

PENNSYLVANIA SUSPENDS THE EXPIRATION DATES OF DEVELOPMENT PERMITS AND APPROVALS UNTIL JULY 2, 2013

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Most governmental approvals, agreements, permits and other authorizations or decisions affecting the use and/or development of real estate, issued by the Commonwealth or local governments and agencies in Pennsylvania, contain sunset language, causing them to lapse if not acted upon within a prescribed time frame. However, in the current economic climate, such rigid time requirements could cause hardship to developers and others who have obtained the necessary permits and approvals for development, but are unable to go forward.

This week, the Pennsylvania Legislature adopted, and the Governor signed, a bill addressing this issue. The Act suspends, until July 2, 2013, the expiration of:

- *outside of Philadelphia*, any government agency approval, agreement, permit (including a building permit or construction permit), or other authorization or decision that either (a) allows a development or construction project to proceed or (b) relates to or affects development; or
- *inside of Philadelphia*, any building permit, zoning and use registration permit, or administrative approval (including by a Board or Commission) that is a condition precedent to issuance of a building permit or a zoning and use registration permit.

The extension period in both instances is retroactive to December 31, 2008, and applies to permits and approvals obtained or issued either before or after that date.

The definition of "development" in the Act is quite broad, and includes (among other activities set forth in the Act) subdivision, demolition, site preparation, excavation, landfill, construction, reconstruction, conversion, structural alteration, relocation, building enlargement and change in use. The Act also includes an express saving provision – that it does not

shorten the term or duration of any permit or approval, or prohibit the grant of any additional extensions provided by law.

Other than in Philadelphia, the suspension of expiration dates is automatic and does not require payment of a fee. In Philadelphia, the Act requires each permit or approval holder desiring a suspension to give notice to the issuing agency that the holder has elected to exercise his or her rights under the Act and pay a fee for such suspension equal to fifty percent of the original *application* fee for the permit or approval, not to exceed \$5,000. The suspension becomes valid twenty days after such notice is given and fee is paid.

Any permit or approval holder may request verification of the existence of a permit or approval, together with confirmation of the expiration date of such permit or approval under the Act. Outside of Philadelphia, the failure of an agency to respond to a verification request within thirty days is deemed to be an affirmation of both the existence of the permit or approval and the expiration date set forth in the request. Agencies may charge a fee of not more than \$100 for verification of a residential permit or approval and \$500 for a commercial permit or approval. The failure of a permit or approval holder to seek verification will not be grounds for termination, revocation, or other invalidation of a permit or approval.

There are certain specific exclusions from coverage under the Act, notably:

- when the expiration of a permit or approval is controlled by the federal government;
- an administrative consent order or other enforcement action relating to a permit or approval that is subject to the extension period;

- Keystone Opportunity Zone approvals, designations, or benefits;
- “one call” determinations (so call again before you dig to be sure nothing new has been installed);
- the revocation or modification of a permit or approval, or the revocation or modification of an extension of a permit or approval, where the approval authorizes revocation or modification for cause; and
- certain environmental permits and approvals.

PennDot approvals are not extended, but Highway Occupancy Permits are to be extended by PennDot, in one year intervals throughout the extension period, upon the

submission of applications for such extensions. Finally, agencies retain the authority, throughout the extension period, to suspend or revoke permits or approvals for noncompliance with written conditions of the permit or approval, to enforce the conditions of permits and approvals that were granted under law prior to December 31, 2008 and to enforce certain conditions of permits or approvals issued under the Pennsylvania Municipalities Planning Code.

If you hold a permit or approval that might be eligible for extension, and would like an evaluation of your rights under the Act or assistance in implementing those rights, please contact us.

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