

UPDATED POLICY ANALYSIS OF ACT 46

Containing Senate Bill 1042 as Article 16-1

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PURPOSE: This analysis was prepared to inform County Planning Directors in PA about Act 46 Article 16-1 requirements imposing new duties on County Planning agencies, counties, municipalities, authorities, commissions, boards and State agencies and a deadline of 7/30/10.

BACKGROUND: Act 46 of 2010 (signed July 6, 2010) is an amendment to the state's Fiscal Code pertaining to the finances of state government. Article 16-1 was added to provide relief to developers and applicants whose developments have been stalled during the present economic economy. **The article stipulates that any permit, approval, authorization or agreement relating to development that was issued or would expire between December 31, 2008 and July 2, 2013 by the state or local government will be automatically extended until July 2, 2013. It also contains specific notice publication requirements and deadlines (7/30/10 – see page 109-110), limitations and specifications on fees, and other procedural matters.**

As enacted the following terms are defined:

“Approval” is any government agency approval, agreement, permit, including a building permit or construction permit, or other authorization or decision that allows a development or construction project to proceed, or any statute, regulation or ordinance adopted by a county or municipality that relates to or affects development.

The following is a **partial** list of those statutes that would be of concern to County Planning Commissions, counties, municipalities, Zoning Hearing Boards, County Conservation Districts, Water and Sewer Authorities, Land Trusts or Conservancies or Agricultural Preservation Boards holding conservation and preservation easements:

- 1) The County Code, Second Class Township Code, and Third Class City Code as they relate to development and construction,
- 2) the Clean Streams Law,
- 3) the State Highway Law as it relates to issuance of Highway Occupancy Permits,
- 4) Municipal Claim and Tax Lien Law,
- 5) the PA Sewage Facilities Act,
- 6) the PA Municipalities Planning Code,
- 7) the Improvement of Deteriorating Real Property or Areas Tax Exemption Act,
- 8) the Flood Plain Management Act,
- 9) The Storm Water Management Act,
- 10) the Dam Safety and Encroachments Act,
- 11) The PA Uniform Construction Code Act,
- 12) the Municipal Code and Ordinance Compliance Act,
- 13) the Conservation and Preservation Easements Act,
- 14) the Community Services Block Grant

Act, 15) Soil Erosion and Sediment Control Plans Approved by a County Conservation District, 16) the National Historic Preservation Act to the extent the Commonwealth has been empowered to administer the Federal Law, 17) the Federal Water Pollution Control Act to the extent the Commonwealth has been empowered to administer it, and 18) creation of additional units and common elements out of convertible real estate in a condominium or planned community.

“Development” is 1) the division of a parcel of land into two or more parcels, including subdivisions as defined in the MPC, 2) the construction, reconstruction, conversion, alteration, relocation or enlargement of a building, 3) site preparation, grading, earth moving clearance, timber harvesting and the moving, depositing or storing of soil, rock or earth materials, 4) a use or change in the use of a building or change in land use, 5) land development as defined in the MPC, 6) demolition, or moving of a building, and 7) the conversion or real estate pursuant to the laws relating to condominiums and planned communities.

“Extension Period” begins after December 31, 2008 and ends before July 2, 2013.

“Government Agency” is the commonwealth, a political subdivision or any department, authority, commission or board created by the commonwealth or political subdivision. The term includes regional commissions with the authority to issue approvals.

Operative Provisions:

An expiration date of an approval that is granted or in effect during the Extension Period shall be automatically suspended during the Extension Period.

The act stipulates that any approval that is granted for, or in effect, during the extension period, whether granted before or after the beginning of the extension period, shall be automatically extended. The act also stipulates that this provision shall not shorten an approved permit if the permit approval grants a longer time period. Also, government agencies may grant additional extensions as provided by law.

No law, regulation or policy adopted or modified during the extension period shall change the requirements that were in effect when the approval was granted. Changes to zoning, subdivision or other plan requirements under the MPC during the extension period shall not prevent the applicant to commence or complete the activities authorized by the approval. Approvals shall be extended for the duration of any appeals of an approval. Leases or licenses or conveyance of rights in the beds of navigable waters of the Commonwealth shall not terminate for the duration of the Extension Period for reason of failure to initiate, prosecute or complete construction.

If an applicant desires to have written verification of the existence of a valid approval and the expiration date of that approval, the agency shall, within 30 days, provide in writing affirmation or denial of the existence of the approval, the anticipated expiration date and any issues associated with its validity. The agency may charge a fee of not more than \$100 for residential verification and \$500 for commercial verification. If the applicant does not seek verification the approval or extension period is not invalidated. Appeals of the verification are handled in accordance with either the Local Agency Law or the provisions of the MPC.

Exceptions: Exceptions to this law are: 1) approval issued to comply with federal law where the terms of expiration are defined in the law, 2) Administrative Consent Order or other

enforcement action relating to an approval that is subject to the extension period, 3) an approval under the Keystone Opportunity Zone, 4) a One-Call Determination, 5) the revocation or modification of an approval or extension when the approval authorizes the modification or revocation for cause, 6) approvals issued by PennDOT, except for HOPs, shall be for one-year intervals that may include modifications based on changed circumstances, and 7) approvals issued by DEP pertaining to antidegradation of surface waters or wetlands if, after the issuance of the approval, those waters became classified as High Quality or Exceptional Value Waters.

Water and Sewer System connections may be subject to capacity allocation or availability and specific language in the Act governs the priority for distribution of additional capacity.

Fee: The government agency issuing the approval may charge a fee not greater than 25% of the original application fee and not greater than \$5,000.

Retained Authority: During the extension period a government agency retains the authority to: 1) suspend or revoke an approval for noncompliance with a written condition of the approval, 2) enforce conditions of approvals granted prior to the extension period, and 3) enforce conditions that were required to be performed prior to final plan approval as authorized by the MPC.

Notice: The act requires that each affected government agency by July 30, 2010, publish in the PA Bulletin the applicability of the extension period to approvals granted by that agency.

Updated Advisory Professional Comment: I have been provided tonight with a Draft Consolidated Public Notice which DCED intends to publish in the PA Bulletin on behalf of all counties, municipalities and authorities in PA to fulfill the Act 46 requirements. CCAP had requested that the Draft Notice be amended to add counties and therefore hopefully include County Planning Commissions, and County Conservation Districts. DCED is also working on a Fact Sheet and other materials to help on this issue.

Based upon learning of these efforts I am hereby revising my Advisory Professional Comment of 7/13/10 to recommend that County Planning Agencies rely on the consolidated Notice being developed by DCED and that you consult your County Solicitor for further advice.

Website address: <http://www.palrb.publications.us/>

Complete Text of New Law (starting at page 99):

<http://www.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?year=2009&sind=0&body=S&type=B&BN=1042>

DISCLAIMER

This Analysis was prepared by Jerry S. Walls, AICP, certified Professional Planner, acting solely as an individual. The purpose and intent was to focus on what information is needed by County Planning Directors in PA as an educational tool. This Analysis and the content and recommendations contained herein represent the professional opinion of the author and no other person or organization or agency. For questions or to offer comments please email Jerry Walls at jerry@jwallsaicp.com.