

CONSTRUCTION LAW/COST OVERRUNS

By Erich J. Schock and Steven T. Boell, Fitzpatrick Lentz & Bubba, P.C.

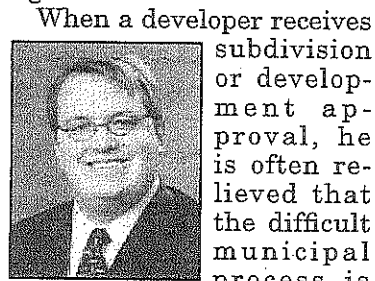
Watching the clock in a troubled economy: Time limits affecting land development

The construction industry's silent enemy in an economic downturn is time. Construction is preceded by a maze of acronyms encountered in the permitting process. Costs to obtain municipal and "outside agency" approvals are well known. Less known is that, while an approved project pending, a buyer or lender may allow those entitlements



Erich J. Schock

to expire and need to start again.



Steven T. Boell

When a developer receives subdivision or development approval, he is often relieved that the difficult municipal process is complete. That relief is quickly tempered due to "conditions" attached to the approval. In addition to municipal fees, security, and development agreements, typical

conditions include the outside agency approvals (e.g., Highway Occupancy Permit; National Pollutant Discharge Elimination System (NPDES) permits).

The time and costs associated with initially obtaining permits is notorious; less known is that, while the outside agency process is on-going, the municipal clock is already running. Often, either as a condition of approval or as a provision in a development ordinance, a municipality requires that conditions be satisfied within a specific window of time (e.g., one year

from the written approval). While the developer may seek extensions, such extensions are in the discretion of the municipality.

Ultimately, even after final outside agency permits are granted, the developer (or its successor) must be cognizant of time as such permits are subject to separate time constraints for improvements completion. Recently, the Pennsylvania Department of Environmental Protection reduced the life of general NPDES permits from five to two years, from the date of its issuance. This is particularly

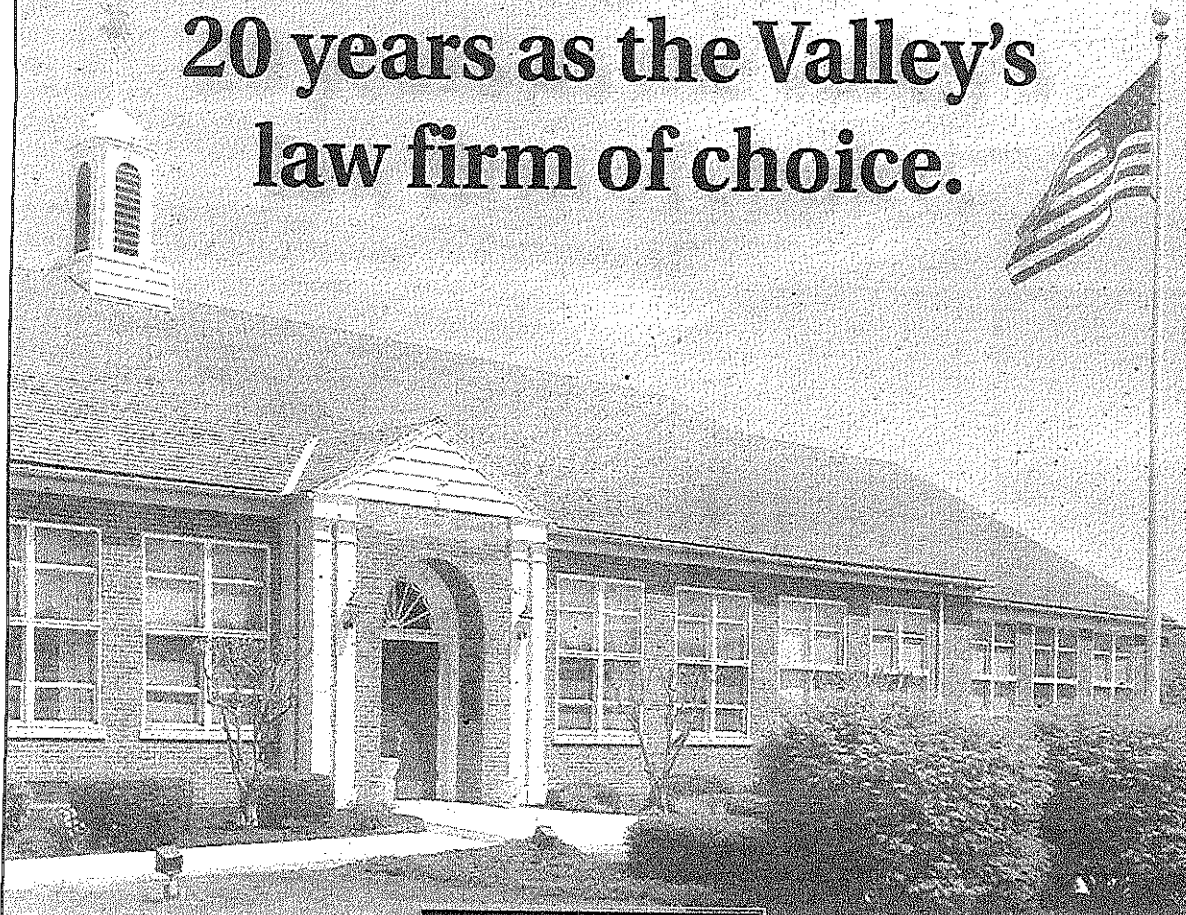
significant, because DEP continually revises its design criteria and regulations, so an expired permit is subjected to the amended standards. For example, as DEP expands required watercourse buffers, building envelopes and lot densities may be impacted. In Pennsylvania, the applicability of revised regulations to permit extension requests remains an issue of controversy.

Further, municipalities commonly amend their zoning ordinances creating greater restrictions use and design standards. While previously approved plans may be "grandfathered," under state law, statutory time restrictions require that construction be completed in a specific time or unfavorable zoning amendments are applied. For example, under Pennsylvania law, if the required improvements are not substantially completed within five years of the approval, then intervening zoning amendments are interpreted to affect the approved project, requiring additional municipal proceedings. In the residential context, amendments may include increased lot size requirements which decrease project density and impact project feasibility.

New Jersey recently addressed many of these issues with the enactment of an Amendment to the Permit Extension Act, extending the validity of most approvals until December 31, 2012. Pennsylvania does not have an equivalent across-the-board statutory protection. Accordingly, in Pennsylvania, extensions of any of the referenced permits or entitlements must be obtained. Be careful to apply for extensions well in advance of the expiration dates, as the process may require complicated submissions and public meetings. Legal and other professional consultants should be continually engaged to monitor the relevant deadlines and to assist in the permit renewal/extension process.

Erich J. Schock is a shareholder at Fitzpatrick Lentz & Bubba, P.C. and is Chair of the firm's Real Estate, Land Use and Development Department. Steven T. Boell is an associate at Fitzpatrick Lentz & Bubba, P.C. ■

Celebrating more than
20 years as the Valley's
law firm of choice.



FL&B

FITZPATRICK LENTZ & BUBBA

ATTORNEYS AT LAW

4001 SCHOOLHOUSE LANE • CENTER VALLEY, PA 18034-0219

STABLER CORPORATE CENTER • PHONE: 610.797.9000 • FAX: 610.797.6663

www.flblaw.com

Corporate, Business
& Banking

Real Estate,
Land Use
& Development

Litigation

Estate Planning
& Administration
of Estates and
Trusts

Health Care

Employment Law

Bankruptcy

Elder Law

Family Law

Who's Who
IN BUSINESS
Lehigh Valley