Business-Friendly Environmental and Land Use Laws To Take Advantage Of

With the dog days of summer fading into rear view and Rhode Islanders heading back to work, it's a good time to take stock of what the Rhode Island General Assembly did earlier this summer to stimulate Rhode Island's commercial real estate market. Several pieces of enacted legislation, summarized below, will encourage the use of underutilized properties and incentivize property development.

Tenants of Dirty Property Can Ensure the State Does Not Come After Them

Under an amendment to the State superfund law–the Industrial Property Remediation and Reuse Act–Rhode Island now protects certain "innocent tenants" from liability to the State for releases of hazardous materials at industrial properties leased after January 11, 2002. Prior to the amendment, the law only protected "innocent owners", known as "bona-fide prospective purchasers", at the time of a property's transfer. While good for prospective owners, it left prospective tenants–who are equally responsible for addressing known contamination as owners–exposed. The new law has corrected that inequality and given prospective tenants the same ability to protect themselves as prospective property owners. Now, a commercial tenant, who is considering leasing a property known to be contaminated from historical operations, may qualify for protection by the submission of certain information to the Rhode Island Department of Environmental Management prior to the start of the lease term. The tenant must make a certification to the State that demonstrates its innocence and indicates its willingness to cooperate with response actions going forward. The certification will be primarily supported by proof of an industry-standard Phase I environmental site assessment, together with any follow-up, in order to establish the environmental condition of the property at the commencement of the tenancy. Once and if the Department signs off on the certification, the liability protection is effective and ensures as best possible that the State will not pursue the tenant in the future for any costs or damages associated with the investigation or cleanup at the leased property.

Developers Get One More Year on Municipal Development Permits

From November 9, 2009 until earlier this summer, the expiration of all state and municipal development permits in effect or issued after that date were tolled or suspended. Indeed, the General Assembly has seen fit to provide a lengthy reprieve for developers to get their projects ready and financing in place. All good things must come to an end and, eventually, that reprieve was scheduled to evaporate on July 1, 2016. In the face of that deadline, the General Assembly decided to again extend the lifeline of municipal development permits–those issued by planning and zoning boards–until June 30, 2017. Under the new law, the expiration dates for all zoning and planning approvals and permits are automatically recalculated as of July 1, 2017. Unlike the prior tolling extension bills, however, the new law does not extend the tolling of the running of state permits, i.e. those issued by the Rhode Island Department of Environmental Management and Rhode Island Coastal Resources Management Council, which permits have all been recalculated and started to run as of July 1, 2016.

Developers Get Credit for More Land

Until recently, local planning departments could exclude wetlands buffers in calculating the potential number of units of proposed subdivisions and lot sizes of major land development projects. This assumed that land within wetland buffers could not be developed, a faulty assumption. In fact, development that does not harm wetlands functions and values may be permitted by the State in these areas. In early July, new law was enacted that, effective January, 2017, municipalities would be required to include wetlands buffers in their lot calculations, excepting those lots abutting surface reservoirs and direct withdrawals used for public drinking water. Exactly how far those buffers extend and the standards for their alteration, if appropriate, will be set by new state

regulations expected to be finalized on or before that date.

Date Created
September 2, 2016