

REAL ESTATE ATTORNEY

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Permit Extension Act Amendment — New Life for Dying Development

On September 21, 2012 Governor Christie signed into effect P.L. 2012, c. 48, which amended the Permit Extension Act of 2008 (N.J.S.A. 40:55D-136.1, et seq.), enlarging by two years to December 31, 2014 the time period during which certain permits and approvals affecting property development will



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be extended (the “extension period”). This amendment to the Act is intended to continue to prevent huge losses to the State’s banking, real estate and construction industries that would result from the abandonment of projects if those approvals were allowed to expire. The amendment also expands the geographic areas within which the extensions will be granted and applies the extensions retroactively in those new areas back to the commencement date originally established in the Act,

i.e. January 1, 2007. Finally, by increasing and clarifying the types of permits and approvals that are covered by the Act, the amendment further enlarges its scope.

The Permit Extension Act preserves throughout the extension period the status quo of the affected permits or approvals that were in effect on January 1, 2007, as well as covered permits and approvals granted during the extension period, i.e. between January 1, 2007 and December 31, 2014, as amended. The mechanism, described

in N.J.S.A. 40:55D-136.4, by which the various development approvals and permits will be extended through the newly expanded eight-year period of the Act has not been altered by the amendment. In accordance with the longer extension period created by the amendment, any covered approval which would ordinarily (i.e., without the Permit Extension Act) reach the end of its statutory period before December 31, 2014 will be tolled until December 31, 2014. At that point, the approval will begin to

“run” again. It is important to understand, however, that such an extended approval will not run beyond June 30, 2015, which is “...6 months beyond the conclusion of the extension period”, irrespective of the amount of time that might have been left to run on the approval when the clock stopped on January 1, 2007.

On the other hand, the statute provides the Act cannot shorten the normal statutory lifetime of any approval or permit. If an approval is granted that, under normal circumstances, would expire later than June 30, 2015, it will not be circumscribed now by the six-month limitation upon extension that is described above. It will continue until such time as its regular statutory expiration date has been reached. Essentially, it will be unaffected by any extension. The Act also guarantees that the opportunity to apply for the extensions permitted under N.J.S.A. 40:55D-49 subsections c, d and g will still be available to a developer whose approval was extended to no later than June 30, 2015.

In addition to the two years it added to the extension period, the amendment significantly expands the number of locations within the State to which the Act will now apply, including areas of the State previously excluded under the Permit Extension Act of 2008. Of equal, if not greater, importance than the additional two years tacked onto the future end-date of the extension period, the recent amendment reaches back, as well, to apply the Act retroactively to the enactment of the 2008 Act in all the areas now included within the newly-defined “extension area.” The effect of this retroactive application of the extensions in these new areas may be the most dramatic outcome of the amendment because is likely to revive some permits and approvals which the owners and/or developers believed had already expired.

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