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Pennsylvania Legislature Moves to Extend Building Permits

by Christopher E. Cummings and Maria J. Wing

On July 6, 2010, Gov. Edward G. Rendell approved a measure to grant much needed relief to frustrated real estate developers across the Commonwealth. The passage of the Permit Extension Act (Senate Bill No. 1042, Article XVI-1) (the **Act**) provides a long awaited reprieve to the countless developers and property owners in the midst of stalled construction projects by extending the expiration date of certain development permits.

When crafting this legislation, the Pennsylvania Assembly noted that its aim was to address the catastrophic impact the economic downturn and ever tightening credit conditions has had on real estate development and construction. Recognizing the financial toll these conditions have had on the Commonwealth's economy, the Assembly worked to provide relief that developers in New Jersey have enjoyed for over two years.

The Act provides that any existing "approval" issued for a project conducted in the Commonwealth shall now benefit from an extension period commencing Dec. 31, 2008 to July 2, 2013 (**extension period**) wherein the expiration dates of such approvals will be suspended during the extension period. The Act broadly defines an approval as any state or local government approval of a development project in the Commonwealth, including a building and construction permit, historic commission approvals, planned communities approvals, condominium approvals, storm water management approvals, permits extended under the various statutory development and conservation guidelines such as that Sewage Facilities Act and the Soil Erosion and Sediment Control Plans and such other similar permits and approvals. However, for "first class" cities such as Philadelphia and Pittsburgh, this term is limited to a building permit, zoning use and registration permit, and any administrative approvals required as a condition precedent to issuance of such permits. To avoid confusion as to what constitutes an approval deemed eligible under the Act, each governmental agency in the Commonwealth is obligated to publish within 30 days of the Act's passage a notice of applicability of the extension period to the relevant approvals granted by that agency.

The Act, however, does not apply to all approvals. It clearly delineates that the extension period shall not apply to:

- i. permits or approvals whose expiration dates are determined by federal law;
- ii. administrative consent orders, approvals, designations;
- iii. benefits extended pursuant to the Keystone Opportunity Zone statutes; or;

- iv. revocations or modifications of existing permits for cause.

Permits issued by the Department of Transportation are also ineligible for extension under the Act, except those permits granted for local road and/or driveways to access to highways. Pennsylvania Department of Environmental Protection approvals related to high quality and exceptional value surface waters and wetlands are also ineligible for extension pursuant to the Act.

The Act provides an automatic suspension of expiration dates for most eligible approvals that are granted or in effect during the extension period, whether the permit was obtained before or during the extension period. A permit holder may write the governmental authority that issued the permit/approval to confirm the applicability of the extension period or to confirm the expiration date of a permit/approval. Such governmental authority has 30 days to reply to such a request and may charge a fee for issuance of a verification, with such fee not to exceed \$100 for residential projects and \$500 for commercial projects.. A governmental authority’s failure to reply within 30 days shall be deemed an acknowledgment of the extension. However, the Act grants to any governmental agency the right to charge an extension fee for any permit or approval granted a suspension during the extension period in an amount

equal to the lesser of 25 percent of the original application fee or \$5,000.

Notwithstanding the automatic renewal provisions, for those eligible approvals issued by “first class” cities such as Philadelphia and Pittsburgh, the extension period shall only apply 20 days after:

- i. the permit holder has advised the city of its intention to seek an extension of the approval; and
- ii. the permit holder has paid a fee equal to the lesser of 50 percent of the original application fee or \$5,000.



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