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In the Zone

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November 2010

Validity Challenges: What Happens If I Win?

By Clair E. Wischusen

A validity challenge is initiated by a landowner who seeks to void a restriction affecting his or her desired use of land. Under the Pennsylvania Municipalities Planning Code (the MPC), a landowner can present a challenge to the zoning hearing board or, if coupled with a proposed curative amendment to the ordinance, to the municipal governing body. A zoning ordinance is presumed valid unless the challenging party can show the ordinance is exclusionary, unreasonable or not substantially related to the police power interest the ordinance purports to serve.

Given the time and resources required to challenge an invalid zoning ordinance, Pennsylvania law recognizes there must be some incentive in place to bring a validity challenge. Under the doctrine of site-specific relief, a successful challenger is granted approval of the proposed development as a reward. The purposes of this doctrine are two-fold. Not only does it reward a successful challenger, but it also encourages municipalities to eliminate exclusionary zoning provisions from their zoning ordinance or suffer the consequences of unplanned development.

But does that mean a successful challenger can build whatever it wants? Under Pennsylvania law, the answer is no. Case law is clear that a successful challenger is awarded approval of the proposed development only to the extent it complies with the other valid provisions of the ordinance. Additionally, Section 609.1(c) of the MPC, 53 P.S. § 10609.1, sets forth five planning factors for courts and municipalities to consider when fashioning relief. These include site suitability and impact on public facilities, residential needs, agricultural lands and environmentally sensitive areas. However, Pennsylvania courts have consistently stated a successful challenger cannot be denied approval of a proposed development on the basis of the reviewing criteria alone.

On a practical level, courts will often remand a successful challenge back to the municipality to fashion relief in accordance with the court's opinion. In such circumstances, the municipality may be willing to waive other zoning requirements to settle the case. After all, it is the municipality that had the invalid zoning ordinance. For example, in *C & M Developers v. Bedminster Zoning Hearing Board*, 820 A.2d 143 (Pa. 2002), the Pennsylvania Supreme Court invalidated a one-acre minimum lot size requirement because, when considered in conjunction with the other zoning requirements, it rendered the zoning ordinance unduly restrictive. Although the court's invalidation seemed limited to the minimum lot size requirement, on remand, the township and the developer negotiated a settlement agreement that provided for relief from other provisions of the zoning ordinance as well, including density and impervious limitations.

While the prospect of site-specific relief is attractive, successfully challenging a zoning ordinance is no small feat. Not only can proceedings last several years, but there are also numerous expenses involved, such as application fees, engineering costs, consultant/expert witness fees, court reporter charges and, of course, legal fees.

In a recent victory, Fox Rothschild attorneys successfully challenged the validity of a zoning restriction that required landowners to preserve 75 percent of the agricultural soils on their properties, no matter the size, location or zoning designation. The relief resulting from this victory is yet to be determined.

The bottom line, when it comes to winning a validity challenge, is the old saying: "To the victor goes the spoils!"

For more information, please contact Clair E. Wischusen at 215.918.3559 or cwischusen@foxrothschild.com.

We invite you to join us for "The ABCs of NMTCs: An Introduction to the New Markets Tax Credit Program"

November 18, 2010 | 5 to 8 p.m. | Philadelphia Country Club | 1601 Spring Mill Road | Gladwyne, PA 19035

The federal New Markets Tax Credit (NMTC) program provides developers with a powerful tool for attracting capital to a wide variety of commercial and mixed use projects located in low-income communities. Join us as we present a general overview of the NMTC program and examine how the NMTC was used in various projects. We'll also discuss how developers can capitalize on the program for future projects.

Click here to register.

New Jersey Case of the Month: *US Bank, N.A. v. Nikia Hough, et al.*

By Burton J. Jaffe

US Bank, N.A. v. Nikia Hough, et al., decided by the Superior Court of New Jersey, Appellate Division, (Docket No. A-5623.08T3) on September 14, 2010, is a real property foreclosure action. In this matter, the plaintiff, US Bank, N.A., sought to foreclose upon defendant Nikia Hough's residential condominium unit located in the Township of Piscataway (the township). The condominium unit is part of the township's affordable housing obligation and, as such, is subject to the Uniform Housing Affordability Controls (UHAC) adopted by the defendant New Jersey Housing and Mortgage Finance Agency (HMFA), N.J.A.C. 5:80-26.12.26. Hough appealed from a June 11, 2009, order denying her motion seeking to "void judgment of foreclosure and to dismiss plaintiff's complaint with prejudice."

The primary issue presented was whether a commercial lender, which makes a loan secured by a mortgage on an affordable housing unit in excess of the amount permitted by N.J.A.C. 5:80-26.6(b), is prohibited from seeking to foreclose the mortgage. The Law Division answered in the affirmative, holding the mortgage was void pursuant to N.J.A.C. 5:80-26.18(e). The Appellate Division affirmed but also held the aforesaid regulation does not bar a plaintiff lender from seeking to collect on the underlying obligation.

On January 14, 2004, Hough purchased a condominium unit for $68,142.86. To fund part of the purchase price, Hough borrowed $61,329.00 from Wells Fargo Home Mortgage, Inc. and secured the loan by executing a mortgage in favor of Wells Fargo. Because the condominium formed part of the township's affordable housing obligation, the deed contained the following restriction:

> The owner's right, title and interest in this unit and the use, sale and re-sale of this property are subject to the terms, conditions, restrictions, limitations and provisions as set forth in Ordinance No. 88-34, as amended, which Ordinance is entitled "An Ordinance Establishing and Creating Regulations Governing the Conduct of the Purchase and/or Rental of Affordable Housing in the Township of Piscataway,"… as well as those terms, conditions, restrictions, limitations and provisions as set forth in the "Affordable Housing Plan of the Commons at Piscataway" dated April 3, 1991, which plan was filed in the Office of the Clerk of Middlesex County…on June 20, 1991…slip opinion at 3.

On March 25, 2005, Hough refinanced the condominium unit by borrowing $108,000 from Mortgage Lenders Network, USA, Inc. At the time of the mortgage transaction, the maximum allowable resale price of the condominium unit, pursuant to N.J.A.C. 5:80-26.6, was approximately $68,735.41. Hough executed a promissory note in favor of Mortgage Lenders, secured by a mortgage on the condominium unit. Hough used the mortgage proceeds to satisfy the Wells Fargo purchase money mortgage and for other personal unsecured debts and real property tax liens. The mortgage included the same affordable housing restriction contained in the January 14, 2004, deed. On February 1, 2007, Hough defaulted on the mortgage.

On June 12, 2007, Mortgage Lenders filed a complaint in foreclosure against Hough. On January 26, 2009, the plaintiff filed and served a notice for entry of final judgment. On March 9, 2009, the plaintiff filed proof in support of its request for entry of judgment. In the interim, Hough filed a motion seeking to void the judgment of foreclosure and dismiss the complaint with prejudice, asserting the mortgage violated UHAC regulations, as it secured a loan in excess of the amount permitted pursuant to N.J.A.C. 5:80-26.8(b).

On April 3, 2009, mistakenly believing final judgment had already been entered, the trial court denied the motion, holding vacation of the judgment would improperly bestow a benefit upon Hough because she had been aware of the affordable housing restrictions when she borrowed the money, paid off the Wells Fargo mortgage and otherwise used or retained the balance of the mortgage proceeds. It is from this order that Hough appealed.

The amount of the indebtedness that can legally be secured by a mortgage on an affordable housing unit is governed by N.J.A.C. 5:80-26.8, which provides:

> (a) Prior to incurring any indebtedness to be secured by an ownership unit, the owner shall submit to the administrative agent a notice of intent to incur such indebtedness, in such form and with such documentary support as determined by the administrative agent, and the owner shall not incur any such indebtedness unless and until the administrative agent has determined in writing that the proposed indebtedness complies with the provisions of this section.
>
> (b) With the exception of the original purchase money mortgage, during a control period, neither an owner nor a lender shall at any time cause or permit the total indebtedness secured by an ownership unit to exceed 95 percent of the maximum allowable resale price of that unit, as such price is determined by the administrative agent in accordance with N.J.A.C. 5:80-26.6(c). Slip opinion at 8 – 9.

The prohibition against securing loans in excess of the amount permitted by N.J.A.C. 5:80-26.8(b) with a mortgage against an affordable housing unit is enforced in part by N.J.A.C. 5:80-26.18(e), which provides:

> Banks and other lending institutions are prohibited from issuing any loan secured by owner-occupied real property subject to the affordability control set forth in this subchapter, if such loan would be in excess of the amount permitted by the

restriction documents or recorded in the deed or mortgage book in the county in which the property is located. **Any loan issued in violation of this subsection shall be void as against public policy** (emphasis added). Slip opinion at 10.

The defendant contended because N.J.A.C. 5:80-26.8(e) provides "any loan issued in violation of [the regulation] shall be void as against public policy," the regulation prohibits the plaintiff from seeking not only to foreclose upon the mortgage but also from collecting upon the underlying debt instrument. The plaintiff countered that because it has agreed with the township it will foreclose upon the condominium unit subject to the affordable housing restrictions, stipulating any sheriff's sale will not produce a sale price higher than the maximum resale price as determined by the UHAC regulations, the property would be sold only to a qualified buyer as determined under those regulations, the court should affirm the trial court's order denying the defendant's motion to dismiss the complaint. The plaintiff also argued that if the court prohibited it from proceeding with its foreclosure action, Hough "would clearly have been unjustly enriched," when, in fact, her own acts materially contributed to the mortgage refinance in violation of the applicable regulations. In support of that contention, the plaintiff cited N.J.A.C. 5:80-26.8(a), which requires an owner to give notice of its intent to the administrative agent that the owner intends to incur an indebtedness secured by a mortgage on the affordable housing unit, other than a first purchase money mortgage loan. The record was devoid of any evidence that Hough gave the required notice before she refinanced the property with Mortgage Lenders.

The HMFA contended N.J.A.C. 5:80-26.18(e) only requires the voiding of the mortgage as against public policy, contending "the regulation does not affect the underlying debt as that does not undermine the regulation's purpose." The court agreed with HMFA's interpretation of the regulation. In agreeing with HMFA, the court cited the public policy of the regulations; that is, if a lending institution is permitted to make a loan secured by a mortgage against an affordable housing unit in excess of 95 percent of the maximum resale price of the unit, default on the loan could result in foreclosure, thus leading to the loss of the affordable housing unit. This would countermand the public policy of ensuring affordable housing units remain affordable and occupied by lower-income households.

In conclusion, the court rejected the defendant's contention that N.J.A.C. 5:80-26.18(e) requires voidance of both the mortgage and the underlying indebtedness. Such an interpretation, the court stated, would unduly enrich Hough, with Hough having contributed to the mortgage refinance. Regulations, like statutes, the court said, must be construed to avoid interpretations that lead to absurd or unreasonable results.

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Fed Announces Interim Rules for Appraisers

By Robert W. Gundlach, Jr.

On October 18, 2010, the Federal Reserve Board announced an interim final rule to ensure real estate appraisers are free to use their independent professional judgment in assigning home values without influence or pressure from those with interests in the transactions. The rule also seeks to ensure that appraisers receive customary and reasonable payments for their services.

The interim final rule includes several provisions that protect the integrity of the appraisal process when a consumer's home is securing the loan. The interim final rule:

- Prohibits coercion and other similar actions designed to cause appraisers to base the appraised value of properties on factors other than their independent judgment;
- Prohibits appraisers and appraisal management companies hired by lenders from having financial or other interests in the properties or the credit transactions;
- Prohibits creditors from extending credit based on appraisals if they know beforehand of violations involving appraiser coercion or conflicts of interest, unless the creditors determine the values of the properties are not materially misstated;
- Requires creditors or settlement service providers with information about appraiser misconduct to file reports with the appropriate state licensing authorities; and
- Requires the payment of reasonable and customary compensation to appraisers who are not employees of the creditors or the appraisal management companies hired by the creditors.

The interim final rule is required by the Dodd-Frank Wall Street Reform and Consumer Protection Act. Compliance will be mandatory on April 1, 2011. Public comments are due 60 days after the interim final rule is published in the *Federal Register*, which is expected soon.

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New Jersey Legislative Report: S1451 - The Rice Bill

By Jeffrey M. Hall

Recently, the New Jersey Senate Community and Urban Affairs Committee reported favorably on Senate Bill No. 1451 (S1451) with Committee amendments. The so-called Rice Bill, named after the state senator primarily responsible for seeking reform, proposes to amend significantly the Local Redevelopment and Housing Law. The Eminent Domain Act of 1971 and the Relocation Assistance Act of 1971 would also be amended. As a basis for reform, the legislation itself states the Legislature received input from a number of interested citizens and interest groups over an extended period of time.

S1451 proposes to create two tracks for municipal designation of redevelopment areas: the first as a non-condemnation redevelopment area and the second as a condemnation redevelopment area. For the latter, enhanced requirements will be built into the statute consistent with two seminal cases decided within the last few years: *Harrison Redev. Agency v. DeRose,* 398 N.J. Super. 361 (App. Div. 2008) and *Gallenthin Realty Development, Inc. v. Borough of Paulsboro*, 191 N.J. 344 (2007). Under this legislation, a municipality will be required to give notice to a property owner informing that their property is at risk of being forcibly taken for redevelopment purposes and giving them a time frame within which they can contest the redevelopment designation. Further, blight determinations must be recorded at the County Recording Office. Finally, the redevelopment designation will lapse after a period of time unless redevelopment work is ongoing.

In recognition of *Gallenthin*, the criteria for blight under the statute is proposed to be modified and specific factors must be found by the municipal governing body to exist in order for a blight declaration to withstand scrutiny. Moreover, no more than 20 percent of the land mass designated for private ownership in a redevelopment area may be comprised of non-blighted land.

Further, changes will be made to condemnation procedures and relocation assistance. Non-blighted property cannot be condemned without a certification that all means have been exhausted to acquire the property short of condemnation. The valuation standard is modified to require that properties be valued at no less than the replacement cost of the property. Also, any displaced resident and small business operator will be given a statutory right of first refusal to purchase or lease the property in the redevelopment area post-development. For relocation assistance, which has not been increased since 1971, there will be a phased increase with significant bumps over the next several years.

Finally, procedural safeguards are built into S1451 that include the right to contest various governmental actions in court. Further, the Superior Court is given specific authority to suspend redevelopment activities in the event a notice under the Local Redevelopment and Housing Law (LRHL) was defective. Importantly, existing redevelopment activities are proposed to be grandfathered to the extent they have been undertaken, and there will be a four-month period of repose after S1451 is made law. The bill has been referred to the Senate Budget and Appropriations Committee to assess fiscal impacts.

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Pennsylvania Case of the Month: Commonwealth Court Views Municipal Ordinance Requirements Separately If Developing Parcel Located in More Than One Municipality

By Loren D. Szczesny

This case—*Hamilton Hills Group, LLC v. Hamilton Township Zoning Hearing Board*, 2010 WL 3419222 (Pa. Cmwlth. September 1, 2010)—before the Commonwealth Court of Pennsylvania involves the development of a tract of land extending into three municipalities. The issue before the court was whether a municipal zoning hearing board could require the provisions of the municipal zoning ordinance be satisfied only by the land situate within its municipal borders and without considering the portions of the tract in the adjacent municipalities. While not a common occurrence, multimunicipal properties are encountered in our practice, especially for development projects where contiguous parcels are assembled as a part of a comprehensive or regional development.

In this case, Hamilton Hills Group, LLC (the developer) proposed to develop a tract of 89.37 acres of land that extended into the municipalities of Hamilton Township, Berwick Township and the Borough of Abbottstown, Adams County, Pennsylvania. The portion of the property within Hamilton Township was located in the R-3 Zoning District, which permitted the construction of a townhome development by special exception. However, the zoning

ordinance also included specific requirements to be satisfied in order to obtain approval of the special exception. Among the requirements for a townhome development was a condition that any development proposing more than 12 townhouse units must contain a "designated open space or recreation area," containing a minimum of 300 feet of open space per unit.

Under the developer's proposal, all of the 325 proposed townhouse units would be built on that portion of the tract within Hamilton Township. The portion of the tract in Berwick Township and in the Borough of Abbottstown would be used to satisfy the open space or recreation area requirement. In the developer's case before the Hamilton Township Zoning Hearing Board, the developer's consultant was not able to identify how much of the open space would be located within Hamilton Township or whether the developer could satisfy the open space requirement if the portions of the tract located in Berwick Township and in the Borough of Abbottstown were not considered a part of the proposal.

In reviewing the testimony before it, the Zoning Hearing Board of Hamilton Township determined the developer failed to prove compliance with the requirements of the zoning ordinance for the grant of a special exception—specifically, the requirement for the plan to include open space or recreation area containing a minimum of 300 feet of open space/recreation area per unit. The developer appealed to the Court of Common Pleas, and in its decision, the trial court held the Hamilton Township Zoning Hearing Board did not have authority to exert control over any municipality outside of its borders. Therefore, the trial court concluded it would have been improper for the Hamilton Township Zoning Hearing Board to consider those portions of the subject tract located outside of Hamilton Township. The trial court affirmed the decision of the Zoning Hearing Board, and the developer appealed to the Commonwealth Court.

In its appeal to the Commonwealth Court, the developer argued the Hamilton Township Zoning Ordinance must be construed in favor of the property owner since the ordinance does not unambiguously state the open space requirement must be satisfied solely by use of land located within the township's borders. In considering the developer's argument, the Commonwealth Court examined the provisions of the Hamilton Township zoning ordinance and the intent of the R-3 Zoning District of the township. Following its review, the Commonwealth Court determined the zoning ordinance clearly reflected an over-arching concern of the township to effect zoning and land use regulations **within the township** and did not mention any consideration to neighboring municipalities. The Commonwealth Court found its interpretation of the Hamilton Township zoning ordinance was consistent with the statutory authority granted to municipalities that possess no power beyond that which is expressly delegated to them.

In noting each municipality is responsible for the well-being of citizens within its borders, the Commonwealth Court explained the well-being of the citizens of the Borough of Abbottsown and Berwick Township belong to the governing bodies of those municipalities. The Hamilton Township Zoning Hearing Board had neither the duty nor the authority to exercise its zoning power for the benefit of any citizens of the neighboring municipalities. Furthermore, the Hamilton Township Zoning Hearing Board would be unable to ensure the developer did not develop the designated open space in the future or the neighboring municipalities would not consent to some other use or development of the property within its borders. As a result, the Commonwealth Court concluded the decision of the Hamilton Township Zoning Hearing Board, refusing to allow consideration of those portions of the tract outside of Hamilton Township, was not an abuse of discretion, and the Commonwealth Court affirmed the trial court's order.

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Proposed Legislation in Pennsylvania

By David H. Comer

In an attempt to keep school districts aware of impending residential development within its borders, House Bill No. 1754 proposes to add provisions to the Pennsylvania Municipalities Planning Code to require a municipality to notify the superintendent in writing if a plan for a residential development or development plans for a planned residential development were finally approved by the municipality during the preceding month. The notice from the municipality to the superintendent is required to include, at a minimum, the location of the development, the number and types of units to be included in the development and the expected construction schedule of the development.

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A Deemed Approval? Maybe. Maybe Not!

By Herbert K. Sudfeld, Jr.

In a recently decided consolidated case, the Pennsylvania Commonwealth Court, in *Maple Street A.M.E. Zion Church v. City of Williamsport and Council of the City of Williamsport,* No. 2241 C.D. 2009, and the companion case of *Maple Street A.M.E. Zion Church v. City of Williamsport and Council of the City of Williamsport,* No. 2252 C.D. 2009 (decision filed October 8, 2010), dealt with cross appeals of the parties involving parking issues for the church and whether a deemed approval of requested variances had resulted in favor of the church.

Here, the church purchased a former laundromat property, which had been a nonconforming use and was therefore exempt from the parking requirements of the city zoning ordinance. The church use was permitted in the R-2 district as a conditional use and was required to have 10 parking spaces. The church applied to the zoning hearing board, asking for a variance and interpretation regarding the parking. The board concluded no variance was required because the church required less parking than the laundromat, and the church should go to city council to have the parking considered. No written decision was ever issued by the board. The church published a public notice of a deemed approval in the local newspaper due to the board's failure to issue a written decision. No one appealed.

The church had also applied for a conditional use approval to the city council, and the council approved the conditional use with the stipulation the church obtain a license for eight off-street parking places. The church obtained a license agreement with a neighbor, which had a parking lot that could handle up to 30 cars, after the council's decision. However, the church appealed the condition because it said it had a deemed approval of the parking issue from the board and the non-conforming use of the laundromat continued as to the parking issue. The lower court remanded back to the city council to determine whether the parking requirement was subject to the law of nonconforming use and if council had the requisite authority to override a nonconforming use. (The lower court should have sent the matter to the zoning hearing board for such a determination.) The city council ruled the nonconforming laundromat use ended when the church bought the property and so did its accessory non-conforming use of the parking. The church again appealed, and the lower court ruled no nonconforming use existed as to the parking, but the church had obtained a deemed approval as to the variance for the parking. Both parties appealed.

The Commonwealth Court ruled first that the church could not maintain an appeal of issues it had won in the lower court (the deemed approval) in order to support its appeal of the nonconforming use argument because it was not an "aggrieved party." The city argued that no deemed approval was perfected. The Commonwealth Court agreed, stating Section 908(1) of the municipal planning code (MPC) requires not only publication but also a posting of the property. Here the church had failed to post the property, so no deemed approval occurred.

The Commonwealth Court also ruled the city council had properly conditioned the conditional use grant on the requirement to obtain a license for eight parking spaces because council did not have jurisdiction to decide the question of nonconforming use status and did not have a zoning hearing board decision granting a variance or a deemed approval of such. The court did hold however that the church had fulfilled the condition by its subsequent agreement with the neighboring parking lot owner, and the church was entitled to its permits.

This case is most noteworthy for the recitation of requirements involving deemed approval status, but it is also important in that it teaches one to pay attention to the decisions being issued from various municipal departments and agencies in order to ensure one does not trump another or is trumped because of lack of jurisdiction in the first place.

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DVRPC Studying US 30 Corridor

By Clair E. Wischusen

A two-year study is being conducted by the Delaware Valley Regional Planning Commission (DVRPC) as part of its long-range planning effort.

The study area stretches along U.S. 30 from its intersection with Old Eagle School Road in the west to the intersection with 52nd Street in West Philadelphia in the east. In general, the study area encompasses land within approximately a one-mile radius from the centerline of Lancaster Avenue. It also includes the area in the vicinity of the SEPTA Norristown High Speed Line station in Delaware County.

The study corridor, Lancaster Avenue, provides direct access from Philadelphia and the Main Line Corridor to I-476 (the Blue Route) and U.S. 1. This study will

address potential improvements to Lancaster Avenue, as well as parallel and perpendicular routes such as Montgomery Avenue, Conestoga Road and Haverford Road. Recommendations will be developed that promote pedestrian and bicycle safety as well as improved access to transit (SEPTA Paoli/Thorndale Regional Rail Line, Norristown High Speed Line and various SEPTA bus routes). The study team will develop conceptual improvement alternatives that are aesthetically and functionally compatible with the character of the study area.

The study seeks to integrate land use and transportation planning by encouraging roadway design that is compatible with the land use context. The land use contexts within the study area, and the comments received from the public, suggest U.S. 30 operates as a community arterial throughout the corridor.

For more information, please contact Clair E. Wischusen at 215.918.3559 or cwischusen@foxrothschild.com.

QUICK LEGAL HITS:

PA Senate Votes To Delay Sprinklers

By Kimberly A. Freimuth

On October 14, 2010, the Pennsylvania State Senate passed House Bill 1196, which would impose a moratorium on the requirement to install mandatory sprinklers in new single-family and two-family homes until December 15, 2011.

The 2009 International Residential Code required the sprinklers be installed in townhomes beginning January 1, 2010. New single-family and two-family homes would also fall under the mandate beginning on January 1, 2011. The 2009 IRC has generally been adopted as Pennsylvania's statewide building code — including the sprinkler requirements.

However, if passed by the State House and signed into law by the Governor, HB 1196 would exclude the requirement for residential sprinklers in single-family and two-family dwellings until December 2011.

During the moratorium, the builder would be required to offer sprinklers as an option to the homebuyer, at the homebuyer's expense, at or before signing the purchase contract. The legislation will not affect townhome construction and existing sprinkler requirements.

The State House returns from its election recess on November 8 and is scheduled to be in session for five days. If the lower chamber fails to act on the legislation, it will need to be re-introduced in 2011, after the 2009 IRC sprinkler requirements for single-family and two-family homes have gone into effect.

For more information, please contact Kimberly A. Freimuth at 215.918.3627 or kfreimuth@foxrothschild.com.

Blight Legislation Awaits PA Governor's Signature

By Carrie B. Nase

On October 18, 2010, bipartisan legislation that will dramatically reform Pennsylvania's current laws addressing abandoned or dilapidated properties cleared the Senate and was sent to the Governor for his signature.

Senate Bill 900, known as the Neighborhood Blight Revitalization and Reclamation Act, passed the Senate unanimously, further aiding the effort for local communities throughout Pennsylvania to fight blight and repair or demolish dilapidated properties.

The bill, authored by Sen. David Argall (R-Schuylkill), will strengthen current law to identify property owners of blighted buildings and hold them responsible for the costs to rehabilitate or demolish these structures. SB 900 provides that if any real property is in serious violation of a building or housing code, the municipality may institute an action to prevent, restrain, correct or abate the violation.

It allows municipalities to deny a building permit, zoning permit, variance or a municipal license, permit or approval if the applicant owns real property in any municipality for which taxes, water, sewer or refuse charges are delinquent or the applicant is in serious violation of a state law or municipal code and has taken no substantial steps to correct the violation six months following notification.

Additionally, SB 900 provides for extradition of out-of-state property owners and specifies under the extradition provisions that out-of-state property owners with code violations must have been charged under the Crimes Code and the extradition shall be subject to the full extent allowed and in the manner authorized by Chapter 91 of the Judicial Code.

For more information, please contact Carrie B. Nase at 215.299.2030 or cnase@foxrothschild.com.

PA Construction Workplace Misclassification Act Signed Into Law

By Robert W. Gundlach, Jr.

On October 13, 2010, Pennsylvania Governor Ed Rendell signed House Bill 400 into law, making it Act 72 of 2010. The legislation, authored by State Representative Bryan Lentz (D-Delaware County), seeks to target employment practices on construction sites. The law penalizes employers that intentionally misclassify their workers to avoid paying taxes and workers' compensation premiums.

The new law requires people who work in the construction industry to be employees of the party that pays their wages unless they can prove they are legitimate independent contractors. That would mean the services performed are outside the usual course of the business of that particular employer and they are customarily engaged in an independently established trade, occupation, profession or business.

While Act 72 defines a worker as an independent contractor in much the same fashion as the Internal Revenue Service, it is worth noting the prohibition against financial control of the independent contractor and his ability to offer services to the market. In particular, Act 72 states the independent contractor must have previously performed similar services while free from control or must hold himself out to others as available and able — and in fact be available and able — to perform similar services in the marketplace.

The intentional misclassification of an employee will be considered a third-degree felony. Misclassification due to negligence would be a summary offense with fines.

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