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A brief examination of the new Smart Growth Act reveals a flaw

On June 14, 2004, the New Jersey Legislature enacted the Smart Growth Act (Act). The Act promotes the “smart growth” goals of the New Jersey State Development and Redevelopment Plan (SDRP) by requiring the New Jersey Department of Environmental Protection (DEP), the New Jersey Department of Transportation (DOT) and the New Jersey Department of Community Affairs (DCA) to expedite certain permit applications in smart growth areas and by creating a Smart Growth Ombudsman in the DCA, as well as Directors of Smart Growth in the DEP, DOT and DCA.

The Act defines smart growth areas as: (i) the areas that the SDRP designates as Planning Area 1 or 2, (ii) a designated center or designated growth center in an endorsed plan, (iii) a smart growth area and planning area designated in a master plan adopted by the New Jersey Meadowlands Commission, (iv) a growth area designated in the comprehensive management plan adopted by the Pinelands Commission,



Kevin Moore

(v) an urban enterprise zone, (vi) an area determined to be in need of redevelopment as approved by the DCA or (vii) similar areas designated by the DEP.

The Act applies to all DEP permits for properties in smart growth areas other than permits issued pursuant to the Coastal Facility Review Act, the Air Pollution Control Act, the Solid Waste Management Act and the Radiation Protection Act, to all DOT permits for properties in smart growth areas and to all DCA permits in smart growth areas required as a condition of development or redevelopment.

Except for certain DEP NJPDES permits for which there are longer time periods, the DEP, DOT and DCA have 20 days after the filing of an application for a qualified permit to determine if it is complete for the purposes of commencing a technical review, 45 days after the application is filed to determine if it is technically complete (except for certain DEP NJPDES permits and DEP water supply allocation permits for which there are longer time periods), and 45 days to approve or deny a technically complete permit application. This 45 day period can be extended for another 30 days upon the mutual agreement of the applicant and the agency.

If the DEP, DOT or DCA fail to act within any of these time periods, the permit application is respectively deemed complete, technically complete and approved. Among their other duties, the Smart Growth Ombudsman and the Smart Growth Directors in the three agencies are to assist applicants in expediting their permit applications.

However, in my opinion the Act has a major flaw. Each

agency must qualify and certify professionals (e.g. traffic and civil engineers). These professionals must certify that the expedited permit application conforms to all regulations. Thus, an applicant who needs a waiver from a regulation cannot use the Act. Moreover, the penalties for negligently or willfully certifying that a non-conforming application conforms to regulations subject a certified professional and his firm to suspension from the permit program and loss of professional licensure. Often the determination of whether an application conforms to a regulation is subject to interpretation. The Act's severe penalties will discourage professionals from making the required certifications. Hopefully, the regulations that the Act requires the agencies to promulgate will clarify what a negligent and willful certification is, so that qualified applicants can take advantage of the benefits of this new law.

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