
New Jersey's Permit Extension Act to Expire December 31, 2014

Legal Alert

August 11, 2014

Despite the continuing challenges of the economic climate, it appears unlikely that the New Jersey Legislature will pass another general extension to the Permit Extension Act ("PEA"). The tolling of the time for which most real estate related government issued permits and approvals are effective, as provided by the PEA, is currently scheduled to end on December 31, 2014, and we encourage our clients to begin preparing for this deadline.

Brief Overview Of How The PEA Works: The PEA covers a variety of municipal, regional, and state-issued development permits and/or approvals, with an expiration date or were approved, between January 1, 2007 to December 31, 2014.

When the PEA went into effect on January 1, 2007, the New Jersey Legislature figuratively hit "pause" on the stopwatch ticking toward the expiration date of any covered permit and/or approval. On December 31, 2014 the Legislature will hit "start" on the stopwatch. The stopwatch illustrates the legal concept of "tolling." It is important to note that all tolled permits and/or approvals *do not automatically expire on December 31, 2014*. Rather, that is simply the date that the stopwatch starts ticking again, and it is important to now analyze what the status of any tolled permits and/or approvals will be as of 12:01 AM on January 1, 2015 and what, if anything should be done prior to December 31, 2014.

The Legislature limited the maximum time left on any covered permit and/or approval on the legislative stopwatch to six months after December 31, 2014. Therefore, when the Legislature hits "start" on December 31, 2014, the longest the stopwatch can run for any Permit and/or Approval that would have expired on or before December 31, 2014, is until June 30, 2015 – *this is an automatic expiration date*.

Shorthand Rules For Figuring Out How The PEA Affects Your Permit and/or Approval: It is a fact-specific inquiry to determine how individual permits and/or approvals will be affected, but generally, permits and/or approvals will fall into one of three categories, as follows:

Category 1: If there were **more than 6 months left on the permit and/or approval** on January 1, 2007, the permit and/or approval will automatically expire on June 30, 2015.

Category 2: If there were **less than 6 months left on the permit and/or approval** on January 1, 2007, the permit and/or approval will expire December 31, 2014 plus the time remaining on the permit and/or approval as of January 1, 2007.

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Category 3: If the **original expiration date on the permit and/or approval is after June 30, 2015**, the PEA does not apply; no tolling is invoked and the legislative stopwatch is not involved. The original expiration date remains the final expiration date. The PEA does not shorten or lengthen the term of any such approval.

For Examples of Tolling Effects on Permits/Approvals granted during the Period January 1, 2007 – December 31, 2014, See Link in the last paragraph of this Alert.

How To Preserve Your Permits and/or Approvals In Preparation For The End Of The PEA's Protection: Below are some proactive steps that can be taken to preserve existing permits and/or approvals beyond the effectiveness of the PEA:

- For approvals under the Municipal Land Use Law ("MLUL"), apply for available extensions with the planning board or zoning board. The PEA does not affect the planning board or zoning board's ability to grant extensions.
- For permits and/or approvals granted by state agencies or other governmental jurisdictions, apply for available extensions provided under the specific program. The PEA does not affect the ability of government agencies to grant extensions. Many of the permits and/or approvals covered by the PEA have built-in mechanisms to obtain extensions, and often establish deadlines when extension applications are due. (*i.e.*, 30 days prior to expiration, 90 days prior to expiration, etc.).
- Take advantage of any non-PEA tolling provisions provided for under the MLUL or other government programs. For example, under the MLUL, if the developer is barred from proceeding with the development by a legal action or governmental or judicial order or directive to protect the public health and welfare, the approval is tolled, provided that the developer is otherwise ready, willing, and able to proceed. N.J.S.A. 40:55D-21.
- Vest the permit and/or approval by starting to build. As a general rule, under New Jersey law, once there has been "substantial reliance" on a permit/approval, through construction, significant expenditures, or other actions, rights in the permit/approval become vested, and irrevocable. Whether or not rights in a specific permit/approval have become vested is a highly fact-sensitive inquiry. In some cases, the statute or regulations for the individual permit/approval provide guidance.

The appropriate course of action with respect to any permit is highly fact-specific and depends on the regulatory scheme governing the individual permit at issue. For additional information on specific permits, consult our recently-published article, [For Whom the Permit Tolls: Life After the Permit Extension Act](#). If we can provide any assistance or guidance with respect to a specific permit, do not hesitate to reach out to us at robert.washburn@flastergreenberg.com; emily.markos@flastergreenberg.com and frank.wisnewski@flastergreenberg.com.

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