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## Coates' Canons Blog: The Land Development Permit Extension Legislation: Some Applications and Examples

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**UPDATE Septemeber 2013: Land development permit extension was extended in 2010 for one additional year. The suspension period ended December 31, 2011 rather than December 31, 2010. For an analysis of this change seehere my blog of August 3, 2010.**

The recently passed legislation concerning land development permit extensions (Session Law 2009 – 406 (H 831), as amended by Session Law 2009 – 484 (S 838), Session Law 2009 – 550 (H 274), and Session Law 2009 – 572 ( H 1490)) has raised a number of questions. As a follow-up to the August 28 blog of Dave Owens, I offer the following examples of the new law's application.

(1) Suppose a county issued a building permit to General Contractor on November 1, 2007. No work was initiated under the permit prior to May 1, 2008. Did the permit expire under G.S. 153A – 358 because the permitted work was not begun within six months after the permit was issued?

No, 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. The new permit-extension law is retroactive and effectively resurrects permits thought to have expired. The law suspends the running of the six-month permit expiration period for a period of three years, beginning January 1, 2008 (before the permit expired) and ending on December 31, 2010. The remaining four months of the original six-month permit-expiration period then resumes on January 1, 2011 and ends on May 1, 2011.

(2) Suppose again that a county issued a building permit to General Contractor on November 1, 2007, and work was actually commenced on February 1, 2009. Suppose further that work was discontinued on July 1, 2008 and has not been resumed. Did the permit expire under G.S. 153A-358 because the permitted work once begun was discontinued for over a year?

No. Once work was actually begun under the permit, the six-month permit-expiration period for failure to commence work became irrelevant. Instead the one-year work-discontinuance permit-expiration period takes center stage. On July 1, 2008 the law again immediately suspends the running of the one-year permit-expiration period for a period of three years (through December 31, 2010). The full twelve-month work-discontinuance permit-expiration period then resumes on January 1, 2011 and ends on December 31, 2011. As a practical matter, then, a general contractor that initiates work under a building permit can buy more time under the new law than one that obtained the permit but has not begun work.

(3) On July 1, 2008 the city granted final subdivision plat approval on the condition that the subdivider complete certain road improvements within twelve months. In addition, it approved a letter of credit submitted by the subdivider to secure this performance, as required under the ordinance. On July 1, 2009 the road improvements had not been completed and the letter of credit had lapsed. Did the plat approval expire? If not, must the subdivider renew or obtain a new letter of credit?

The plat approval now remains valid until December 31, 2011. The running of the approval period was immediately suspended on July 1, 2008 until December 31, 2010; then the one-year plat-approval period runs for the full twelve months. The subdivider's obligation will depend on the ordinance. It is likely, however, that the subdivider's obligation to provide a current performance guarantee is a condition of plat approval and runs (or should run) continuously until either the subdivider completes the improvements or the development approval expires, whichever happens first. See *also*

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Town of Pinebluff v. Marts, \_\_N.C. App. \_\_, 673 S.E.2d 740 (2009) (failure of local government to declare a default in letter of credit does not preclude it from pursuing other subdivision ordinance enforcement remedies).

(4) In November 1, 2007 West End obtained a special-use zoning permit to build a residential condominium complex and in so doing qualified his site-specific development plan for a two-year zoning vested right under G.S. 160A-385.1. However, the company has run into financial difficulty even before it obtained its building permits and sold its interest in the project this past summer to Hunter's Forest, another developer. The new owner is considering redesigning the project to include substantial office and commercial space. Does the new owner enjoy the same vested right (extended to May 1, 2013) as West End did?

Probably not. The changes outlined above, which change the project land uses, would probably necessitate a new special-use permit. That is true whether West End voluntarily relinquished its permit or not. Vested rights under the new Hunter's Forest permit would have to be established separately. The running of the vested rights period for the old permit held by West End might actually be suspended under the new law, but that fact may be largely irrelevant since that permit would be inconsistent with plans for the property that Hunter's Forest wishes to pursue.

(5) In the last example would the result be different if Hunter's Forest was content to develop the site as set forth in West-End's original plan? In other words, would a mere change in project ownership make a difference?

I think that the suspension of the permit-expiration period continues as if no change in ownership had occurred. It is true that some local governments may routinely require a new development permit whenever a project is sold to a new owner. However, it seems clear that one of the purposes of this new legislation (section 4) was to suspend the running of various development approvals and "any associated vested right under G.S. 153A-351 and or G.S. 160A-385.1" (the zoning vested rights statutes). Those two zoning vested rights statutes specifically provide that a vested right is not a personal right and runs with the land. All successors to the original landowner are entitled to exercise any vested rights obtained earlier. For that reason I believe that mere change of ownership does not matter for purposes of this example.

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