

Things are evolving daily, and Zarin & Steinmetz is here to assist you.

No Need To "Pause" Existing Land Use Reviews: Traffic And Other Impact Analyses When Conditions Are Not "Typical"

Temporary reduction of traffic and air pollution may be one of the few "silver linings" of orders requiring non-essential people to work from home (see, e.g., New York Times, [Traffic & Pollution Plummet as U.S. Cities Shut Down for Coronavirus](#)).^{*} But how do we deal with analyzing traffic and other related impacts to advance development projects under such conditions?

Working with planning and traffic consultants, we can use data available from various sources gathered during pre-pandemic conditions, which can be extrapolated to estimate current conditions. It is typical to include seasonal and other adjustments to current traffic impacts. (See, e.g., Institute of Transportation Engineers' ("ITE") [Trip Generation Manual](#)). Certain municipalities are allowing the traffic impacts to be deferred until the FEIS, and/or a condition incorporated into the project approval requiring future sensitivity analysis at a later date to confirm any adjusted traffic counts and mitigation in the DEIS (or other traffic impact analyses if the project was subject to a negative declaration).

The ITE has put together a helpful [COVID-19 resource page](#)^{*} for its members.

Construction As An "Essential Business"

"Essential construction" has been exempt from the [Governor's "PAUSE" Executive Order](#)^{*} from the outset. Residential development with an affordable housing component has always been included in the definition of essential construction, but no quantification of the "affordable housing" component required to be deemed essential was provided initially.

Empire State Development ("ESD") responded to emailed questions clarifying the definition of essential construction and affordable housing, but municipalities began to apply this "exemption" in a seemingly inconsistent fashion. On April 9, 2020, ESD issued official guidance clarifying that ["affordable housing" for purposes of the essential business exemption means a minimum 20% affordability component](#)^{*} pursuant to an agreement with and/or declaration from a local, state, or federal government agency. Hopefully, this limitation will end in the early stages of the lifting of the emergency status.

Deadlines, Extensions, And The NY "PAUSE" Order

If your development project is not considered essential under the [Governor's "PAUSE" Executive Order](#),^{*} even though construction is stayed, you still need to ensure that your site plan, subdivision, variance, or other development approvals don't lapse either by statute, local ordinance, or by the terms of the resolution.

Extensions should also be secured when it may not be possible to comply with specific conditions in your approvals. Required landscaping and wetland monitoring, for example, are commonly done in the spring. Pursuant to [Guidance issued by the NY Department of Agriculture and Markets on April 6, 2020](#),^{*} however, horticulture (except for nurseries/greenhouses selling food producing plants) has been designated as a non-essential business, so new planting will not be possible during the "PAUSE." In contrast, [landscaping for maintenance and pest control purposes \(but not for cosmetic purposes\)](#)^{*} has been designated essential.

[Z&S has submitted a letter to Governor Cuomo](#) requesting that he toll and/or extend land use approvals and implementation deadlines pursuant to his [authority to issue Executive Orders during the COVID-19 State of Emergency](#).^{*} In the meantime, it is incumbent upon the applicant to seek and secure the necessary extensions.

Avoiding Pitfalls Of Holding Remote Public Hearings

Municipal boards are permitted to conduct their public meetings via conference call or video conference pursuant to [Executive Order 202.1 \(03/12/20\)](#).^{*} There are certain protocols to follow to avoid disruption, and achieve efficient and productive meetings:

- Require members of the public to register for by email, including providing his or her name and email address, if they wish to be provided a link to virtually attend the meeting as it occurs in real time. This is no different from sign-in sheets at public hearings. Meetings should be recorded, and are required under the Executive Order to be transcribed after the fact. The video and transcription can be posted on the internet for all members of the public who do not wish to register to view on demand after it is completed.
- Designate a strong and effective “host” to be in control of the meeting (chairperson or board clerk/secretary). The host can also designate others to be co-hosts, such as board members, the applicant, and members of the applicant’s development team.
- Require the applicant to do a “trial run” with the host before the public meeting, to demonstrate the capability to present over the conferencing platform effectively. Questions from the board can be provided to the applicant in advance to allow the applicant to incorporate the responses into the presentation for a smoother virtual experience.
- Set up a virtual “waiting room.” Have the host allow only those who pre-registered into the meeting.
- Lock down screen sharing only to the host and the co-hosts. Mute everyone but the host and the co-hosts.
- Determine in advance how the public will participate: Will questions be accepted by email in advance? Will questions be accepted via the video conferencing chat feature or by email in real time? Will the board allow a brief period of time for written comments from members of the public who did not participate or pre-register for the meeting?

By implementing these or similar protocols, an applicant is afforded due process, and the public has a full and fair opportunity to participate and be heard.

Courts Slowly Coming Back Online For Non-Essential Matters

As litigators are aware, [Chief Administrative Judge Order 78 \(03/22/20\)](#)^{*} stayed paper and e-filing in non-essential matters, and the [Second Amended Administrative Order, Ninth Judicial District \(03/30/20\)](#)^{*} adjourned all non-essential civil matters until on or after April 30, 2020, litigation of "non-essential" matters has been at all but a standstill in the NY Courts. It appears the tolling of statutes of limitations and other deadlines has also been further extended to May 7, 2020 by [Executive Order 202.13 \(04/07/20\)](#).^{*}

Now that Virtual Courts have been implemented Statewide, in a recent [Administrative Order of the Chief Administrative Judge \(04/08/20\)](#),^{*} as of April 13, 2020, the Courthouse doors began to reopen to non-essential matters. Although the prohibition on the filing in connection with new and pending non-essential matters will continue for now, matters will begin to be conferenced remotely at the discretion of the Judges and at the request of attorneys. Judges are also being encouraged to address backlogs of undecided motions.

Efficiency And Productivity While Sheltering-In-Place

Good resources on how to maintain your efficiency and productivity, while balancing family needs, and coping with the struggles of a “shelter-in-place” pandemic world*:

- [The Ultimate Guide to Productivity at Home during a Shelter-in-Place Lockdown](#) (Boileau Communications)
- [Going Remote: 4 Practical Ways to Promote Work-Life Balance and Avoid Burnout](#) (Great Place to Work)
- [50 Tips for Improving Your Work Remote Life](#) (Stacker)
- [Homeschooling is Not the Same as Crisis Schooling: Advice During Coronavirus COVID-19 Shut Downs](#) (Heather Anne Art and Soul)

^{*}Note: Links are to external web sites that friends of our firm may find helpful. They are provided for information only, and do not constitute an endorsement by Zarin & Steinmetz of those organizations, their policies, or their products. Zarin & Steinmetz is not responsible for, does not endorse, nor have any control over the content of linked websites.

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