

Notes on Permit Extension Problems

- (1) The permit is still valid. The earliest the permit may expire because work was not commenced is May 1, 2011. Why? The permit was still valid at the beginning of January 2008, when the three-year permit-extension period began. The permit extension law is retroactive and effectively resurrects permits thought to have expired. G.S. 160A-418 provides, among other things, that a building permit shall expire by limitation six months after it is issued if the work authorized by the permit has not been cancelled. Thus the permit extension law suspends the running of the six-month period for a period of three years, beginning January 1, 2008 (before the permit expired) and ending on December 31, 2010. The remaining four-month period (part of the original six-month permit-expiration period) then resumes on January 1, 2011 and ends on May 1, 2011.
- (2) Since the original preliminary plat approval was granted during the three-year statutory suspension, the original approval-expiration period of one year is to be added to the end of the suspension period. However, the city, probably without any idea that the state would adopt permit extension legislation later on in 2009, granted a one-year extension of its own. Does the state legislation preempt the extension by the granting local government? Apparently not. Note that section 5(2) of the act provides that it is not to be construed to “(p)rohibit the granting of such additional extensions as are provided by law.” If we assume that River City was authorized to grant the extension under the local ordinance, the effect would be to give the subdivider a full two years after December 31, 2010 to have a final plat approved.
- (3) The primary issue is what effect the relinquishment of the permit by Juniper had. The relinquishment appeared to be voluntary since Juniper claimed the refund. Note that section 5(6) provides that the act does not affect the ability of a governmental entity “to accept voluntary relinquishment of a development approval by the holder of the development approval pursuant to law.” Assuming the relinquishment was accepted by the local government, the only remaining question is whether the permit extension law somehow allows the resurrection of a relinquished permit rather than an expired permit. The short answer is that the act does not provide for such. Could the local government take pity on the former permit holder and somehow resurrect the former permit itself? That appears unlikely under the procedures in place in most jurisdictions. However, it is possible that a city might allow a new permit to be issued without charging a permit fee. The effect would be that the new permit would itself be subject to the permit extension law.

- (4) It is important to first understand that it appears that Bart has no zoning vested right to be protected from future changes in the zoning regulations. First, he has not qualified for an ordinance-based vested right under G.S. 160A-385.1. Second, he has not obtained a building permit; he thus can claim no zoning vested right under G.S. 160A-385(b). Finally, it appears that he can claim no common-law vested right since he has apparently made no substantial good-faith expenditures in reliance upon the zoning permit. What then is the effect of the new regulations? Technically Bart's zoning permit is revocable to the extent that it authorizes work that is inconsistent with the new regulations. Whether this partial revocation of the permit comes in the form of immediate action by the city or is accomplished more informally when Bart decides to apply for the building permit for the property may depend on local practice. However, it seems clear enough that permit revocation is possible under G.S. 160A-422, which allows for the revocation of a permit "for refusal or failure to comply with the requirements of any applicable State or local laws. . . ." In the absence of a vested right the new stormwater regulations amount to such "applicable . . . local laws."
- (5) This problem raises two issues. Assume for a moment that the permit extension law applies to certain agreements with developers as well as various development permits. Are "intermediate" deadlines set forth in such an agreement or permit subject to the permit extension provisions? Such intermediate deadlines are firm, date-specific deadlines that apply before the full execution of the obligations under the agreement or permit has been completed. (They are not provisions governing the sequencing of events such as a requirement that a soil erosion and sedimentation control plan must be approved before a building permit may be obtained.) Thus if the ultimate deadline or permit expiration date is extended, it would appear reasonable that intermediate deadlines be extended in the same fashion and for some amount of time as well. Thus in the problem a requirement that the site be purchased before a certain date would appear to be subject to the permit extension law even though that obligation by the developer probably precedes most of the other obligations in the agreement. A more fundamental question is whether the permit extension law applies to this type of agreement. This public enterprise improvement reimbursement agreement is authorized by G.S. 160A-320. The permit extension law, which applies to approvals expressly listed in the statute, in section 3(1) (m.) provides that it applies to "a development agreement . . . under Article 19 of the Chapter 160A of the General Statutes." It does not refer to agreements authorized by G.S. 160A-320, which is not in Article 19. Thus the permit extension does not extend the time by which the developer is obliged to buy the property.