

CKC EXPANDS AREAS OF PRACTICE AND OPENS NEW SUSSEX COUNTY OFFICE

The firm of Courter, Kobert & Cohen P.C., is pleased to announce that Paris P. Eliades and John E. Ursin have become members of the firm and Robert B. McBriar has become associated with the firm. The firm also announces the opening of its new Sussex County Office located at 35 Sparta Avenue in Sparta, New Jersey.

Paris P. Eliades is the resident partner of the firm's new Sussex County Office. Mr. Eliades concentrates his practice in the areas of family law, criminal defense and personal injury litigation. As head of the firm's Family Law Department, Mr. Eliades provides professional legal services regarding all facets of family law including domestic violence, high conflict custody matters, child support, alimony, equitable distribution and prenuptial agreements. Mr. Eliades also devotes a considerable amount of his practice to representing individuals charged with criminal matters in Superior Court and Municipal Court, motor vehicle violations and substantial personal injury litigation.

Mr. Eliades joins the firm after 18 years with the Law Firm of Daggett, Kraemer, Eliades, Kovach & Ursin. Mr. Eliades brings a broad range of legal experience to the firm having tried both civil and criminal jury trials as well as hundreds of bench trials. In 1985, Mr. Eliades served as Judicial Law Clerk to the Honorable Ronald B. Graves, now an Appellate Division Judge. From 1986 to 1989, Mr. Eliades was an Assistant Prosecutor with the Sussex County Prosecutor's Office and in 1990 Mr.

Eliades served as the Municipal Prosecutor for the Borough of Hamburg.

Mr. Eliades is an active member of the Sussex County Bar Association and the New Jersey State Bar Association. Mr. Eliades served on the State Bar Association's Board of Trustees from 1997 to 2003 and has continued to serve from 2005 to the present. Mr. Eliades is presently serving his second term as the Sussex County representative to the New Jersey State Bar Association's Judicial and Prosecutorial Appointments Committee. In 2003, Mr. Eliades was appointed by the Supreme Court of New Jersey as a member of the Disciplinary Oversight Committee. Mr. Eliades is also a member of the New Jersey State Bar Association's Membership and Public Relations Committee, a trustee to the Association's Municipal Court Practice Section and a member of the Association's Family Law Executive Committee.

Mr. Eliades is also involved in various charitable organizations. He has acted as an advisor for Project Self-Sufficiency and lectured at numerous seminars hosted by Project Self-Sufficiency. In 2003 Mr. Eliades was awarded the Mosaic Award by Project Self-Sufficiency. Mr. Eliades has received numerous awards over the years for his pro bono service.

John E. Ursin concentrates his practice in the areas of municipal law, civil litigation, zoning and land use. Mr. Ursin provides professional legal services that involve complex business and real estate transactions. Mr. Ursin

serves as Municipal Attorney for the Boroughs of Hopatcong, Franklin, Ogdensburg, and Sussex. In addition, Mr. Ursin handles a broad range of civil matters in State and Federal Courts for nationally recognized corporations, local developers and individuals.

Mr. Ursin joins the firm after 6 years with the Law Firm of Daggett, Kraemer, Eliades, Kovach & Ursin. Mr. Ursin is admitted to the Bar of the State of New Jersey, the Commonwealth of Pennsylvania, the United States District Court for the District of New Jersey and Eastern District of Pennsylvania, the Third Circuit Court of Appeals and the United States Supreme Court.

Mr. Ursin attended the University of Scranton and Rutgers University School of Law where he earned his J.D. in 1993. After law school, Mr. Ursin served as Judicial Law Clerk to the Honorable Ronald B. Graves in Sussex County.

Mr. Ursin is presently Vice President of the Sussex County Bar Association, past Chairman of the District X Fee Arbitration Committee, Civil Arbitrator for the Sussex County Superior Court and Condemnation Commissioner appointed by Assignment Judge Bozonelis. In 2007, Mr. Ursin was recognized by the New Jersey Law Journal as one of the "Top 40 Attorneys Under 40."

Mr. Ursin remains committed to serving a number of volunteer and charitable organizations. He is Member of the Board of Directors and General Counsel for Project Self-

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AREAS OF PRACTICE

Corporate Law/Commercial & General Litigation/Land Use & Zoning/Labor & Employment/Government Affairs & Agencies/Personal Injury/Insurance Law
Banking Law/Construction/Estates & Trusts/Family Law/Mediation/Real Estate/Health & Hospital Law/Public Utilities & Telecommunications

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UNDER THE RIGHT CIRCUMSTANCES THE BURDEN OF DOUBLE TAXATION CAN BE FURTHER REDUCED

By Thomas F. Craig, II, Esq.

Provisions of the 2003 Jobs Growth and Tax Relief Act provided a reduction in the “double taxation” of C-corporation income through a reduced rate on dividend income. However, it did not eliminate the “double taxation”, which still remains a consideration for small business owners that have used the C-corporation format for their business.

The worst-case scenario for use of the C-corporation involves taxable mergers and acquisitions. Assume that the corporation has been very successful and has substantially appreciated in value, so much so that it is ripe for sale at a high purchase price. Also assume that the purchaser of the business insists on purchasing the assets only; rather than the stock, for cash.

Under this scenario the sale of assets will yield an income tax at the corporate level, and then, to get the cash out to the shareholders, another tax as a dividend at the shareholder level. The double-taxation experienced by the business owners as a result of the asset sale for cash could be at least 15 percent more than if the assets were sold by an S-corporation or an LLC taxed as a partnership.

Several years ago I had a client come to me with a letter of intent to sell substantially all of the assets of the four C-corporations he owned for about \$3,500,000. It was his intention to completely retire so that after the asset sale the proceeds of the sale would need to be distributed to our client, the only shareholder. This would have resulted in substantial tax because it would be taxed at the corporate level and when the money was distributed the dividend would be subject to an additional 15% tax. The corporate tax liability of the four corporations for the year in which the assets were sold amounted to \$1,380,000. Thus, the gross paid for the assets would be reduced to \$2,120,000 and that amount, when distributed to the client, the shareholder, as a dividend, would be subject to tax at a rate of 15%. This would result in a net of \$1,802,000 to the client.

While preparing to close the asset transactions, the client's accountants and I began to look for a way to reduce the client's tax burden. After searching for a period of time we located a company that was willing to purchase the stock of the four corporations for cash following the asset sale.

The purchasing company wanted the corporations because they had cash and gains which the purchasing company could use to its benefit on consolidated tax returns. The purchasing company agreed to pay the sum of \$2,860,000 for the stock of the four corporations. This represented a significant increase over the amount that would be available for the dividend if the corporations were simply dissolved.

The sale of assets was followed shortly by a sale of all the stock of the corporation. In connection with the stock sale the corporations assigned to the client all of their respective liabilities, except the income tax liabilities, which were assumed by the client. The total assumed liabilities were not significant in amount. The \$2,860,000 purchase price after a tax of 15% capital gain rate resulted in a net to the client of \$2,431,000.

By finding a purchaser for the stock and completing the sale in a timely manner we were able to put the client in a position to maximize the net profit resulting from the sale of his businesses. ♦

NEW JERSEY PERMIT EXTENSION ACT

By Amanda L. Mulvaney, Esq.

On June 23, the New Jersey Legislature passed the Permit Extension Act of 2008, which was recently signed into law by the Governor. The Act extends the expiration date of state and local government approvals issued from January 1, 2006 through July 1, 2012. The legislation was adopted in response to the national recession, which has drastically impacted various segments of New Jersey's economy. The Legislature was concerned about the industry-wide decline in real estate development, including reduced demand, declining sales and rentals, layoffs, and problems in the financial markets. The Act is similar to legislation enacted in the early 1990s, which helped the State's

economy when it faced a similar economic downturn.

The Legislature has found that the construction industry and related trades are sustaining severe economic losses and that the lapsing of development approvals would exacerbate these losses. By allowing an extension of permits, already approved projects will be able to go ahead once the economy improves. In addition, the extension of permits and approvals will help maintain the value of the collateral to financial institutions throughout the State.

The Act mandates that projects approved on or after January 1, 2006, are exempt from changes in most environmental laws, public

health standards, building codes, or local zoning enacted after the approvals were granted. It should be noted, however, that while the Act applies to most government permits and approvals, there are several exemptions.

For example, the Act does not apply to permits issued by the federal government, permits or approvals issued in “environmentally sensitive areas” including, but not limited to, the Highlands Preservation Area. Further, there is no extension of approvals granted for residential developments where the master plan and zoning ordinance was amended to rezone the property to industrial

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NEW JERSEY AFFORDABLE HOUSING UPDATE

By Katrina L. Campbell, Esq.

New Jersey has seen great changes in the area of New Jersey Affordable Housing in 2008. This spring, the Council on Affordable Housing introduced its new third round rules which greatly increased the amount of low-cost housing that towns are required to build. Then on July 17, 2008, Governor Corzine signed landmark legislation that will further reform the affordable housing laws.

The bill, A500/S1783, effectively ends the Regional Contribution Agreement (RCA) as means to address affordable housing requirements under the Fair Housing Act. These RCAs tended to be used by suburban municipalities to pay older, more urban areas to build low and moderate housing there.

The new law also creates a statewide development fee of 2.5% that will be charged on non-residential construction or improvements to raise revenue for the construction and rehabilitation of affordable and workforce housing in New Jersey. Under the old rules, a municipality could pay for the affordable housing by assessing fees on the developer equal to the cost of the housing. Under A500/S1783, rules regarding costs for residential developers are unchanged. But non-residential developers may now only be charged a flat fee of 2.5%.

Proponents of the bill believe that it will end decades of unfair, unbalanced and insufficient affordable housing in New Jersey. While many of the municipalities in New Jersey, particularly the more rural ones, argue that this legislation is at odds with policies to preserve open space and farmland and further exacerbates the pressure to build roads and utilities.

At least two separate efforts—one by the State League of Municipalities that claims 217 participants, and another by Clinton Township (Hunterdon County) that includes approximately 20 towns—have been organized to challenge the legality of the new rules.

In the meantime, COAH has given all municipalities a December 31, 2008 deadline for completion and submission of its Third Round COAH plans. Failure to meet this deadline could open municipalities up to builder's remedy suits. Each municipality is dealing with this deadline differently, some are fighting to extend the deadline through lawsuits and refusing to submit a plan, others are working to meet the deadline, still others are fighting the new rules but at the same time planning to be ready to meet the deadline if a request for an extension is unsuccessful.

At this time, the future of Affordable Housing rules in New Jersey is still uncertain. All parties involved in residential and non-residential development should keep a watchful eye over the next year and be mindful of the present rules as well as potential changes when making any land use decisions.

Bill Highlights

- Establishes a statewide non-residential development fee of 2.5 % to be charged upon non-residential construction or improvements to raise revenue for the construction and rehabilitation of affordable and workforce housing. Certain exclusions apply. Developers of non-residential properties without COAH's or the court's authorization to charge development fees, will be required to remit the non-residential development fees to the State Treasurer. The fees will be used for affordable housing purposes under the "Fair Housing Act."
 - Eliminates the Regional Contribution Agreement (RCA) as a method to address affordable housing needs under the FHA.
 - Renames the "Neighborhood Preservation Nonlapsing Revolving Fund" to the "New Jersey Affordable Housing Trust Fund."
- This transformation will require very specific accounting and reporting by the Department of Community Affairs on the fund's activities.
 - Amends the "Fair Housing Act" to expand the types of properties that may be excluded from being designated as vacant land, including covenant-restricted agricultural lands, lands restricted from development pursuant to environmental laws, reserved recreational sites and historic sites.
 - Creates the "Urban Housing Assistance Fund," to be funded by an annual \$20 million appropriation from the State portion of the receipts of the statewide non-residential development fees which are received directly by the State Treasurer. The program will assist urban aid municipalities in the rehabilitation and production of housing. Funds can be used for households earning up to 120% of area medium income.
 - Establishes minimum numbers of housing units required to be set aside statewide for very low income persons under the FHA (for those earning 30% of median household income).
 - Also requires redevelopers of redevelopment projects to replace low and moderate income housing units which are subject to affordability controls and are eliminated as a result of such activities with comparable housing, on a one-for-one basis.
 - Establishes a State Housing Commission to develop a strategic housing plan for New Jersey, as well as prepare an annual housing performance report to the Governor and the Joint Committee on Housing Affordability. ❖

NEW JERSEY PERMIT EXTENSION ACT continued from page 2

or commercial use. Accordingly, builders and developers should not assume that all permits and approvals received by January 1,

2006 are automatically extended. No permit shall be extended more than 6 months after July 1, 2012. Please contact us with any

questions about this legislation or any other municipal land use matter. ❖

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PEOPLE IN THE NEWS

HOWARD A. VEX has been unanimously selected to serve as President-Elect for the Sussex-Warren Human Resource Managers Association. Mr. Vex has served as the Association's Legislative Chair since 2006 and will also continue to serve in that position.

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Sufficiency and was honored in 2001 with the Mosaic Award. Since 2004, Mr. Ursin has been a Member of the Advisory Board for Birth Haven and has been a long time Volunteer for Domestic Abuse Services, Inc. from which he received Community Service Awards in 2003 and 2005.

Also, joining the firm with Mr. Eliades and Mr. Ursin is Associate, **Robert B. McBriar**. Mr. McBriar began as an associate at the Law Firm of Daggett, Kraemer, Eliades, Kovach & Ursin. Mr. McBriar has experience in a broad range of legal areas including civil litigation, municipal law, family domestic relations, zoning and land use.

Mr. McBriar received his Juris Doctor from New York Law School. While attending law school, Mr. McBriar served as a judicial extern to the Honorable Francis Alessandro, New York City Civil Court, Bronx County.

Prior to attending law school, Mr. McBriar graduated from Boston College. Mr. McBriar also attended St. Edmund Hall, Oxford University where he studied philosophy and literature.

He is admitted to the Bar of the State of New Jersey and the United States District Court, District of New Jersey. He is a member of the New Jersey State Bar Association and the Sussex and Warren County Bar Associations. ♦

Actual resolution of legal issues depends upon many factors, including variations of facts and state laws. This newsletter is not intended to provide legal advice on specific subjects, but rather to provide insight into legal developments and issues. The reader should always consult with legal counsel before taking action on matters covered by this newsletter.

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