



New Pennsylvania Law Extends Life of Development Approvals

Development approvals often expire if actions are not taken to implement those approvals. Those actions could include filing engineered land development plans, obtaining a building permit, or even beginning or completing construction. Similarly, there is a five-year protection period for most subdivision and land development approvals from changes in governing ordinances.

Allowing a development approval to expire can be fatal to a project for a host of reasons including applicability of new ordinances, and changes in political and economic conditions. Managing the expiration deadlines for development approvals can be challenging in the best of times. These challenges have increased dramatically with the economic downturn. On July 6, 2010, Pennsylvania provided some relief from these challenges by adopting a new permit extension statute ("PES").

Extension Period

The PES automatically suspends the expiration date of development approvals during the "Extension Period" (i.e., January 1, 2009 – July 1, 2013). The automatic suspension applies to development approvals obtained before or during the Extension Period. Thus, even if an approval expired, the PES could breathe new life into a development approval as long as it was in effect at some time during the Extension Period. The rules are different in Philadelphia, where the suspension is not automatic. In Philadelphia, the holder of an approval must provide written notice of the intent to extend the approval under the PES and must pay a fee. The PES does not shorten the duration of any approval or preclude additional extensions.



Scope of Development Approvals

The scope of the PES is broad. The PES applies to governmental approvals, agreements, decisions, and permits that allow a development or construction project to proceed or that relate to or affect development. Development under the PES includes subdivision, land development, building construction, demolition, site work and changes in the use of buildings or land. Thus, building and other permits, conditional use, zoning hearing board, subdivision and land development approvals are protected.

Exceptions

Although the reach of the PES is broad, there are exceptions. Those exceptions include approvals issued under federal law where the duration is specified by federal law; and PADEP approvals relating to high quality or exceptional value waters. There are special rules for PADOT highway occupancy permits and development approvals that require connection to a water or sewer system.

Change in Law

One of the most important rights that can attach to a valid development approval is protection from subsequent changes in the applicable law. The PES extends that protection from changes in the law, regulation or policy enacted during the Extension Period.

Verification

The PES provides a non-mandatory verification process where the holder of the development approval may seek verification of: (1) the existence of a valid approval and (2) the expiration date of the approval. The verification request must identify the expiration date under the PES. Upon receipt of the request, a government agency has thirty days to respond by "affirming or denying the existence of the approval, its expiration date and any issues with its validity." Failure to request verification does not affect the validity of an approval.



Mr. Broseman is a principal in the Land Use, Zoning & Development group. He has handled land use cases for developers, homebuilders, landowners, educational institutions, religious institutions, hospitals and businesses, and assists clients in receiving development permits from County, State and Federal agencies.

*If your development project is at risk due to the potential expiration of governmental approvals contact us to develop a plan to protect your rights. Contact **George Broseman** at 610.941.2459 or gbroseman@kaplaw.com.*

Keeping Our Clients Informed

Our Construction Law group recently launched "Construction Report," an e-newsletter for people involved in the construction industry. The first issue of Construction Report (June 2010) can be viewed on the Kaplin Stewart website (www.kaplaw.com). If you would like to be included in our Construction Report e-mail list, please contact Bonnie Vandenberg at gvandenberg@kaplaw.com (610.941.2574).



News

Kevan F. Hirsch, a principal in the Business & Commercial Litigation, Construction Law and Employment Law groups, has been appointed Vice Chair of the Lawyers' Assistance Committee of the Pennsylvania Bar Association for a one year term. Mr. Hirsch has a diverse practice representing contractors, industrial equipment manufacturers, insurance carriers and businesses in a wide variety of claims including contract claims, dispute resolution, employment issues, protection of trade secrets and enforcement of intellectual property rights.

Neil A. Stein, a principal in the Land Use, Zoning & Development group, was the Panel Chair for the Easements Course given by the Pennsylvania Bar Institute in Pittsburgh and Philadelphia in July, 2010. Mr. Stein is a frequent course planner, author and lecturer on varied real estate and development subjects. He has more than 25 years experience in complex land use, zoning, environmental, and corporate matters.

Lisa M. LaPenna, a Paralegal in the Business & Commercial Litigation group, has been appointed to the Legal Studies Advisory Board of Manor College in Jenkintown, Pennsylvania. Lisa is a frequent guest speaker at Manor. We are proud to report that Lisa continues to ride her bike for charitable events, riding on July 11, 2010 in the 38th Annual Cancer Society Bike-a-Thon. She will also be riding on September 25-26, 2010 in the Multiple Sclerosis Bike-a-Thon. Lisa keeps her wheels turning year after year for good causes.

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Attorney Spotlight

This month, Kaplin Stewart shines the spotlight on Lisa Buckalew, an associate in our Commercial and Real Estate Litigation Department. Lisa handles a wide variety of real estate and business disputes, including contract disputes, business torts, construction litigation, landlord-tenant matters, foreclosures and title litigation. She practices in state and federal courts in Pennsylvania and New Jersey.

Lisa, who grew up in South Brunswick, New Jersey, always knew she wanted to be a lawyer. She got hooked at the tender age of seven when she watched her brother testify in a dog-bite case. She decided right then and there that was the job for her. Lisa majored in history and political science at Rutgers University and was nominated to the Phi Beta Kappa Honor Society. After graduating with High Honors, Lisa attended Seton Hall University School of Law in Newark, New Jersey, and completed a judicial clerkship.

Lisa hit the ground running working for a solo practitioner with a general practice in northern New Jersey. She gained invaluable experience doing just about everything – civil litigation, criminal litigation, family law, real estate closings, estate law, you name it. Eventually, Lisa focused on civil litigation and in 2004 she was excited to receive a job opportunity from Kaplin Stewart in their New Jersey office. Lisa's first year at Kaplin Stewart was eventful because one of her cases went up to the New Jersey Supreme Court.



Lisa Buckalew

So, how did Lisa wind up on the “right side of the river” (as one of her colleagues put it), in Blue Bell, Pennsylvania? In 2007, Lisa got engaged to David Goldring (now her husband) and decided to move to Philadelphia. Kaplin Stewart asked Lisa to take the Pennsylvania bar exam and to work primarily out of Blue Bell. Lisa agreed, how hard could the bar exam be? She had no idea. It was so hard that at one point during the bar exam, Lisa considered walking out and heading to the Cheesecake Factory. Thankfully, she stuck it out and passed, and became a Pennsylvania lawyer too.

Lisa still enjoys practicing in New Jersey, and at any given time you can find her crossing the Ben Franklin Bridge. A few months ago, one of Lisa's biggest fears was realized when her car broke down on the Ben Franklin Bridge heading into New Jersey for a trial. Thankfully, a nice port authority policeman drove Lisa to court (after she assured him that she was not a criminal defense lawyer). She made it to trial on time and won her case.

Lisa and her husband, who live in the Roxborough section of Philadelphia, enjoy traveling. The two just returned from a trip to London and Paris in June. They also enjoy watching Phillies games and taking cooking classes together. Lisa's youngest sister is starting college at Rutgers and is considering becoming a lawyer, and Lisa could not be happier.

Do You Know–

that the Department of Housing and Urban Development (HUD) recently made changes to the Good Faith Estimate and Closing Statement forms? HUD revised the thirty year old forms in an effort to help consumers better understand the terms of the loans they are considering and to protect consumers from “surprise” fees at the closing table. Here are a few of those changes:

- 1 Loan originators are required to provide borrowers with a standard Good Faith Estimate that clearly discloses key loan terms and closing costs.
- 2 Mortgage brokers must calculate their commissions from their lenders (known as yield-spread premiums) as part of the loan origination fee. HUD hopes that by integrating the yield-spread premium into the origination fee, brokers will be less likely to place their customers into loans at the high end of the interest-rate spread.
- 3 The Closing Statement has been expanded from two pages to three pages. Origination fees and transfer taxes on the Closing Statement must be exactly as stated on the lender's Good Faith Estimate. While some costs from entities unaffiliated with the lender (i.e. certain title company and inspection fees) can change between the Good Faith Estimate and the Closing Statement, the change cannot be greater than 10%.

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Legal Perspectives

The American Jobs and Closing Tax Loopholes Act of 2010: Eliminates a Benefit of S Corporations

This is the Bill that contains the controversial tax reduction extenders. The Bill was approved by the House on May 28, 2010 but is still waiting for Senate action. Among the tax loophole eliminators is Section 413 which will impact some S Corporation ("S Corp") owners who will be paying more employment taxes.

Under current law the owners of limited liability companies ("LLC") are subject to self-employment tax ("SECA Tax"). The SECA Tax rate is 15.3% on the first \$106,800 and 2.9% on amounts in excess of \$106,800.

Unlike the LLC owner, the S Corp shareholder who is employed by the corporation is treated as an employee. The shareholder's compensation is subject to social security tax and Medicare tax but if the S Corp pays the shareholder a reasonable amount of compensation, amounts distributed as corporate earnings will not be subject to employment taxes.



Barry A. Furman

What you should know:

1. Section 413 requires that all distributed income of a disqualified S Corp be taxed as self-employment income. Although Congress wants to stop business owners from taking a minimal salary and the rest of their income as distributions, thereby avoiding employment taxes, Section 413 treats an S Corp like an LLC for employment tax purposes.
2. The provision does not apply to all S Corps. Instead, it only applies to disqualified S Corps. Disqualified S Corps are those S Corps (1) engaged in a professional services business and which make their income on the reputation and skill of 3 or fewer shareholders, and (2) that are partners in a professional services business.
3. Section 413 has a number of flaws. It will not apply to large S Corps and therefore discriminates against small S Corps. Moreover, the provision would overturn more than 50 years of tax policy that has been enforced by IRS audits, and would remove one of the benefits of an S Corp over an LLC.

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Unless otherwise expressly stated herein, all discussions and opinions are based upon the law of the Commonwealth of Pennsylvania and the State of New Jersey. Your comments or suggestions are welcome... Phone: 610.260.6000 • Fax: 610.260.1240 • www.kaplaw.com

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