

No. 2013-54

AN ACT

HB 784

Providing for permit extensions; and making a repeal.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Short title.

This act shall be known and may be cited as the Development Permit Extension Act.

Section 2. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Approval."

(1) Except as provided in paragraph (2), any government agency approval, agreement, permit, including a building permit or construction permit, or other authorization or decision:

(i) allowing a development or construction project to proceed; or

(ii) relating to or affecting development, granted pursuant to a statute, regulation or ordinance adopted by a municipality, including the following:

(A) 37 Pa.C.S. (relating to historical and museums).

(B) 53 Pa.C.S. (relating to municipalities generally).

(C) 68 Pa.C.S. Pt. II Subpt. B (relating to condominiums).

(D) 68 Pa.C.S. Pt. II Subpt. C (relating to cooperatives).

(E) 68 Pa.C.S. Pt. II Subpt. D (relating to planned communities).

(F) The act of March 7, 1901 (P.L.20, No.14), referred to as the Second Class City Law, as it relates to development and construction.

(G) The act of May 16, 1923 (P.L.207, No.153), referred to as the Municipal Claim and Tax Lien Law.

(H) The act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929.

(I) The act of June 23, 1931 (P.L.932, No.317), known as The Third Class City Code, as it relates to development and construction.

(J) The act of June 24, 1931 (P.L.1206, No.331), known as The First Class Township Code, as it relates to development and construction.

(K) The act of May 1, 1933 (P.L.103, No.69), known as The Second Class Township Code, as it relates to development and construction.

(L) The act of June 22, 1937 (P.L.1987, No.394), known as The Clean Streams Law.

(M) The act of June 1, 1945 (P.L.1242, No.428), known as the State Highway Law, as it relates to the issuance of highway occupancy permits which are regulated under 67 Pa. Code Ch. 441 (relating to access to and occupancy of highways by driveways and local roads) or which are affected by other laws or regulations.

(N) The act of April 21, 1949 (P.L.665, No.155), known as the First Class City Home Rule Act, as it relates to development and construction.

(O) The act of July 28, 1953 (P.L.723, No.230), known as the Second Class County Code.

(P) The act of August 9, 1955 (P.L.323, No.130), known as The County Code.

(Q) The act of July 15, 1957 (P.L.901, No.399), known as the Optional Third Class City Charter Law, as it relates to development and construction.

(R) The act of January 24, 1966 (1965 P.L.1535, No.537), known as the Pennsylvania Sewage Facilities Act.

(S) The act of February 1, 1966 (1965 P.L.1656, No.581), known as The Borough Code, as it relates to development and construction.

(T) The act of July 31, 1968 (P.L.805, No.247), known as the Pennsylvania Municipalities Planning Code.

(U) The act of July 9, 1971 (P.L.206, No.34), known as the Improvement of Deteriorating Real Property or Areas Tax Exemption Act.

(V) The act of October 4, 1978 (P.L.851, No.166), known as the Flood Plain Management Act.

(W) The act of October 4, 1978 (P.L.864, No.167), known as the Storm Water Management Act.

(X) The act of November 26, 1978 (P.L.1375, No.325), known as the Dam Safety and Encroachments Act.

(Y) The act of November 10, 1999 (P.L.491, No.45), known as the Pennsylvania Construction Code Act.

(Z) The act of December 20, 2000 (P.L.724, No.99), known as the Municipal Code and Ordinance Compliance Act.

(Z.1) The act of June 22, 2001 (P.L.390, No.29), known as the Conservation and Preservation Easements Act.

(Z.2) The former act of May 16, 2002 (P.L.315, No.46), known as the Community Services Block Grant Act.

(Z.3) The act of February 22, 2008 (P.L.36, No.4), entitled "An act authorizing the Department of General Services, with the concurrence of the Department of Environmental Protection, to lease to VTE Philadelphia, LP, or its nominee, land within the bed of the Delaware River in the City of Philadelphia; and affirming the authority of the General Assembly to enact certain conveyances."

(Z.4) The act of February 22, 2008 (P.L.41, No.5), entitled "An act authorizing the Department of General Services, with the

concurrence of the Department of Environmental Protection, to lease to NCCB Associates, LP, or its nominee, land within the bed of the Delaware River in the City of Philadelphia; and affirming the authority of the General Assembly to enact certain conveyances."

(Z.5) Soil erosion and sediment control plans approved by a local soil conservation district under 25 Pa. Code Ch. 102 (relating to erosion and sediment control).

(Z.6) The National Historic Preservation Act (Public Law 89-665, 80 Stat. 915), to the extent the Commonwealth has been empowered to administer, approve or otherwise authorize activities under that act.

(Z.7) The Federal Water Pollution Control Act (62 Stat. 1155, 33 U.S.C. § 1251 et seq.), to the extent the Commonwealth has been empowered to administer, approve or otherwise authorize activities under that act.

(2) In cities of the first class and agencies established by such cities, the term shall include only the issuance of a building permit, a zoning use and registration permit and any administrative approval, including an approval by a board or commission, that is a condition precedent to issuance of a building permit or zoning use and registration permit to an owner of property.

(3) Creating additional units and common elements out of convertible real estate in a condominium or planned community.

"Development." Any of the following:

(1) The division of a parcel of land into two or more parcels, including a subdivision as defined in section 107 of the act of July 31, 1968 (P.L.805, No.247), known as the Pennsylvania Municipalities Planning Code.

(2) The construction, reconstruction, conversion, structural alteration, relocation or enlargement of a building or other structure.

(3) Site preparation, including grading, earth moving activities, clearance, soil removal or movement, timber harvesting relocation, excavation, landfill and moving, depositing or storing soil, rock or earth materials.

(4) A use or change in the use of a building or other structure or change in land use.

(5) Land development, as defined in section 107 of the Pennsylvania Municipalities Planning Code, or land use.

(6) Demolition, moving or removing a building or other structure.

(7) The right to convert convertible real estate or withdraw withdrawable real estate pursuant to 68 Pa.C.S. Pt. II Subpt. B (relating to condominiums) or D (relating to planned communities).

"Extension period." The period beginning after December 31, 2008, and ending before July 2, 2016.

"Government agency." The Commonwealth, a political subdivision or an agency, department, authority, commission or board of the Commonwealth or a political subdivision. The term includes regional commissions, boards or instrumentalities with the authority to issue approvals.

Section 3. Existing approval.

(a) Automatic suspension.—The expiration date of an approval by a government agency that is granted for or in effect during the extension period, whether obtained before or after the beginning of the extension period, shall be automatically suspended during the extension period.

(a.1) Cities of the first class.—In cities of the first class and agencies established by such cities, the suspension provided for in subsection (a) shall be valid, for any covered approval, 20 days after the notice from the approval holder to the agency that issued the approval of the approval holder's intent to exercise his or her rights under the suspension and payment of a fee equal to 50% of the original application fee, but not to exceed \$5,000. The agency that issued the approval may prescribe a form of notice.

(a.2) Limitation.—Any government approval granted after July 2, 2013, shall not be extended beyond the normal approval periods of the government agency without the permission or approval of the government agency.

(b) Duration.—The extension period established under this act shall be the maximum approval period authorized under this act and shall supersede the normal time period for approvals relating to development. Nothing in this section shall prohibit the government agency from granting additional extensions as provided by law.

(c) Riparian leases.—

(1) The time period relating to obtaining a building permit under section 1(i) of the act of February 22, 2008 (P.L.36, No.4), entitled "An act authorizing the Department of General Services, with the concurrence of the Department of Environmental Protection, to lease to VTE Philadelphia, LP, or its nominee, land within the bed of the Delaware River in the City of Philadelphia; and affirming the authority of the General Assembly to enact certain conveyances," shall be extended until January 1, 2013.

(2) The time period relating to obtaining a building permit under section 1(i) of the act of February 22, 2008 (P.L.41, No.5), entitled "An act authorizing the Department of General Services, with the concurrence of the Department of Environmental Protection, to lease to NCCB Associates, LP, or its nominee, land within the bed of the Delaware River in the City of Philadelphia; and affirming the authority of the General Assembly to enact certain conveyances," shall be extended until January 1, 2013.

Section 4. Subsequent changes.

(a) Change in law.—A law, regulation or policy enacted, adopted or modified by a government agency during the extension period shall not have the effect of prohibiting or limiting an existing approval during the extension period.

(b) Planning code approval.—When an approval has been granted under the act of July 31, 1968 (P.L.805, No.247), known as the Pennsylvania Municipalities Planning Code, a subsequent change in a zoning, subdivision or other governing ordinance or plan shall not apply to or affect the right of the applicant to commence or complete the activities authorized by the approval for the duration of the extension period. For purposes of this subsection, the extension period shall be extended for the duration of any

litigation, including appeals, relating to an approval which prevents the completion of all or part of the activity authorized by the approval.

(c) Nonexpiration.—An action by a government agency or law to lease, license, grant or otherwise convey rights in the beds of navigable waters of the Commonwealth shall not expire for the duration of the extension period, including time limits relating to the initiation, prosecution or completion of construction. A conveyance of rights under this subsection shall not terminate during the extension period for failure to initiate, prosecute or complete construction.

Section 5. Agency verification.

(a) Request for verification.—

(1) The holder or recipient of an approval may seek written verification from the issuing government agency for any of the following:

(i) The existence of a valid approval.

(ii) The expiration date of the approval under this act.

(2) The request shall set forth the approval in question and the anticipated expiration date under this act.

(b) Agency action.—Upon receipt of a request under subsection (a), the government agency shall respond in writing affirming or denying the existence of the approval, its expiration date and any issues associated with its validity within 30 days. Except in cities of the first class and agencies established by such cities, failure to respond within 30 days shall result in a deemed affirmation of the existence of the approval and expiration date set forth in the request submitted under subsection (a). The agency may charge a fee of not more than \$100 for verification of a residential approval and \$500 for verification of a commercial approval under this subsection.

(c) Failure to seek affirmation.—The failure of the holder of an approval to seek verification from a government agency shall not be grounds for termination, revocation or other invalidation of an approval.

(d) Appeals of verification.—A dispute arising under this section shall be appealable in accordance with one of the following applicable laws:

(1) 2 Pa.C.S. § 105 (relating to local agency law).

(2) The act of July 31, 1968 (P.L.805, No.247), known as the Pennsylvania Municipalities Planning Code.

Section 6. Applicability.

(a) Exceptions.—This act shall not apply to any of the following:

(1) An approval issued to comply with Federal law, the duration or terms of expiration of which is specified or determined by Federal law.

(2) An administrative consent order or other enforcement action relating to an approval that is subject to the extension period.

(3) An approval, designation or benefit under the act of October 6, 1998 (P.L.705, No.92), known as the Keystone Opportunity Zone, Keystone Opportunity Expansion Zone and Keystone Opportunity Improvement Zone Act.

(4) A "One-Call" determination, response or other requirement under the act of December 10, 1974 (P.L.852, No.287), referred to as the Underground Utility Line Protection Law.

(5) The revocation or modification of an approval or extension of an approval, when the approval authorizes the modification or revocation for cause.

(6) An approval issued by the Department of Transportation, except that approvals in accordance with 67 Pa. Code Ch. 441 (relating to access to and occupancy of highways by driveways and local roads) shall be extended by the department upon the submission of a complete and accurate application throughout the extension period for one-year intervals, subject to the requirements of 67 Pa. Code Ch. 441, including modifications based on changed circumstances.

(7) An approval issued by the Department of Environmental Protection implementing 25 Pa. Code § 93.4a (relating to antidegradation) in connection with surface waters, as defined in 25 Pa. Code § 93.1 (relating to definitions), or wetlands, as defined in 25 Pa. Code § 93.1, which surface waters or wetlands, after the issuance of the approval, and during the extension period, became classified as:

(i) High Quality Waters, pursuant to 25 Pa. Code §§ 93.1 and 93.4b(a) (relating to qualifying as high quality or exceptional value waters); or

(ii) Exceptional Value Waters, pursuant to 25 Pa. Code § 93.4b(b)(1).

(8) An approval issued by the Department of Environmental Protection implementing 25 Pa. Code § 93.4a in connection with surface waters, as defined in 25 Pa. Code § 93.1, or wetlands, as defined in 25 Pa. Code § 93.1, which surface waters or wetlands are classified as Exceptional Value Waters pursuant to 25 Pa. Code § 93.4b(b)(1).

(b) Sewer and water systems.—If an approval is based upon the connection to a sanitary sewer system or water distribution system, the application of the extension period as it relates to capacity shall be contingent upon the availability of sufficient capacity of the system to accommodate the development that is the subject of the extended approval. If sufficient capacity is unavailable at the time it is required to proceed with development under the approval, priority with regard to further distribution or allocation of capacity shall be established by the date on which the approval was obtained. Priority relating to distribution of additional capacity shall be allocated in order of the granting of the original approval for the connection.

(c) Fee.—A government agency which issued an approval may charge a fee to extend the approval that may be no more than 25% of the original application fee. In no event may the fee be more than \$5,000.

Section 7. Notice.

By August 5, 2010, each affected government agency shall publish notice of applicability of the extension period to approvals granted by the government agency under this act in the Pennsylvania Bulletin.

Section 8. Miscellaneous.

(a) Construction.—Nothing in this act shall be construed to modify any requirement of law that is necessary to retain Federal delegation to, or assumption by, the Commonwealth of the authority to implement a Federal law or program.

(b) Authority.—During the extension period, a government agency shall retain the authority to do all of the following:

(1) Suspend or revoke an approval for noncompliance with a written condition of the approval.

(2) Enforce conditions of approvals granted under law prior to the extension period.

(3) Enforce only those conditions in an approval issued under the act of July 31, 1968 (P.L.805, No.247), known as the Pennsylvania Municipalities Planning Code, that are required to be performed prior to final plan approval.

Section 20. Repeals.

Repeals are as follows:

(1) The General Assembly declares that the repeal under paragraph (2) is necessary to effectuate this act.

(2) Article XVI-I of the act of April 9, 1929 (P.L.343, No.176), known as The Fiscal Code, is repealed.

Section 21. Effective date.

This act shall take effect immediately.

APPROVED—The 9th day of July, A.D. 2013

TOM CORBETT