherwise prepared to proceed; and

WHEREAS, due to these circumstances, developers may be unable to commence and carry approved projects to completion within the time limits mandated by the terms of permits and development agreements previously issued; and

WHEREAS, the expiration of certain permits and development agreements may result in serious consequences for the developer/permit holder, ranging from loss of prospective financing, loss of certain vested rights (such as reserved concurrency capacity under the

Comprehensive Development Master Plan and the Code of Miami-Dade County), and even loss of the approvals required for the project; and

WHEREAS, the loss of these development entitlements may result in even further adverse market impacts and job loss, as well as a delayed recovery of the local economy,

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that:

Section 1. Section _____ of the Code of Miami-Dade County, Florida, is hereby created to read as follows:

Sec. _____. Extension of Permits and Reservations of Concurrency Capacity.

(a) Notwithstanding any provision of this code to the contrary, the Directors of the Departments of Planning and Zoning, Public Works, Environmental Resources Management and Water and Sewer shall upon application, review and receipt of a fee established by the Board of County Commissioners or 10 percent of the initial permit or agreement fee, whichever is greater, extend for a single period of two years the time within which the permits or agreements described in (c) below are scheduled to expire. Such extensions shall be granted only for those active permits or agreements for development projects that are in substantial compliance with permit conditions and applicable requirements of this code, and that are in effect as of October 1, 2008 or are issued or executed prior to October 1, 2010. Such extensions shall be in addition to, and not in place of, other extensions granted pursuant to other provisions of this code.

(b) Reservations of concurrency capacity under Chapter 33G of this code for intermediate and final development orders that are either in effect as of October 1, 2008, or become effective prior to October 1, 2010, shall upon application, review and receipt of a fee established by the Board of County Commissioners or 10 percent of the initial concurrency capacity reservation fee, whichever is greater, be extended for two years beyond the date the reservation of capacity is scheduled to expire. Extensions shall apply both to initial reservation of capacity or reservations that have previously been extended through the procedures in sections

2-114.1, 2-114.2, 2-114.3 or 2-114.4 of this code. It is provided, however, that extensions pursuant to this section may extend the reservation of capacity only up to, and not more than, five years after final plat approval.

(c) Permits and agreements eligible for extension of expiration dates shall include only reservations of concurrency capacity and the following listed development permits and agreements that are issued administratively by the departments and are not subject to initial approval at public hearing.

Department of Planning and Zoning:

- Extension of concurrency capacity
- ZIP 0002 farm buildings
- ZIP 0003 construction trailers, etc.

Public Works Department:

- Paving and drainage permits for new construction
- Agreement for construction and maintenance of subdivision improvements (infrastructure construction and maintenance bond)

Department of Environmental Resources Management:

- Class I coastal construction/wetland
- Class I mangrove trimming permit
- Class II overflow/outfall system permit
- Class III canal right-of-way work
- Class IV wetland permit (non-coastal and non-rock mining)
- Class IV wetland rock mining
- Class VI drainage non-residential with contamination
- Natural forest community permit
- Water extension
- Water treatment system (private well)
- Industrial waste pretreatment (IWP)
- Tree removal permit
- Air construction permit, county

Water and Sewer Department:

- Water and sewer agreements
- Water and sewer construction plans
- Water and sewer verification forms

(d) Such extensions shall not be granted where the director of the responsible department finds that the extension

would create an immediate threat to public safety, health or welfare; would delay or prevent the cure of an ongoing violation of an existing law, regulation or development order; would result in material change or adverse environmental impact; would directly serve unreasonably to delay or impede other neighboring development, to the demonstrated detriment of the local economy; would delay utility permits for upgrade or installation of new utilities in existing neighborhoods; would contravene the due process or other legal rights of parties with a direct interest in the timely fulfillment of the requirements of the development order; or would delay or prevent compliance with a court order, federal or state law, or interlocal agreement with any other government.

(e) Applications for extensions under this section may be approved for water and sewer agreements only if all plans approvals have previously been obtained and have not expired for the water and sewer extensions for the property covered under said agreement.

(f) Any extension of a permit or reservation of capacity sought under provisions of state law, if granted, shall run concurrently with extensions granted pursuant to this section.

Section 2. If any section, subsection, sentence, clause or provision of this ordinance is held invalid, the remainder of this ordinance shall not be affected by such invalidity.

Section 3. It is the intention of the Board of County Commissioners, and it is hereby ordained that the provisions of this ordinance, including any sunset provision, shall become and be made a part of the Code of Miami-Dade County, Florida. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

Section 4. This ordinance shall become effective ten (10) days after the date of enactment unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

PASSED AND ADOPTED:

Approved by County Attorney as
to form and legal sufficiency:




Prepared by:

Craig H. Collier/Joni Armstrong Coffey