

REQUEST FOR BOARD ACTION

HENDERSON COUNTY

BOARD OF COMMISSIONERS

MEETING DATE: 17 November 2010

SUBJECT: Permit Extension Act Opt-Out

ATTACHMENT(S):

1. PowerPoint Summary
2. Memorandum
3. Draft Resolution to "Opt-Out" of Permit Extension Act

SUMMARY OF REQUEST:

The General Assembly passed Session Law 2009-406, titled the Permit Extension Act of 2009 (PEA). The Act stated development approvals granted or in effect between January 1, 2008 and December 31, 2010 would have the time the approvals are effective put on hold until after December 31, 2010. The PEA was amended multiple times in 2009 prior to going into effect, and again in Session Law 2010-177 (extending the tolled period to December 31, 2011).

The 2010 amendment allows local governments the option to "opt-out" of the time extension. Any local governments choosing to opt out must do so by resolution by December 31, 2010. No public hearing is required. If the opt-out is exercised, there would be no extension of time for the development approvals and the clock would start running again on all development approvals active during the referenced period on January 1, 2011. Guidance from the School of Government suggests that a local government can either opt out of all development approval extensions or if a rationale is given, specific development approvals may be opted out.

There are advantages and disadvantages to opting out of the PEA (see attached PowerPoint and memorandum). County staff will be present and prepared if requested to give further information on this matter.

BOARD ACTION REQUESTED:

Staff is not recommending the Board to opt out of the amended Permit Extension Act. If the Board is inclined to opt out of the extension as authorized by the Permit Extension Act as amended, the following motion is suggested.

Suggested Motion: I move that the Board approve the attached resolution opting out of the 4th year extension of the Permit Extension Act.



Permit Extension Act

**Board of Commissioners Meeting
November 17, 2010**

Permit Extension Act: Background

- With the economic recession, the General Assembly passed the Permit Extension Act of 2009.
- It was amended several times before becoming effective.
- The legislation applied to most state and local development approvals (zoning, building permits, subdivisions, etc.).
- If a permit was in effect, or still valid, as of January 1, 2008, the “clock” for its expiration stopped until December 31, 2010.
- On January 1, 2011, the clock for such permits and development approvals would starting “ticking” again with whatever time remained for that permit.
- The law appeared to not apply to improvement guarantees, but the law was not especially clear on this point.

Permit Extension Act: Analysis

- Session Law 2010-177 amended the PEA in several ways:
 - It extended the “tolling” period by 1 year. Thus the clock would start again on January 1, 2012 instead of the original date of January 1, 2011.
 - The amendment clarified that the legislation does NOT apply to improvement guarantees. This clarification benefits Henderson County regarding current litigation with a bond company.
 - The amended PEA provides an “opt-out” provision.
 - The opt-out allows local governments to choose to not apply the 1-year extension. Thus permits would begin to expire with the original date of January 1, 2011.
 - No public hearing is required to opt out. Only a resolution is required.

Permit Extension Act: Analysis

- Reasons to opt-out of the amended legislation:
 - Avoiding the extension of development approvals that do not meet current standards (pre-Land Development Code, older Building Code permits, etc.).
 - Avoiding loss of permit revenues that may otherwise be required to re-apply and pay an additional permit fee.
 - Avoiding additional administration that accompanies the PEA in determining if/when previous approvals are still valid.

Permit Extension Act: Analysis

- Reasons to NOT opt-out of the amended legislation:
 - Avoiding the re-application of development approvals and permits that would expire prior to January 1, 2012 (additional administration).
 - Taking advantage of the clarification that the PEA does not apply to improvement guarantees.
 - Avoiding possible opposition from the development community for “opting out.”
 - The amended PEA provides the option to exclude specific projects from the time extensions, if warranted.
 - It also allows the Board to opt-out for specific classes of development approvals, if justified by the Board (example: Zoning but not Subdivision, etc.).

Permit Extension Act: Conclusion

- Staff is not recommending the Board to opt out of the PEA.
- No action is needed by the Board if it choose to allow the amended PEA to go into effect.
- If the Board desires to opt out, a model resolution is provided (developed by the School of Government).
- Action to opt out, by resolution, is required by December 31, 2010.
- According to the School of Government, opting out would leave the original PEA to still apply.

HENDERSON COUNTY
Planning Department

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MEMORANDUM

TO: Selena Coffey, Assistant County Manager

FROM: Anthony W. Starr, AICP, Planning Director *AWs*

DATE: October 19, 2010

SUBJECT: Extension of the Permit Extension Act of 2009

Background. With the downturn in the economy in 2008, the General Assembly passed Session Law 2009-406, titled the Permit Extension Act of 2009 (PEA). This law extended most state and local development approvals that were valid at any time between January 1, 2008 and December 31, 2010. The PEA “tolled” the running period of such approvals. In other words, time was frozen for development approvals in so far as they would not expire during this time period. The clock on their remaining time would have started ticking again on January 1, 2011. The PEA applied to approvals for subdivisions, zoning permits, building permits and other “development approvals.” It does not apply to federal development laws or approvals.

Analysis. Session Law 2010-177 amended the PEA in several ways. It extended the “tolling” period until January 1, 2012 (a 1-year increase). The new amendment also clarified that the PEA does not apply to improvement guarantees (IG). This clarification benefits Henderson County’s current litigation with the bonding company (Lexon) for the Seven Falls development as they claimed the PEA applied to their improvement guarantee and thus no default for the IG occurred. The amended PEA also provides authority for a local government to terminate the extension of a development approval under certain conditions.

The amended PEA provides for an “opt-out” provision. Under this provision, a local government’s governing body may choose to not apply (opt-out of) the amended provisions (including the time extension) of the PEA by adopting a resolution. No hearing is required. Reasons for “opting-out” may include: the extension of approvals that no longer meet current rules; loss of permit revenues for projects that otherwise would re-apply; and avoiding additional administration that accompanies the PEA. However, there are several benefits to not “opting-out” including: avoiding the re-application of development approvals (additional administration) that would expire prior to January 1, 2012; taking advantage of the clarification that the PEA does not apply to IGs; and the likely opposition from the development community for “opting out.” A local government may choose to “opt-out” for certain development approval types as well with an appropriate justification in the required resolution (i.e. just building permits or subdivision approvals).

Conclusion. Staff from several Henderson County departments and divisions met to discuss the PEA. They included: Building Services, Code Enforcement, County Attorney’s Office, Engineering, Environmental Health, Fire Marshal’s Office, and Planning. After a detailed discussion of the effects of the PEA, it was determined that we should not recommend “opting-out” of the PEA for the reasons stated above.

Allowing the amended PEA to become effective requires no action by the Board of Commissioners. Opting-out of the amended PEA – the original PEA would still apply – requires the Board to adopt a resolution to that effect. If the Board desires to opt-out, the School of Government produced a model resolution. To utilize that option, action is required by the Board prior to December 31, 2010.

HENDERSON COUNTY, NORTH CAROLINA

A RESOLUTION PROVIDING FOR THE COUNTY OF HENDERSON, NORTH CAROLINA TO OPT OUT OF THE FOURTH YEAR OF PERMIT EXTENSION FOR ALL DEVELOPMENT PERMITS ISSUED BY HENDERSON COUNTY THAT ARE SUBJECT TO NORTH CAROLINA SESSION LAW 2010-177, AS AUTHORIZED THEREBY

WHEREAS, the economic conditions affecting the nation, the State of North Carolina, and our county that began in 2007 and continue today have impacted the local economy and resulted in increased unemployment, lower economic growth, reduced demand for real estate, and higher rates of real property foreclosure;

WHEREAS, developers and builders have sustained losses and have been unable to proceed with projects authorized by State and local permits and development approvals;

WHEREAS, many environmental, land use, and construction permits are subject to legal requirements that cause the permits to expire if progress on the work authorized by such a permit is not initiated or completed within a certain period of time;

WHEREAS, the North Carolina General Assembly adopted the "Permit Extension Act of 2009" in response to the expiration or impending expiration of certain development permits issued by the State and local governments;

WHEREAS, the Permit Extension Act of 2009 served to toll the expiration of certain development permits during the three-year period from January 1, 2008, until December 31, 2010;

WHEREAS, the County of Henderson granted or issued many valid, unexpired development approvals and permits that were outstanding on January 1, 2008, and has granted or issued many additional approvals or permits since that date;

WHEREAS, certain development permits issued by the County of Henderson have not expired or cannot expire for a period of as many as five years from the time of issuance or approval because of the 2009 permit extension legislation and the permit expiration requirements that apply;

WHEREAS, the General Assembly acted again in 2010 to extend for one more year the period during which the expiration of development permits is tolled, so that the running of any applicable expiration period that otherwise would apply does not resume until January 1, 2012;

WHEREAS, Session Law 2010-177 authorizes a unit of local government by resolution to declare that the one-year extension provided for in the Permit Extension Act of 2009, as amended, shall not apply to development approvals that it has issued;

WHEREAS, the suspension of the running of permit expiration periods has provided relief to the development community during a period of economic stress but has also contributed to certain other problems;

WHEREAS, the enforcement by governmental units of permit obligations on projects that are not actively being developed has imposed administrative burdens, especially where partially completed site improvements have been abandoned;

WHEREAS, the extension of the completion time for some partially completed projects has contributed to certain nuisance-like conditions on such sites that have had a blighting influence on nearby properties;

WHEREAS, the failure or postponement of certain private development projects has made it more difficult for the county to coordinate and carry out its capital improvement program concurrently with new development;

WHEREAS, permit expiration provisions serve a useful public purpose in encouraging permit holders to complete projects, winnowing out projects that are not well conceived, and bringing closure to the permitting process;

WHEREAS, the standards and procedures for obtaining development permits issued by the County of Henderson are neither unduly onerous or time consuming;

WHEREAS, additional time to complete key steps in the land development and construction process is more crucial for larger-scale, multiphase developments and less crucial for individual building projects,

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the County of Henderson as follows:

Section 1. The Board hereby declines to be subject to the one-year permit extension provisions of Session 2010-177, as that act amends the Permit Extension Act of 2009, with respect to all of those development permits that have been issued by the County of Henderson that are otherwise subject to these acts.

Section 2. If any section, phrase, or provision of this resolution is for any reason declared to be invalid, such declarations shall not affect the validity of the remainder of the sections, phrases, or provisions of this resolution.

Section 3. This resolution shall take effect immediately upon its passage.

This Resolution approved by the Henderson County Board of Commissioners on this the 17th day of November, 2010.

William Moyer, Chairman

Attest: (County Seal)

Terry Wilson, Clerk to the Board