

“Owners and Developers Should Review Permits Now Before Time Runs Out”

At the end of June, Governor Raimondo signed into law legislation that suspends the running and expiration of all development permits until **June 30, 2016**. This suspension further expands a permit toll that has been in place, through a series of legislative enactments, since November 9, 2009. Back then, the economy was in a recession, project financing was anemic, and it made sense to afford developers some relief. That relief has been generous. Indeed, with the recent expansion of time, development permits will have been frozen in time for close to seven years. This means that anyone developing property in Rhode Island did not have to act on or even think about acting on their state and local permits for a very long time. The reprieve, however, will end next summer on July 1, 2016, when all tolled permits will start to run. Those holding tolled permits should not expect that this date will get pushed out again. The justification for the tolling (a bad economy) is dwindling and support from permit-issuing entities, including state regulators, will not be there. Property owners and developers need to take action now to review and recalculate expiration dates on permits banked during the tolling period so that they are not surprised by their sudden expiration or faced with having to apply anew for hard-fought permits.

The following permits are impacted by the tolling and automatically receive new expiration dates:

1. Rhode Island Department of Environmental Management development permits, certifications, determinations, and decisions. Many of the affected permits are those issued by the Office of Water Resources and their new expiration dates may be verified by submitting a written request to that office. Some of the new dates are still far into the future, such as new construction for onsite wastewater treatment systems (July 1, 2021), while others, such as one year freshwater wetlands permits, will sunset by the summer of 2017;
2. Rhode Island Coastal Resources Management Council development permits, including assents for new construction and alterations in the coastal region or tidal waters and within 200 feet of the mean high-water mark and coastal features. Assents are issued for a three-year period; therefore, any assents issued after the tolling went into effect will expire on July 1, 2019; and
3. Municipal planning and zoning permits. Many such permits are issued for one year and, therefore, any such permits issued during tolling would now expire on July 1, 2017.

The dates described above apply to permits issued while the tolling is in effect, i.e. between November 9, 2009 and June 30, 2016. Expirations on permits issued before but in existence at the time the tolling law took effect on November 9, 2009, will be sooner and will depend upon the number of days left on the permit when the toll began.

Property owners and developers should also be aware that the conditions under which a development permit was originally issued may have changed. The physical environment itself may have been altered significantly or the regulations pursuant to which the permit was approved may have been amended in some material way. While typically circumstances post-permit issuance do not “count”, it will be hard for the permitting authorities to ignore changes in all cases and particularly where the gap in time is large. Accordingly, holders of tolled permits should not be surprised if the permitting authorities attempt to re-evaluate or impose new conditions upon their permits at the time those authorities are notified of the start of construction. In such circumstances, legal counsel should be consulted.

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