

State's New Expedited Permitting Law Summarized

BY BRIAN C. LEVEY AND MARC J. GOLDSTEIN

On Aug. 2, Gov. Mitt Romney signed Chapter 205 of the Acts of 2006, known as the Expedited Permitting Law. Because the legislation declared it to be an emergency law, it took effect immediately. The sections of the new law are summarized below:

Section 1: Provides for appropriating authority for fiscal year 2007 for purposes described in the statute.

Section 2: Makes appropriations to the Executive Office of Economic Development for fiscal year 2007.

Section 3: Amends General Laws (G.L.) Chapter 7, Section 4H to require that the Division of Administrative Law Appeals (DALA) prepare an annual report concerning all appeals filed with the division during the preceding calendar year, including the reasons for any case lasting longer than six months. The chief administrative magistrate is required to verify that written recommended final decisions are issued within 90 days after the record is closed.

Section 4: Amends G.L. Chapter 23A by replacing Section 3H with a new section that requires the governor to appoint a Director of the Massachusetts Permit Regulatory Office within the Executive Office of Economic Development who will serve as the Permit Ombudsman to new and expanding businesses, provide one-stop licensing for businesses and development for obtaining state licenses, permits, state certificates, state approvals and other requirements (excluding the State Secretary's office).

The new section also requires a permitting specialist within each of the five regional offices of the Massachusetts Development Finance Agency, whose responsibility it will be to assist in the obtaining of local permits, approvals and licenses.

Section 5: Adds Section 62 to G.L. Chapter 23A which creates an Interagency Permitting Board within the Department of Economic Development which includes the secretaries of Economic Development, Transportation, Environmental Affairs, and Public Safety, and the directors of the

Department of Housing and Community Development (DHCD), Department of Business and Technology, Department of Workforce Development, Department of Consumer Affairs and Business Regulation, the chair of the Commonwealth Development Coordinating Council, and the executive director of the Massachusetts Development Finance Agency (or their designees). The board will monitor the development of Chapter 43D priority development sites and administer the technical assistance grants of G.L. Chapter 43D, Section 3(b).

Section 6: Adds Section 2SSS to G.L. Chapter 29 which establishes the District Local Technical Assistance Fund administered by the bureau of municipal assistance within the Department of Revenue and used by DHCD to provide grants to regional planning agencies for technical assistance to municipalities and to develop a statewide permitting model.

Section 7: Amends G.L. Chapter 30A, Section 10A by requiring that at least five of the 10 persons intervening in an appeal in a Chapter 91 licensing matter reside in the community where the project is proposed. Each intervenor must file an affidavit stating the intent to be part of the group and to be represented by its authorized representative (DEP to adopt rules and regulations by July 1, 2007, pursuant to Section 23).

Section 8: Amends G.L. Chapter 40A, Section 9 by allowing municipalities which adopt the provisions to allow research and development as permitted uses by special permit in non-residential zoning districts that are not residential, agricultural or open space districts.

Section 9: Amends G.L. Chapter 40A, Section 11 to allow special permits to take effect regardless of whether the special permit decision is appealed. Any person proceeding with construction pursuant to a special permit under appeal does so at risk that a court will reverse the permit and that any construction performed under the permit may be ordered undone (Applicable only to

special permits issued after the effective date of the act pursuant to Section 21).

Section 10: Adds Section 30 to G.L. Chapter 40B which requires the development of a statewide permitting model that municipalities may adopt consistent with Chapter 43D and creates a technical assistance center in each regional planning district.

Section 11: Replaces Chapter 43D entirely with new sections 1 through 16 regarding expedited permitting. A municipality may choose to accept the provisions of the new Chapter 43D, which provides for the designation of Priority Development Sites by the selectmen or other chief elected officer, with approval from town meeting and the Interagency Permitting Board (see section 5 above). Priority Development Sites may be publicly or privately owned and must be:

- Commercially or industrially zoned;
- Eligible under applicable zoning for development or redevelopment of at least 50,000 square feet of gross floor area in new or existing buildings or structures;
- Located either (i) adjacent to areas of existing development or in underutilized buildings or facilities and with adequate water and sewer infrastructure and adequate water supplies or (ii) close to appropriate transit services; and
- Designated as a Priority Development Site by the Interagency Permitting Board.

Priority Development permit reviews and final decisions are to be issued within 180 days after the application materials are deemed complete; failure to make a decision within this timeframe is a constructive grant. There are provisions for certain extensions by assent and as a result of incomplete information or the need for additional permits. Appeals of these decisions are made within 20 days to the DALA, which must render a decision within 90 days. Further appeal is to the Superior Court.

Priority Development Sites are eligible for technical assistance grants.

Continued on next page

Municipalities that adopt Chapter 43D shall, within 120 days:

- Appoint a single point of contact to serve as primary contact for all issues under the chapter;

- Amend rules and regulations on permit issuance to conform to the chapter;

- Collect and ensure availability of all local statutes, ordinances, bylaws, etc.;

- Establish procedures for the selectmen or other chief elected officials shall determine permits, reviews, etc.; and

- Establish procedures for determination if all required materials have been submitted.

Section 12: Amends G.L. Chapter 81, Section 21, to require the Commissioner of Highways to adopt regulations regarding curb cuts (Regulations to be completed by July 1, 2007, pursuant to Section 24).

Section 13: Amends G.L. Chapter 184, Section 32 by replacing a paragraph which allows for the award of attorneys' fees for successful actions to enforce conservation, preservation and other land restrictions held by governmental bodies or charitable corporations or trusts (Applicable only to enforcement action taken after effective date of the act pursuant to Section 22).

Section 14: Amends G.L. Chapter 185, Section 1 by providing that the Land Court shall hold sittings in Boston, Fall River and Worcester.

Section 15: Adds Section 3A to Chapter 185 which provides for a separate session of the Land Court Department known as the Permit Session, which shall be held in Suffolk, Middlesex, Essex, Norfolk, Plymouth, Worcester, and Hampden counties. The Permit Session has original jurisdiction (concurrent with the Superior Court) over the following civil actions, but only if the project involves 25 or more dwelling units or the construction or alteration of 25,000 square feet or more of gross floor area or both:

- Appeals of any municipal, regional or state permit, order, certificate or approval or denial concerning the use or development of real property, including those brought under Chapter 21, sections 61 to 62H of Chapter 30, chapters 30A, 40A to 40C, 40R, 41, 43D, 91, 131, 131A or sections 4 and 5 of Chapter 249, or Chapter 664 of the Acts of 1956, or any local bylaw or ordinance;

- Appeals seeking equitable or declaratory relief designed to secure or protect the issuance of any municipal, regional or state permit or approval concerning the use or development of real property;

- Appeals challenging the interpretation or application of any municipal, regional or state rules, regulations, statutes, laws, bylaws or ordinances concerning any permit or approval;

- Claims under Chapter 231, Section 6F, or for malicious prosecution, abuse of process, intentional or negligence interference with advantageous relations or intentional or negligence interference with contractual relations arising out of or based on the appeal of any municipal, regional or state permit, order, certificate or approval concerning the use or development of real property; and

- Any other claims between persons holding any right, title or interest in land and any municipal, regional or state board, commission, authority or public official based on or arising out of a permit or approval concerning the use or development of real property.

Cases in the session are assigned to a single judge and are assigned one of three tracks:

Track A: 12 months to trial plus four months to decision (Time to decision measured from argument on summary judgment or receipt of trial transcripts);

Track F: Nine months to trial plus three months to decision; or

Track X: Six months to trial plus two months to decision.

Cases from other sessions can be transferred by motion to the chief justice for admin-

istration and management. In addition to various reporting requirements, the Chief Justice of the Land Court may request additional judges from the Chief Justice for Administration and Management in order to meet these timeframes.

Section 16: Amends G.L. Chapter 211B, Section 2 to add an additional judge to the Land Court for a total of seven.

Section 17: Appropriates funds to the DALA.

Section 18: Appropriates funds for economic development grants to be administered by the Department of Business and Technology.

Section 19: Appropriates funds for District Local Technical Assistance Fund.

Section 20: Requires the Secretary of Environmental Affairs to report to the House and Senate on the statewide environmental justice program.

Section 21: Section 9 (proceeding at risk upon appeal of special permit) is applicable only to special permits issued after the effective date of the act.

Section 22: Section 13 (allowing attorney's fee awards for enforcement of land restrictions) is applicable only to enforcement actions commenced after the effective date of the act.

Section 23: DEP shall adopt rules and regulations concerning intervention in Chapter 91 licensing pursuant to G.L. Chapter 30A, Section 10A by July 1, 2007.

Section 24: The Commissioner of Highways shall adopt the curb cut regulations by July 1, 2007. ■

BRIAN LEVEY and MARC GOLDSTEIN are attorneys at *Beveridge & Diamond P.C.*, where they practice land use, zoning and environmental law, including representation of builders and developers before local, state and federal permit-granting authorities and in all state and federal trial and appellate courts. They can be reached at their Wellesley office at (781) 416-5700 or at mgoldstein@bdlaw.com.