

September 02, 2010

## 2010 UPDATE PERMIT EXTENSION ACT OF 2009 AMENDED TO EXTEND GOVERNMENTAL PERMITS FOR ONE ADDITIONAL YEAR SUBJECT TO LOCAL GOVERNMENT'S RIGHT TO OPT OUT.

Permit Extension Act 2010 amendment to extend governmental permits for one additional year subject to local government's right to opt out.

September, 2010

In an update to the article below, on July 10, 2010, the North Carolina legislature ratified an amendment extending the Permit Extension Act of 2009 (the "Act") for one additional year, through December 31, 2011 (the "Amendment"). For any "development approval" (as defined by the "Act") that is current and valid between January 1, 2008 and December 31, 2010, the Amendment adds another year to the life of the approval.

- For approvals issued prior to January 1, 2008 (but valid on January 1, 2008), the Amendment extends the relevant time period associated with said approval by three (3) years, beginning January 1, 2008 and ending December 31, 2011.
- For approvals issued after January 1, 2008, but before December 31, 2010, the Amendment suspends or tolls the running of the time period associated with the approval until January 1, 2012.

Using a building permit with a six (6) month limitation period as an example:

If the permit was issued on October 1, 2007, the developer would normally have until April 1, 2008 to commence construction. However, because the building permit was current and valid on January 1, 2008, the time period is extended by three years and developer has until April 1, 2012 to commence construction.

If the permit was issued on March 1, 2008, the six months does not begin to run until January 1, 2012 so the developer has until July 1, 2012 to commence construction.

**LOCAL GOVERNMENT OPT-OUT RIGHT:** Unlike the two (2) year extension initially granted by the Act in 2009, local governments have the right to decide whether it wants the additional one year extension granted by the 2010 Amendment to apply to a development approval issued by that local government. If a local government elects to "opt-out" of the additional year, then the development approvals issued by that local government shall expire in accordance with the provisions of the

original Act as set forth in the Article below.

Local governments are in the process of deciding whether or not they will opt-out of the additional one year extension. If you have questions about how the Act applies to your particular development approvals, or whether the local government you are working with has elected to opt-out of the additional extension, please do not hesitate to contact either Steve Gennett or Susanne Todd for more information.

## New Legislation Helps Developers by Extending Governmental Permits.

**August, 2009**

Recognizing that the current state of economic emergency in North Carolina has drastically affected various segments of our economy and most severely the State's banking, real estate and construction sectors, Senate Bill 831, "Permit Extension Act of 2009" (the "Act"), extends the life of any "development approval" that is current and valid between January 1, 2008 and December 31, 2010.

"Development approval" is broadly defined and covers permits and approvals that are (a) issued by the State of North Carolina, any agency or subdivision of the State or any unit of local government and (b) for the development of land and for the provision of water or wastewater services. A detailed list is set out in the legislation but some of the approvals included are approvals for erosion and sedimentation control plans, water quality certifications, air quality permits, as well as any approval by a City or County of sketch plans, preliminary plats, plats regarding a subdivision of land, a site specific development plan or a phase development plan, a development permit, development agreement and building permits.

- For approvals issued prior to January 1, 2008 (but valid on January 1, 2008), the Act extends the relevant time period associated with said approval by three (3) years, beginning January 1, 2008 and ending December 31, 2010.
- For approvals issued after January 1, 2008, but before December 31, 2010, the Act suspends or tolls the running of the time period associated with the approval until January 1, 2011.

Using a building permit with a six (6) month limitation period as an example:

If the permit was issued on October 1, 2007, the developer would have until April 1, 2011 to commence construction.

If the permit was issued on March 1, 2008, the developer would have until July 1, 2011 to commence construction.

The Act was amended by House Bill 1490 to provide that the Act does not revive water/sewer allocations that would have expired between January 1, 2008 and August 5, 2009 if that water or sewer capacity has already been allocated to another project and there is insufficient supply or treatment capacity available to accommodate the resurrected project. The Act was also amended to allow Union County (subject to fulfillment of certain requirements) to accommodate requests for additional allocations of supply and treatment capacity by pulling from capacities initially reserved for projects whose development approvals were revived by the Act, but whose developer is not ready to proceed.

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