



ZONING AND LAND USE

ALERT

SIGNIFICANT BENEFIT TO DEVELOPERS AND LANDOWNERS IN NJ AND PA: FURTHER APPROVAL/PERMIT SUSPENSION LEGISLATION PASSED

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New Jersey

Both houses of the New Jersey Legislature have passed A-1338 (Act) -- a law that extends and modifies the Permit Extension Act of 2008. Under the Act approvals are broadly defined to include local, county and state permits and entitlements. Nevertheless not all approvals are covered.

Examples of permits not covered by the Act are federal permits and all permits in environmentally sensitive areas which are preservation areas of the Pinelands and Highlands as well as lands located in Planning Areas 4 & 5 under the State Development and Redevelopment plan.

The Act applies to all approvals in effect on and after January 1, 2007.

The Act suspends the running of the approval period during the extension period now defined as January 1, 2007 until December 31, 2014.

After December 31, 2014, if the approval still had time to run as of the end extension period an approval is extended an additional 6 months or up until June 30, 2015. In addition the Act does not prevent the developer from seeking additional extensions of the approval if other grounds exist for an additional extension.

The Act clarifies that all permits in the "Extension Areas" i.e. growth areas of the Pinelands are extended. Hopefully this clarification will clear up a long standing dispute with Pinelands where Pinelands was requiring project redesigns if a project did not comply with the

Pinelands' most current regulations; most notably its storm water management regulations.

How to apply the Act:

1. Check to ensure the Permit is covered under the Act and make sure the permit is not excepted from the Act's coverage i.e. a permit in an environmentally sensitive area.
2. Determine whether the permit was in force and effect as of or after January 1, 2007
3. Determine the remaining life of the permit when the extension period went into effect.
4. Determine whether the law related to the permit allows for additional extensions beyond the extension period and timely apply.

Click [here](#) to view a copy of the New Jersey legislation.

Pennsylvania

Back on July 6, 2010, Governor Rendell signed the Fiscal Code Bill (Senate Bill 1042), providing, in part, for the automatic suspension, during the "extension period" (which begins after December 31, 2008 and ends before July 2, 2013), of approvals granted by a government agency for or in effect during the extension period, whether obtained before or after the beginning of the extension period. This meant that certain permits and approvals that may have expired since December 31, 2008, were suspended through July 2, 2013.

On July 2, 2012, Governor Corbett signed the Fiscal

Code Bill (Senate Bill 1263), which amended Act by redefining the “extension period”, which now begins after December 31, 2008 and ends before **July 2, 2016**. This new legislation is a welcome relief, and significant benefit, to Pennsylvania developers and landowners who have been hurt by the recession. Significantly, certain permits and approvals that may have expired since December 31, 2008 have now been suspended through July 2, 2016, thereby buying a developer or landowner significant additional time.

The term “approval” has not changed and is still defined broadly to include any government agency approval, agreement, permit, including a building permit or extension permit, or other authorization or decision allowing a development or construction project to proceed or relating to or affecting development granted pursuant to a statute, regulation or ordinance adopted by a municipality (including, but not limited to the Planned Communities Act, the Condominium Act, the Clean Steams Law, the Municipalities Planning Code, the State Highway Law as it relates to the issuance of Highway Occupancy Permits, the Sewage Facilities Act, the Flood Plain Management Act, the Storm Water Management Act, the Construction Code, and the portion of the Pennsylvania Code relating to Erosion and Sediment Control as to Soil Erosion and Sediment Control Plans approved by Local Soil Conservation Districts). In addition, the term “approval” includes creating additional units and common elements out of convertible real estate in a condominium or planned community. During the extension period, however, a government agency shall retain the authority to suspend or revoke an approval for noncompliance with a written condition and to enforce conditions of approvals granted prior to the extension period.

In Philadelphia, however, the suspension is not automatic. The approval is suspended only after the holder of the approval (i) provides notice to the issuing government agency of the holder’s intent to exercise their rights under the legislation to suspend the expiration date of the approval and (ii) pays a fee equal to 50 percent of the original

application fee, but not to exceed \$5,000.

There are other exceptions to the automatic suspension that are notable. First, with regard to Highway Occupancy Permits, such permits shall only be extended by the Department of Transportation upon the submission of a complete and accurate application throughout the extension period for one year intervals. Second, any approval issued by the Department of Environmental Protection for a discharge into exceptional value or high quality waters is not subject to the automatic suspension. Third, approvals issued for compliance with federal law are not deemed suspended. Finally, with regard to an approval to connect to a public sewer system, the automatic suspension during the extension period is contingent on the availability of capacity for the extended approval.

Any holder or recipient of an approval may seek written verification from the issuing government agency for any of the following: (i) the existence of a valid approval; and/or (ii) the expiration date of the approval under the new legislation. The request must state the approval in question and provide the anticipated expiration date in light of the extension period. Upon receipt of a request, the government agency shall have 30 days within which to affirm or deny the existence of the approval, its expiration date, and any issues associated with its validity. If the agency fails to respond within 30 days, the approval that was the subject of the request, as well as the anticipated expiration date, shall be deemed affirmed. The agency may charge a fee of not more than \$100 for a residential approval request and \$500 for a commercial approval request.

Click [here](#) to view a copy of the Pennsylvania legislation.

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