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News

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QUALITY ISSUES



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Extended Opportunity

Change brought forth for municipalities through the Permit Extension Act¹

The last two years have been difficult on those of us who practice land development law. Attorneys, bankers, developers and engineers have all been hit hard by the economy. Many of those who started projects and obtained approvals prior to the financial crisis have been left holding those approvals while the window to begin development closed. On July 6, 2010, Governor Rendell signed the budget bill adopted by the General Assembly. The bill included the Permit Extension Act, a rider to extend the life of permits, approvals and other authorizations that are in effect as of January 1, 2009 or issued after that date, until July 1, 2013.

The Act applies to virtually any approval granted by any government agency, under any state law, such as the Municipalities Planning Code (MPC), municipal codes, the Uniform Construction Code, and other applicable statutes such as the Municipal Claim and Tax Lien Law, the Pennsylvania Sewage Facilities Act, and other environmental laws affecting flood plain management,



PERMIT EXTENSION The Act extends the life of permits, approvals and other authorizations that are in effect as of January 1, 2009 or issued after that date, until July 1, 2013

storm water management, dam safety and encroachments, and the Clean Streams Law. There are some exceptions, however, as discussed below.

The extension is automatic (with some exceptions applicable to Philadelphia) and applies broadly to any authorizations issued for “development” including permits, development approvals, agreements, decisions and other authorizations, whether issued by the governing

body, such as a borough council or board of supervisors, or other board, commission, department or authority of the municipality. Thus, decisions or approvals made by the governing body, the zoning officer, code enforcement officer, building code official or zoning hearing board will be subject to the extension.

One important item of note is that the Act addresses the requirements mandated in the 2009 Uniform Construction Code,

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including mandated residential sprinklers. Building permits that were granted prior to December 31, 2009 and extended under the Act can be built to the 2006 codes. Any building permit granted between Jan 1, 2010 and July 6, 2010 can be extended; however, they will need to build to the 2009 codes.

A municipality is required to provide written verification, upon request by any person who has received an approval, that the extension applies to such approval. If the municipality does not respond in writing within 30 days after receiving such a request, the approval will be deemed extended until the date specified in the request.

The Act defines “development” to include all of the following:

- Subdivision of land, as defined in the MPC
- Construction, reconstruction, conversion, structural alteration, relocation or enlargement of a building or other structure
 - Site preparation
 - A use, or change in the use, of a building or other structure, or change in land use
- Land development, as defined in the MPC
 - Demolition, moving or removing a building or other structure
 - The right to convert convertible real estate or withdraw real estate pursuant to the laws governing condominiums and planned communities

Any expiration period relating to an approval that is not due to expire until after the end of the extension period on July 1, 2013, will not be affected; i.e., will not be shortened, as a result of this legislation. The Act does not limit the authority of a municipality to suspend or revoke an approval for noncompliance with a written condition of the approval; enforce conditions of approvals granted prior to the extension period; or enforce conditions that

must be met prior to final plan approval.²

There are significant exceptions to the term “approval” as defined in the Act. For example, a municipality may charge a fee of up to \$100 for confirmation relating to a residential approval and up to \$500 for confirmation relating to a commercial approval. There is another provision that limits the amount charged to extend an approval to 25 percent of the fee for the original permit, or a maximum of \$5,000.

The Act also required all municipalities subject to the Act to provide notice in the Pennsylvania Bulletin acknowledging the applicability of this Act to approvals granted by the municipality. However, the Department of

² The Act appears to limit relief for certain Department of Environmental Protection storm water control permits that include provisions implementing DEP’s anti-degradation rules for discharges to surface waters or wetlands classified as high-quality waters or exceptional-value waters during construction activities, and may not apply at all for certain federal permits controlling such discharges. The Act does not apply to Pennsylvania Department of Transportation approvals, except that PennDOT highway occupancy permits will be extended, upon submission of an application, throughout the extension period for one-year intervals, subject to modifications based on changed circumstances.

Community and Economic Development, with the approval of the Governor, and in consultation with municipal associations, published a notice on behalf of all local governments in order to meet this requirement.

So while the Permit Extension Act may not be the remedy to the region’s economic woes, it provides a respite for those who invested money in approvals and were in danger of losing their investment while the window to take action of those approvals was closing. Of course, what is good for the developer may create more bureaucracy for municipal staff throughout the Commonwealth. In addition, the Permit Extension Act, like all legislation, may have unintended consequences such as the interaction between now “frozen” local approvals and those imposed by the federal government in the interim. Legal advice on these matters should be forwarded to your solicitor. **(B)**



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