

Important Update on Time Frame for Action on Land Use Applications

UPDATED – November 16, 2020

Under Chapter 53 of the Acts of 2020 (“Chapter 53”), the state Legislature generally tolled the time periods for land use regulatory and permitting boards to act on permit applications, where the COVID-19 pandemic presented obstacles on the ability of such boards to act within statutorily-required timeframes. That tolling was set to expire within 45 days after the termination of the current State of Emergency (which is still in effect), or other later time period if applicable.

Without notice, the Legislature revised these deadlines in the FY20 supplemental budget passed on November 6, 2020 (H. 5102), which was signed by the Governor last week. Specifically, the Legislature amended the relevant provisions of Chapter 53 to change the tolling period to December 1, 2020. Thus, boards and committees will no longer have until 45 days after the termination of the State of Emergency to complete necessary actions on pending applications. Instead:

- The statutory time periods for conducting public hearings upon receipt of an application, which had been suspended as of March 10, 2020, shall resume on December 1, 2020;
- Any required public hearings that were opened as of or after March 10, 2020, but continued, must resume on or before December 1, 2020; and
- The “clock” for taking final action or risking constructive approvals/grants of permit applications shall resume December 1, 2020. However, these timelines for taking final action shall be tolled from March 10, 2020 to December 1, 2020.

H. 5102 contains a mechanism whereby permitting boards and committees may apply to the state Secretary for Housing and Economic Development (“Secretary”) for relief from the December 1, 2020 suspension of the tolling provisions. Unfortunately, this relief will only be available where boards/committees lack the technological resources to conduct virtual public hearings, and have been prevented from holding in-person public hearings as a result of COVID-19 related gatherings limitations imposed by the Governor (or other similar public health orders). We have no information at the present time whether the Secretary has established, or intends to establish, processes for such applications. Moreover, failure to secure the Secretary’s approval may result in a particular application being deemed constructively approved or granted. In any event, we advise that written extensions of time be obtained from applicants with pending permit applications whenever possible, and filed with the Town or City Clerk where applicable, so as to avoid the potential for constructively approved permits in light of this significantly shortened tolling period.

Please feel free to contact your KP Law attorney with any questions and/or e-mail us at coronavirusinfo@kplaw.com. We will be in touch with you as soon as possible.

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