



COURT EXTENDS APPROVAL BEYOND ACT 46'S JULY 1, 2013 EXTENSION PERIOD

In a case of first impression, on October 22, 2010, Judge Louis J. Farina of the Lancaster County Court of Common Pleas issued an Order and Opinion in the Land Use Appeal *In re: Appeal of Keystone Custom Homes, Inc. and Fox Clearing, LLC* (Lancaster CCP Case No. CI-10-03933) ruling that the Permit Extension provisions of recently enacted Act 46 of 2010 ("Act") operate as a tolling statute that extends the expiration of "Approvals" (as defined under the Act) beyond the expiration of the Act's Extension Period (December 31, 2008 through July 1, 2013) without limit. By holding so, the Court rejected the premise that the Act's Permit Extension provisions extended the expiration of all "Approvals" until only July 1, 2013.

In its Opinion, the Court determined that certain of the Permit Extension provisions of Act 46 were ambiguous. The Court held that the Legislature's use of the phrase "suspended during the Extension Period" suggests that the Legislature intended Act 46 to toll the running of the expiration dates, rather than merely postpone all expiration dates until a later date." *Opinion* at p. 5. The Court further held that the verification process, whereby an Approval holder may seek verification of its new approval date from the issuing Government Agency, "contemplates varying expiration dates rather than just one mass expiration date for all approvals at the conclusion of the Extension Period." *Opinion* at p. 5. As such, the Court looked to the Act's legislative history in order to interpret the Legislature's intent.

In its examination of the legislative history, the Court determined that the Pennsylvania Permit Extension provisions were modeled after New Jersey's permit extension act, which is a tolling statute that extends approvals for 6 months after conclusion of the extension period. However, with respect to Pennsylvania's Permit Extension provisions, the Court found that the Legislature did not intend to limit the running of an approval's expiration date to only up to six months after the conclusion of the Extension Period. Rather, the Court construed Pennsylvania's Permit Extension provisions "to allow expiration dates to be extended beyond six months after conclusion of the Extension Period" because the Legislature had originally included but later deleted the 6 month limitation from the pending legislation. *Opinion* at p. 7. In further support of its holding, the Court reasoned that to hold all Approvals were extended only to July 1, 2013 would result in all Approvals expiring on the same day, July 2, 2013, which "would achieve an absurd result that the General Assembly could not have intended." *Opinion* at p. 8.

Therefore, the Court held that the Appellant's May 26, 2010 construction completion deadline imposed under its Conditional Use Approval was tolled as of December 31, 2008 and would not begin to run again until July 2, 2013, after the conclusion of the Act's Extension Period. On December 31, 2008, the Appellant had 16 months and 26 days remaining before the construction completion deadline expired. As such, the Court ruled that the Appellant's construction completion deadline was now extended until November 28, 2014, or 16 months and 26 days, after the July 1, 2013 conclusion of the Act's Extension Period.

Marc B. Kaplin, Esquire and Gregg I. Adelman, Esquire, Principals of Kaplin Stewart's Land Use, Zoning & Development Department, represented Keystone Custom Homes, Inc. and Fox Clearing, LLC in the Land Use Appeal.

For further information contact Marc Kaplin at 610.941.2666 (mkaplin@kaplaw.com)
or Gregg Adelman at 610.941.2552 (gadelman@kaplaw.com).