

W. S. A.

Memorandum Date: May 17, 2007
Order Date: NA

TO: Board of County Commissioners
DEPARTMENT: Public Works
Land Management Division
PRESENTED BY: Craig Starr
AGENDA ITEM TITLE: Report Back – Fees for Reinstatement of Building Permits

I. MOTION

None

II. AGENDA ITEM SUMMARY

This is a report back requested by the Board of County Commissioners on May 16, 2007 regarding fees charged for the reinstatement of expired building permits.

III. BACKGROUND/IMPLICATIONS OF ACTION

A. Board Action and Other History

It may be helpful to briefly review a few points regarding building permits and how they expire:

- Lane County is essentially administering the State of Oregon Building Code.
- The timelines for permit expiration are established by the State Building Code.
- A building permit will expire at any point in the construction process when there has been no building activity for a period of 180 continuous days. The phrase “no building activity” means that no required inspection has been requested since the permit was issued or since the last required inspection was completed. Each time a required inspection is completed, the 180-day period will roll ahead.

- If construction has not progressed to the point of the next required inspection in 180 days, the permittee can also extend their building permit at no cost by completing an extension request form. The form is available in LMD's office and on line.
- The permittee is sent a written notice the first time that a building permit approaches expiration which generally gives the permittee up to an additional month to resume activity under the permit. This notice is sent one time only and there is no subsequent notice if the permit again approaches expiration later on. Language warning the permittee of this is included in the written notice.
- When a permittee allows a permit to expire, the State Building Code requires charging a fee equal to one-half of the original building permit fee for reinstatement of the permit if the reinstatement occurs within six (6) months of the permit expiration. If more than six (6) months has passed since the permit expired, the Code requires charging a full new fee for reinstatement of the permit.
- The Board has previously provided policy direction to staff which allows discounts against the fees specified in the State Building Code for required inspections that have been completed under the permit. If the only activity required is a final inspection, the Board has provided policy direction which allows charging only a "fairly modest" fee, currently \$54, for the final inspection.
- It is important to note that a permit expiration exposes a permittee not only to the reinstatement fees, but also to the possibility of being required to meet new, generally more demanding provisions that have been added to the State Building Code since the original permit was issued.

This issue first came to my attention when I was contacted by Ms. Teresa Kintigh regarding an expired building permit only little over a week after I began as the interim LMD Manager. Ms. Kintigh and her husband obtained a building permit which was issued on July 26, 2005. Because Mr. Kintigh presumably has a full-time job and is performing the construction himself, progress on their project has been slow. The permit was extended once between July of 2005 and September of 2006. As the permit approached expiration in September of 2006, a written notice of the pending expiration was mailed and the Kintigh's called for a required inspection which kept the permit active and rolled the expiration date ahead by another 180 days. Again, no inspection activity occurred on the project for 180 days and the permit expired on April 7, 2007. The

Kintigh's originally paid almost \$2,200 for their building permit. Under the State Building Code, the fee to reinstate their permit would be about \$1,100. The fee that LMD would charge is \$613. Ms. Kintigh requested that I simply extend the permit without charging a reinstatement fee.

B. Policy Issues

Should the Board provide direction changing current policy regarding fees for reinstatement of expired building permits?

C. Board Goals

NA

D. Financial and/or Resource Considerations

NA

E. Analysis

After my conversation with Ms. Kintigh, I checked Lane County's policy manuals (the Lane Code and Lane Manual) to see whether I have the discretion to extend an expired building permit without charging a reinstatement fee. First, LM 60.855-(1) states that building permit fees: "...shall be 130% of the fees allowed by Section 304 of the State of Oregon Structural Specialty Code..." (underlining added). The term "shall" is directive, not discretionary, so I looked elsewhere. Second, LM 60.850-(2) provides that "...the Director of the Department of Public Works, or his or her designee..." may reduce certain fees, including the building permit fees in LM 60.855 under certain specified circumstances. These circumstances are:

- When strict adherence to the fee schedule would cause inequity among pending applications,
- When higher fees result from a staff processing error, or
- When extraordinary circumstances cause strict adherence of the fee schedule to be inappropriate.

I was (and am) unable to determine that the Kintigh's situation fit within any of the exceptions which the Board has authorized. The fee schedule for reinstatement of an expired building permit is applicable to each and every expired permit so there is no inequity in applying it to the Kintigh's situation. There has been no staff processing error relevant to the

Kintigh's situation. There have been no extraordinary circumstances causing the permit expiration such that the fee schedule is inappropriate. In fact, the Kintigh's situation is just like many other situations that occur frequently in Lane County when permittees don't adequately stay on top of managing their building project.

I have some personal sympathy for Ms. Kintigh in the situation she is in. However, I am also well aware that LMD and its staff have recently been subject to claims of providing favored treatment to certain customers and that an internal investigation has even recently been made into such claims. If the Board has any discretion to further deviate from the State Building Code's fee provisions for permit reinstatement (this is a matter for Legal Counsel to consider) and wishes to devise some system more sympathetic to permittees such as the Kintigh's, it should be done in a manner which doesn't expose LMD staff to even more charges of favoritism. Assuming it legal to do so, I think that could be accomplished through some kind of graduated fee schedule based on the length of time since the permit expired and the circumstances of the permit, e.g., whether the permittee initiated the reinstatement, as in the Kintigh's case, or the reinstatement is being sought because the compliance process has been initiated.

When presenting his request for this report back to the Board, Commissioner Stewart addressed it in terms of LMD's cost for a permit reinstatement. I have not addressed the issue from that perspective at this point because, so far as I can determine, the reinstatement fees are based on the State Building Code requirements and have little or nothing to do with LMD's processing costs. If the Board wishes to consider processing costs for permit reinstatements in developing some kind of revised fee schedule for reinstatement, we could certainly put a cost estimate together.

F. Alternatives/Options

NA

IV. TIMING/IMPLEMENTATION

Depends on Board discussion and direction.

V. RECOMMENDATION

This matter is a report back requested by the Board and, as such, requires no action. However, if the Board wishes to make a policy change to address circumstances such as those in which the Kintigh's are involved in a manner

differently than under current policy, direction should be provided so that staff can prepare alternatives for the Board to consider and act on.

VI. FOLLOW-UP

Depends on Board discussion and direction.

VII. ATTACHMENTS

None